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DEPARTMENT OF CULTURAL RESOURCES

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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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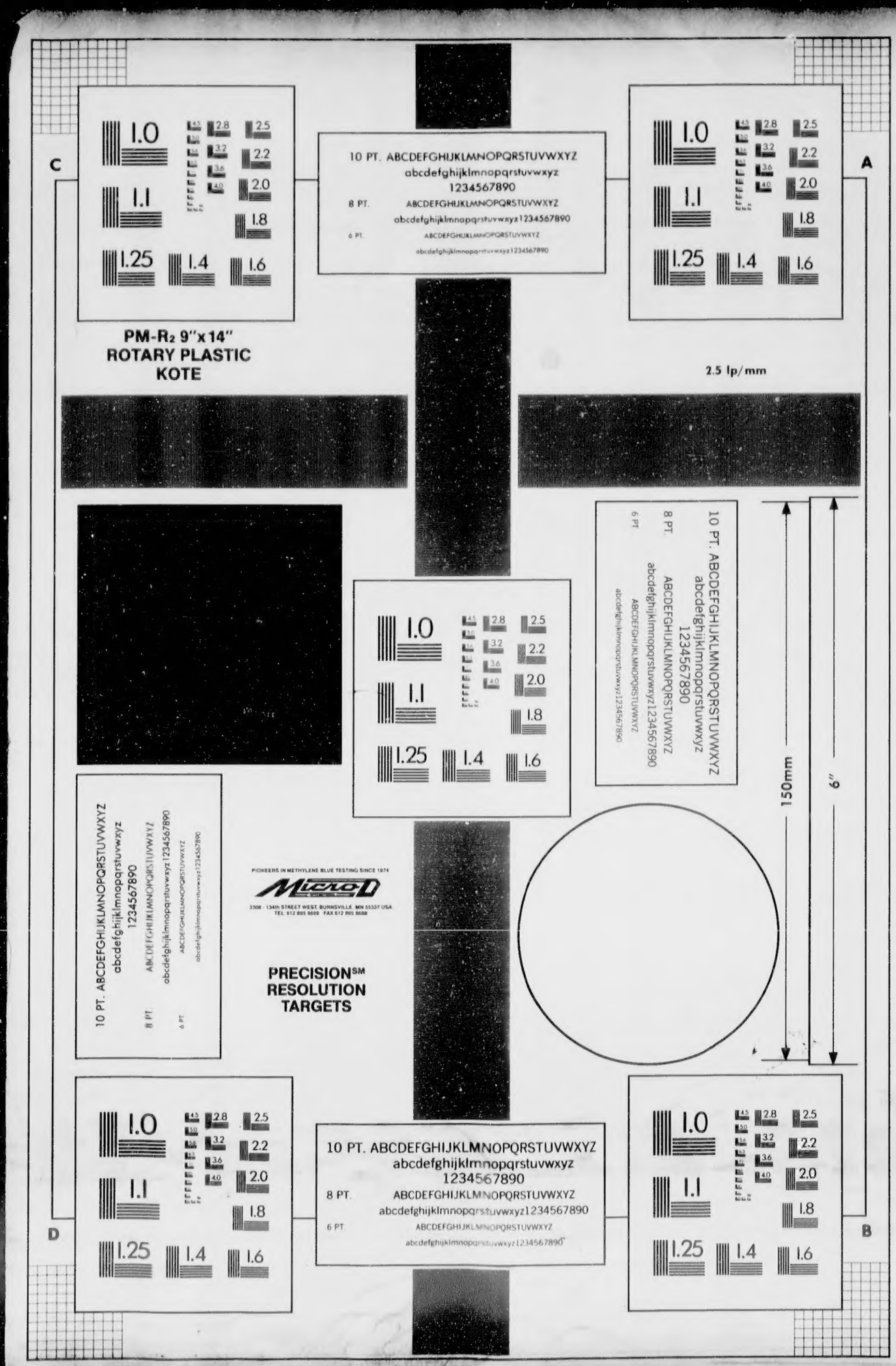
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Analyst: Tom Vincent
Date: 1/20/2009

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City of Asheville

Name of the board, council, department, or agency:

City Council

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Exact dates of the records included:

4/3/2001 - 6/24/2008

Records are: ☒ Minutes ☐ Resolutions ☐ Ordinances

Other: _____

Are these records in reverse order? _____

The details above were compiled from: ☒ Cover letters supplied by the originating office
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Person submitting the minutes for filming: Maggie Burleson, City Clerk

Notes: _____

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 77

(SEPTEMBER 21, 2004 - MAY 10, 2005)
(PAGES: INDEX – 488)

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DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

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Tuesday – September 21, 2004 - 3:00 p.m.

Worksession

Present: Vice-Mayor R. Carl Mumpower, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley

On behalf of City Council, Vice-Mayor Mumpower expressed Council's deepest sympathy to Mayor Charles R. Worley for his recent loss of his father.

ORDINANCE NO. 3164 - ORDINANCE AMENDING THE 2004-05 ANNUAL OPERATING BUDGET TO AUTHORIZE PERMIT AND FEE WAIVERS TO REPAIR STRUCTURES IN DESIGNATED AREAS FLOODED BY THE EFFECTS OF HURRICANE FRANCES BEGINNING SEPTEMBER 6-8, 2004

City Manager Westbrook explained the ordinance as follows: The City of Asheville adopted the FY 2004-05 Annual Operating Budget on June 22, 2004, providing for certain permit fees for building and related activities. Following the eye of Hurricane Ivan touching down in the State of Mississippi, substantial winds and rainfall felled upon the City of Asheville, beginning September 15, 2004, through September 17, 2004, causing major flooding and wind damage of commercial and residential properties. Many of the commercial and residential structures were completely submerged in water or damaged by trees. Before repairs or re-occupancy of such structures, the City of Asheville must first issue appropriate building and related permits. In an effort to minimize the substantial financial and emotional loss already suffered by certain City of Asheville residents and businesses, staff of the City of Asheville is of the opinion that it is in the best interest of the City to waive building and related permit fees for owners of such properties. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT (1) Building permit fees for structures suffering flooding and wind damage due to the effects of Hurricane Ivan from September 15-17, 2004, within the jurisdiction of the City of Asheville, be and are hereby waived beginning on September 17, 2004; (2). The Building Safety Director is further authorized to expedite the processing of permits for repairs to flood damaged structures by waiving the requirement for a City of Asheville Privilege License for N.C. Licensed Contractors; and (3) This budget ordinance amendment will expire on January 1, 2005.

Councilman Dunn moved to waive the rules and take formal action on this ordinance at this time. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3164. This motion was seconded by Councilwoman Jones and carried unanimously.

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CONSENT AGENDA:

Amendment to Asheville-Buncombe Minority Business Plan

Summary: The consideration of a resolution amending the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended four times: (1) November 1998 to expand participation in the

Mentor-Protégé Program; (2) December 1999 to add the 72-hour delay requirements for "good faith efforts; (3) December 2001 to expand certification to two years; and (4) October 2002 to reduce the Minority Business Commission from 13 to 11 members and provide for clarification of the grievance process in the Plan.

At their meeting on August 12, 2004, the Minority Business Commission recommended that the Plan be further amended to enhance and clarify provisions of the Plan. The most significant changes are the update of N.C. General Statutes in the changes made in the Plan regarding procurement, construction and professional services and the update of definitions.

On September 7, 2004, the Buncombe County Commissioners reviewed and approved the Plan.

Advantages:

- Changes in definitions will make the program easier and less complicated to understand.
- Update of N.C. General Statutes will provide that the current provisions are being used, updating our procedures for construction, procurement and professional services originally provided in the May 1998 adopted MB Plan.
- Removal of any reference to specific forms for minority business compliance so that it is not necessary to update with changes.
- Clerical changes for ease of reading in removing repeated information, clearer wording of procedures.
- Removal of any reference to certification being a prerequisite to contracting with the City of Asheville.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

After a brief discussion, it was the consensus of City Council to have the Mayor write a letter to Buncombe County Commission Chair Nathan Ramsey to support the filling of a third position in the Minority Affairs Office as soon as possible. Councilwoman Jones also suggested personal contact with the Commissioners would be helpful.

NC DOT Utility Agreement

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line in the State right-of-way on Bridge 740 over Mill Creek (NCDOT Project B-3616) and approval of an associated budget amendment, in the amount of $83,000, to provide funding for this project.

The Water Resources Department operates a water main across Bridge 740 over Mill Creek under the policies of the Asheville, Buncombe & Henderson Regional Water Authority (RWA), which is owned by the City of Asheville. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT has estimated the construction cost of this relocation at $74,656. An additional 10% needs to be added to include contingency and inspections, so the total amount that needs to be budgeted is $83,000.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. Funding is currently available from excess funds in the Critical Needs II matching funds. A budget amendment amending Capital Project Ordinance 82-25 (35 Fund) to reflect funding for this project is required.

Pros: Reprogramming funds for this NCDOT project will provide funding for a state mandated project that requires relocation of a water line that conflicts with an NCDOT right of way.

Cons: None noted.

City staff recommends that City Council approve the resolution authorizing the Mayor to execute a Utility Agreement with NCDOT for relocation of a water line and a budget amendment to provide funding for this project

Clerk to Advertise for Upset Bids for a Vacant Lot on Max Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Max Street.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel comprising approximately 0.04 acre located on Max Street (PIN No. 9648.07-59-8495) across from Stephens-Lee Center. The lot is too small to build on. The tax value for the parcel is $1,500.

Brandon Knolls LLC has submitted a bid to purchase the property in the amount of $1,500, and intends to combine it with adjacent property that is improved with a single-family house

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale and combination of this lot with the adjoining lot will eliminate a substandard parcel.

Approval of the resolution will establish a minimum price of $1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids.

Exchange of Land at 14 Michigan Avenue for Land on Lyman Street

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located on 14 Michigan Avenue for real property located on Lyman Street.

The City and Brandon Knolls LLC (Knolls) have negotiated an exchange of real property at 14 Michigan Avenue for Knolls property on Lyman Street.

The property at 14 Michigan Avenue (PIN No. 9638.15-54-8270) is a 0.19 acre parcel zoned RM-8 Residential Multi-Family Medium Density District. The lot is on the east side of Michigan Avenue about 150 feet from its intersection with Haywood Road. It is elevated about 5 feet above street grade and mostly level except for a driveway. It has several large trees and some grass that has been worn bare due to frequent use by customers of the convenience store on the adjacent lot. All utilities are available to the lot. There is a sidewalk across the front of the property at the street. The property has a tax value of $16,800.

The property owned by Knolls (PIN No. 9648.17-01-5372) is a 0.88 acre parcel located on the French Broad River at the intersection of Lyman Street and Amboy Road. It is directly across the river from the French Broad River Park and highly visible from the park. It slopes steeply down from the road at Amboy and levels off at the river. It is long and narrow, wider at Amboy and tapers off as it runs North with the western boundary of Lyman Street. Traveling North, the grade of Lyman Street descends closer to the river thus improving the access to the property. The parcel has a tax value of $83,600. Knolls purchased the lot at a tax foreclosure sale for the upset bid amount of $7,250. After purchasing the lot, Knolls offered to exchange the lot for City-owned property An exchange of property was negotiated which includes an additional cash payment to the City in the amount of $5,000.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It is consistent with the greenway master plan.
- It will protect the view from the park across the river.
- Acquisition of the entire parcel will allow greater flexibility than an easement.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located 14 Michigan Avenue for real property located on Lyman Street.

2005 Legislative Weekend

Summary: The City has received a request from the Chamber of Commerce for a $10,000 appropriation to help support the 2005 Legislative Weekend.

The Asheville Area Chamber of Commerce, on a biannual basis, invites the North Carolina General Assembly to travel to Asheville and meet with members of the Chamber and local governments. The purpose of the event is to build relationships and familiarize members of the General Assembly with the needs of the Asheville area. In 2003, there were 200 legislators and spouses who committed to attend the event here. Since that was the first and the weather was not at its best, we expect more than 200 this year.

The private sector is supporting the 2005 Legislative Weekend, in addition to an appropriation of $30,000 from Buncombe County. Members of the Chamber of Commerce are working with the local delegation to the General Assembly to plan an appropriate agenda and program. The Chamber is requesting $10,000 from the City to support the program. As you know, the City has some important issues coming before both the local delegation and other members of the General Assembly in the next several years. This will be an excellent opportunity to start previewing those needs and concerns with them.

City staff recommends Council adopt a budget amendment, in the amount of $10,000, from Contingency to the Chamber of Commerce in support of the 2005 Legislative Weekend.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

FEMA BRIEFING

Mr. Butch DeCote, Public Affairs Officer for the Federal Emergency Management Agency, updated City Council on the assistance they are providing to the citizens of Asheville and other areas in North Carolina affected by Hurricanes Frances and Ivan.

PROGRESS ENERGY UPDATE

Ms. Nancy Thompson, representing Progress Energy, briefed City Council on the progress Progress Energy has made, and is making, to restore power as a result of outages from the recent disasters of Hurricanes Frances and Ivan. She commended City staff for their communications and working with them throughout the disasters.

REPORT FROM DELOITTE CONSULTING ON ORGANIZATIONAL ASSESSMENT OF ASHEVILLE ALCOHOLIC BEVERAGE CONTROL BOARD

Mr. Joe Davidson, Senior Manager for Deloitte Consulting, presented City Council with an executive summary of their report on the organizational capabilities business processes and internal controls of the Asheville Alcoholic Beverage Control Board. He said that they were engaged (1) to assist the ABC organization in evaluating their organizational processes, their structure and their effectiveness, (2) to make recommendations that would overall improve their organizational efficiency and make them more transparent to the stakeholders in that organization; and (3) to make recommendations on how to be a more effectively functioning organization.

Mr. Davidson then reviewed the following highlights of recommendations along with the status of each of the recommendations:

- The current organizational structure could be redesigned to reduce the supervisor's span of control, thereby enhancing decision-making and information sharing capabilities.
- The new managerial position, "Store Operations Manager," should be shared by two high-performing store managers (in addition to their current store responsibilities) who possess operational, managerial and communication skills.
- The expanded responsibilities proposed increase store managers' accountability for their respective store operations.
- Centralizing purchasing and instituting guidelines and protocols for a key business process can be executed through a full-time employee dedicated to fulfilling these objectives.
- Increasing job clarity and improving accountability requires defining the role of each position in the organization and the expectations for successful job performance. Recommendations for the Supervisor position were detailed.
- Additional job specifications were developed for the following positions: Chief Accountant, Accountant, Administrative Assistant; and Warehouse Manager/Assistant Manager
- Separation of duties – opportunities exist to clarify job responsibilities and cross-train employees to create more productive and transparent work processes and improve workforce accountability.
- Purchasing for non-product goods should require completion of a requisition form, with pre-approval received centrally prior to actual transaction.
- Stores managers should be more accountable for inventory management.
- Policies and procedures – The organization needs up-to-date written policies and procedures, increasing the extent to which formal procedures guide decision-making in the organization.

- Policies and procedures – The organization can improve it's employee handbook through consideration and implementation of recommendations.
- Risk management – Internal controls should be developed for several internal transactions to assure transparency of operations.
- ABC law enforcement is provided by the ABC Board in many jurisdictions. In other jurisdictions, the function is "outsourced" to the local police. The Board should continue to evaluate the alternatives and choose the best solution.
- Organizational culture and communications can be improved by adoption of recommendations regarding the increase of both formal and informal communication channels throughout the ABC organization.

When Councilman Dunn asked about recommendations about the ABC Board and it's role, Mr. Davidson explained that their focus was operational review of the ABC organization and the Board itself was not in the scope of their engagement.

Mr. Davidson then responded to various questions and comments from Council, some being, but are not limited to: why were findings made in the report if policies and procedures had been followed; what was the recommendation regarding store managers communicating directly with ABC Board members; explain why one store sold $915,830 worth of alcohol last year but only had a net profit of $12,431; what is the overall morale of the employees; will store managers be given more latitude in store operations; how many full-time employees are there in the ABC organization; and with 42 employees, the Board may need one person solely for Human Relations responsibilities.

Councilman Dunn expressed concern that the current members on the ABC Board haven't fulfilled their responsibilities. He felt it was not City Council's responsibility to be looking over the shoulder of any board to insure good governance. City Council should not have had to request a management study be performed. The Board should have done this themselves a long time.

Upon inquiry of Councilman Dunn, Mr. Davidson said that they have discussed the full results with the ABC Board and they are in agreement with all the recommendations and are eager to begin implementation of them as soon as possible.

Mr. Curtis Canty, General Manager/Supervisor of the Asheville Board of Alcoholic Control, responded as best he could since he has only been General Manager/Supervisor for 45 days, to various questions/comments from City Council, some being, but are not limited to: what he has already implemented since he has been hired; what are some of the big changes with small improvements that can be made; what is the attitude and morale of the ABC employees; what type of communication has occurred with the employees; what type of internal controls have you look at for change; is it the General Manager's responsibility or the Board's responsibility to supervise the employees; will Board members be allowed to talk to employees; how will each of the recommendations be addressed and during what timeframe; and what do you think the role of the ABC operations is as it relates to the City of Asheville.

Councilwoman Bellamy stated that the ABC Board hired Mr. Canty to do a task and hoped that the employees will allow him a chance to do his job.

Ms. Debora Holmes-Young, Chair of the ABC Board, responded to various questions/comments from members of Council, some being, but are not limited to: why is there such a small percentage of the net profits from alcohol sales allocated to the City; has the Board been diligent in using taxpayer's money; why did the Board Chair feel the need to spend a night at the Grove Park Inn during a conference; what inclination does the Board have regarding in-house ABC law enforcement or outsourcing it to the Asheville Police Department; what was the

reasoning for spending 19% on ABC law enforcement; is there more money unaccounted for other than the $244,411 from employee embezzlement in 2002; the responsibility of allocating taxpayer dollars for alcohol and drug education should rest with an elected body and not an appointed body; and will the Board consider allocating an additional $250,000 to the City to promote the drug program adopted by the City of Asheville this fiscal year.

Ms. Holmes-Young said that they will be sending City Council their law enforcement reports to give Council an ideal of how their hours are spent. In addition, she urged City Council to review the detailed minutes of their meetings.

Councilwoman Jones said that the ABC Board's challenge will be how to increase profit margins as well as simultaneously implement the recommendations.

When Vice-Mayor Mumpower asked for any ideas on how the relationship between the ABC Board and City Council can be strengthened, Ms. Holmes-Young suggested that if City Council has a question or a concern with any decision made by the Board, that the Council come to a Board meeting to have the concerned addressed.

After City Attorney Oast verified that the legislature has increased the ABC Board membership from 3 to 5 members, it was the consensus of City Council to start the application process.

On behalf of City Council, Vice-Mayor Mumpower thanked Mr. Davidson, Mr. Canty and Ms. Debora Holmes-Young for responding to Council's questions and concerns.

N.C. LEAGUE OF MUNICIPALITIES KICK-OFF FOR SEARCH FOR NEW CITY MANAGER

Mr. Ellis Hankins, Executive Director of the N.C. League of Municipalities ("League"), and Mr. Gene Dillman, Director of Member Services of the League, reviewed with City Council an outline for selecting a new City Manager. They reviewed the roles of the League and the roles of City Council. They then briefly talked about the (1) importance of the process; (2) agreeing on what City Council wants in a Manager; (3) and agreeing on a timeframe/procedure for selection, including (a) timeframe if Council manages the process themselves; (b) salary range and other considerations; (c) some sources for publication of the vacancy; (d) the screening process; (e) the interview process; (f) the interview session with City Council; and (g) the selection of the top candidate. City Council has three options: (1) manage the entire process themselves; (2) manage the entire process with the understanding that you may need some outside facilitation or guidance; or (3) retain a professional executive search firm to help you with the process.

Mr. Ellis and Mr. Dillman responded to various questions/comments from Council, some being, but are not limited to: does the League offer facilitators and services to help a City agree on what they are looking for in a manager; is up-front public involvement good for the process; can the League give the City a list of professional executive search firms; is it common for employees to leave after a new city manager is hired; and if it is disclosed at the beginning of the process that public involvement is a possibility before final selection, will that affect a candidates decision to apply or not.

On behalf of City Council, Mayor Worley thanked Mr. Ellis and Mr. Dillman for their presentation.

BUNCOMBE COUNTY DRUG TREATMENT COURT

The Honorable Ronald K. Payne, Superior Court Judge, explained when the drug court began and why. He said the Buncombe County Drug Treatment Court (DTC) originated in

December of 2000 under his leadership. The other original Team members were Al Williams, D.A.'s office; Kristin Warnke, T.A.S.C.; Lori Anderson and Robin Keith, Probation; and Patricia Kaufman, Public Defender's office. Barbara Blanks was the DTC Administrator until her retirement in June 2004, at which time Kyle Moody took over as Administrator. The DTC seeks to reduce drug/prison recidivism, while specifically providing guidance, treatment, and discipline to those facing addiction recovery. To that end, the DTC Team, comprised of probation, law enforcement, treatment providers and court officials, offers individuals the tools necessary to help maintain sobriety years after program completion.

The model used in forming the Drug Court is the acceptance into a deferred judgment program or post-plea diversion program shortly after arrest, under which the defendant pleads guilty to a criminal charge (for example, unlawful possession of drugs) with the understanding that (a) the active sentence will be deferred; (b) if the defendant successfully completes the program, the plea of guilty will be vacated and the charges dropped; and (c) if the defendant fails to complete the program, sentence will be imposed on the original charge.

He explained the key components of the program, which are: (1) Drug Courts integrate alcohol and other drug treatment services with justice system case processing; (2) Using a non adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process of rights; (3) Eligible participants are identified early and promptly placed in the Drug Court program; (4) Drug courts provide access to a continuum of alcohol, drug, and other related rehabilitation services.; (5) Abstinence is monitored by frequent alcohol and other drug testing; (6) A coordinated strategy governs drug court responses to participant's compliance; (7) Ongoing judicial interaction with each drug court participant is essential; (8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness; and (9) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations. Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.

Active client numbers have grown over the years. The DTC currently serves 44 individuals. Of those, 4 are habitual felons.

As funding is the easy answer, the understanding behind the funding is more important. The DTC is currently funded by the County with a 75% reimbursement by the Governor's Crime Commission (for the time being). However, addiction and the good effort to get a handle on it lies beyond the County. DTC services, and is serviced, by all local governances and law enforcement. Therefore, it is easy to determine we are all working together to not only to fight, but also positively address the issue of addiction.

If the current persons did not agree to participate in this program, or if this program did not exist, various costs to the County and community would likely be: $1,046,760.00 in jail or prison costs (44 participants with an average jail time of 10 months at an average daily cost to house an inmate of $78). This cost does not include the likely subsequent drug and related charges following release from incarceration. $150,000.00 annual cost to the community for 1/3 of the participants who would likely become homeless (annual cost of a chronic homeless offender is $10,000, as referenced by the committee to develop a 10 year plan to end chronic homelessness in Asheville and Buncombe County). Additional and permanent dependency on community service providers including public housing and DSS (Drug dependency interferes with a person's ability to maintain employment and provide assistance to families).

The annual budget for the DTC is approximately $145,000, most of which goes to the treatment provider. Over the past few years, the majority of this cost ($108,000) has been provided through an initial grant from the Governors' Crime Commission.

The Governors' Crime Commission grant runs out at the end of September, 2004, however, as of today, they have just found out that the grant has been extended it because all the money hasn't been spent. We have also made the participants pay some monies. We have about $9,200 remaining from the Eblen Foundation. All monies totaled will probably enable us to operate until February or March of 2005 with the participants we have. He also thinks there is an outside chance that we can get some other monies from private sources. They have quit accepting other clients. He is guardedly optimistic that the DTC will be funded by the State next year. He explained that the General Assembly has now made DTC an intermediate sanction to be used by the courts, although there are only 5 in existence throughout the State. He has talked to some of our representatives who will try to seek that funding. Because of City Council's efforts to battle drugs in our community he felt that Council may see fit to fund a portion towards the DTC in the treatment aspect.

Judge Payne responded to various questions and comments from Council, some being, but are not limited to: are the clients ordered to pay restitution; what happens if a person is convicted of another felony while in DTC; are records expunged if the person graduates; how much have the treatment costs gone up since the overhaul of the mental health system; and what type of crimes are committed by the clients in the program.

Vice-Mayor Mumpower said that it was Council's interest to respond to an immediate crisis and since the grant has been extended, the crisis may have been abated for a period of time. He said this is about drug interdiction, however, there is a concern about the City getting too heavily involved in treatment matters, which he personally feels is more of a state and county function. With the knowledge that the DTC has some temporary relief, he would prefer to temporarily tabling the matter until to the first of 2005, when the financial pictures becomes clearly in terms of permanent funding. He did feel this is a powerful program that has a positive impact on Asheville and the surrounding area.

Upon inquiry of Councilman Newman, Judge Payne said that Buncombe County has invested $25,000 to the program for each of the last three years, for the match of the Crime Prevention grant. The ABC Board has given them $12,000 a year, which is also used towards the match. Since Buncombe pays part of Mr. Moody's salary and they provide the office space and making of copies, he did not ask them for more funds. He did note though that Mecklenburg County receives funding from both the City and County.

Councilman Newman could see the tremendous value of the program and would like to see it continue. His only concern is that the criminal justice process is primarily a county responsibility, although the benefits for the citizens are self-evident. He would like to be supportive, however, he did think Buncombe County should be playing some significant leadership role.

Upon inquiry of Councilwoman Jones, Judge Payne could only guess that approximately 40% or more are City residents in the program. He explained that they only verify that they are a Buncombe County resident.

Councilwoman Jones would like to be supportive as well of this program and felt that a one-time matching of what the County has done in terms of dollars for two months is a way to be supportive.

Councilwoman Bellamy has seen the Charlotte program and they, along with Judge Payne, are committed to ensuring that people stay out of trouble long-term. She felt this program should qualify as an outside agency and the City of Asheville should invest it this successful model annually. She noted that in the past the City did provide outside agency funding for the Drug Commission, which is no longer in existence.

Judge Payne stated that one of the reasons he has not asked the City for funding in the past is because he believes the courts should be funded by the state. That said, they don't want to run out of money and then ask for funds. He said that he would not ask the City to assist in funding through June 30 because he did not think it is the role of City government – or the role of County government. He believes it is the role for the State government.

Vice-Mayor Mumpower suggested a resolution of support to our legislative delegation.

Councilman Davis would be supportive to help the program one-time and felt the end of the year would be an appropriate time to decide what the City can contribute.

When Councilman Brownie asked what will happen if the State doesn't fund the program, Judge Payne said he would approach Buncombe County and ask them to approach people in the community that might take an interest in this sort of effort.

Upon inquiry of Councilman Newman, using an approximate figure, Judge Payne said that if they received $20,000 they could run the program through June 30 and be able to serve the maximum number of participants (44).

It was the consensus of City Council to have Judge Payne check for other funding sources and then come back to Council with a specific request in November or early December. If, however, in the interim, if new information is obtained about funding sources or matching monies, City Council would be willing to bring up this issue prior to that time.

REPORT ON PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI/COUNCIL PRIORITIZATION OF STAFF PROJECTS

It was the consensus of City Council to consider this matter when the worksession is continued to September 28, 2004.

DEVELOPMENT REVIEW PROCESS TEAM

It was the consensus of City Council to continue this matter until the October 19, 2004, worksession when all Council members will be present to hear the presentations.

REQUEST FOR PROPOSALS FOR WATERSHED MANAGEMENT PLAN

It was the consensus of City Council to consider this matter when the worksession is continued to September 28, 2004.

QUARTERLY REPORT ON THE COUNCIL'S STRATEGIC PLAN

It was the consensus of City Council to consider this matter when the worksession is continued to September 28, 2004.

UDO AMENDMENT REVIEW

Agreements as to Removal, Relocation and Reconstruction of Non-Conforming Off-Premise Signs

It was the consensus of City Council to hear the presentation at the public hearing scheduled on September 28, 2004.

BOARD/COMMISSION VACANCIES

It was the consensus of City Council to instruct the City Clerk to re-advertise for the Alternate vacancy on the Board of Adjustment.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Geraldine Melendez to the Asheville-Buncombe Fair Housing Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Eva Estelle Williams to the Firemen's Relief Fund Board of Trustees.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Pattiy Tomo, as one of the two property owners within the River District, to the River District Design Review Committee.

It was the consensus of City Council to instruct the City Clerk place the vacancy on the Buncombe County Tourism Development Authority on the next formal City Council agenda for action.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Councilman Joe Dunn to the Regional Water Authority.

FLOOD UPDATE

City Manager Westbrook updated City Council on matters related to the recent floodings as a result of Hurricanes Frances and Ivan and responded to various questions/comments from Council.

CONTINUATION OF WORKSESSION

At 6:37 p.m., Councilman Dunn moved to continue the City Council worksession until 3:30 p.m. on Tuesday, September 28, 2004, in the Council Chamber, Second Floor of the City Hall Building. This motion was seconded by Councilwoman Jones and carried unanimously.

CONTINUATION OF TUESDAY, SEPTEMBER 21, 2004, WORKSESSION

September 28, 2004 – 3:30 p.m.
Council Chamber – City Hall

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower (arrived at 3:54 p.m.); Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

REQUEST FOR PROPOSALS FOR WATERSHED MANAGEMENT PLAN

Interim Water Resources Director David Hanks said that City Council approved the implementation of a watershed management plan for the North Fork and Bee Tree watersheds. This plan was the first phase in a comprehensive management plan covering the next five (5) years and beyond. The request for proposals (RFP) is the second phase of the watershed plan to ensure long range proper management of the watersheds.

Submitting watershed management firm must be qualified to address the best watershed management concepts and the scope of the proposal must include but is not limited to the following:

- Provide annual detailed recommendations to City of Asheville Water Resources staff for managing the watershed in the next fiscal year (July 1 – June 30)
- Insure that the annual recommendations maintain water quality as the primary objective
- Approval of the annual plan by City Council during the annual budget process for each fiscal year plan in order to proceed
- Provide detailed information on cost and any projected revenues of the annual proposed plan
- Identify areas within the watershed which require annual maintenance and specifically identify ways to address the annual maintenance needs using best forestry management techniques
- Provide recommendations for riparian buffer designs in order to reduce sedimentation and provide protection for streambanks
- Provide recommendations to reduce the risk of catastrophic events, such as fire, insects or disease to preserve the watershed in order to maintain high water quality
- Identify trees, underbrush, plants, shrubs, etc. which require one time maintenance or removal
- Identify trees, underbrush, plants, shrubs, etc. which require ongoing maintenance or removal during the life of the contract
- Identify roads, bridges, stream crossings, and road shoulders that require immediate maintenance
- Identify roads, bridges, stream crossings, and road shoulders that require long-term maintenance
- Identify invasive plant and tree species and provide action plans for removal or termination to insure continued health of the watershed
- Provide annual watershed plans that are compatible with the North Carolina Conservation Trust easement
- Provide annual watershed plans that protect and preserve the scenic view sites of the watershed from the Blue Ridge Parkway
- Assist in determining which emergency access roads should be maintained, closed or developed within the watershed
- Determine sites within the watershed for re-establishment of the American Chestnut tree
- Identify endangered/threatened species in the watershed area and provide recommendations for management
- Provide annual plans that will enhance native plants, wildlife, and other species found within the watershed
- It is the desire of the City to appoint a Watershed Advisory Committee made up of Water Resources and other City staff, representatives from the North Carolina Conservation Trust, Blue Ridge Parkway, and City of Asheville Tree Commission. This committee will be used to provide technical assistance and recommendations to the watershed management plan
- Any water-related work the firm is qualified to do (or sub-contract), as directed and mutually agreeable to both parties

Staff will bring an annual plan to City Council outlining specific details of what will be done within the watershed, except emergency maintenance, for the next fiscal year for Council approval.

Mr. Hanks noted that due to recent storm events some items in the RFP will not need to be performed, e.g. several trees have already blown down and every bridge that has been accessible for them are gone.

City staff recommends City council's approval of the proposed RFP for the next phase of managing the North Fork and Bee Tree watersheds.

Councilwoman Bellamy initiated discussion about the need to receive as much public input as possible before it is brought to City Council. It was the desire of Council to have the Watershed Advisory Committee receive public input prior to the matter being considered by Council. Councilwoman Jones suggested another item in the RFP should include a public input process for the firm to do as well. This way, the public input would be in the formulation of the plan and then public input when the plan if finalized.

Mayor Worley felt it would be appropriate for staff to formalize the Watershed Advisory Committee and the ground rules under which they operate and bring that back to Council for approval.

Upon inquiry of Councilman Newman, Mr. Hanks said that they are looking for an individual or firm who has the resources to look at the entire 22,000 acres of the watershed.

In response to Councilman Newman, Mr. Hanks said that we are soliciting RFP's so we can gauge on how much it will cost based on the scope of what we want done. He has requested in the RFP an hourly rate and a flat rate for the entire project. We may have to go with an hourly rate, depending on the cost factor. He has called around and has gotten estimates on projects done with similar size watersheds and they range from $50,000 to $500,000, depending on the level and scope.

Councilman Newman felt we clearly need to have the a plan to identify which roads are vital, have the vital roads cleared, bridges maintained, and a plan for ongoing maintenance of those roads. He supports the chestnut restoration and preserving hemlocks, however, we only need a plan to maintain an adequate road network, with bridge repairs, and removal of the exotic species.

Mr. Hanks said that we are looking at a 5-10 year project. After we get the rates, then Council can determine what they want done, if anything, on a priority basis.

Councilman Newman said that in his opinion the main benefit of using forestry as a management tool in the watershed is to produce revenue to either accomplish other management goals or to create significant revenue for the Water Department. He feels that the watershed takes care of itself and even the consultant Council hired stated that forestry management on the watershed doesn't reduce the risk of fire. He felt Council needed to be more clear on if we want to use forestry as a tool and to what degree. If we aren't going to do much forestry on the property then he didn't see a need to hire a big firm to create an expensive plan.

A brief discussion surrounded the reason for the RFP and the need to have capable people to follow-through on any of the services City Council want to move forward on.

City Manager Westbrook said that Council will tailor what the firm does each year, if anything.

Councilman Newman asked that this matter not be on the consent agenda for the formal meeting.

QUARTERLY REPORT ON THE COUNCIL'S STRATEGIC PLAN

Assistant City Manager Jeff Richardson said that this multi-year plan document outlines seven (7) key focus areas that City Council has identified as critical to the overall long-term positive growth and vibrancy of the Asheville community. Within those seven key focus areas, 45 goals and 94 operational tasks are identified. Timeframes were identified for each of the tasks. This report outlines staff progress in the first 90 days after adoption of this plan for those tasks with timeframes conducive to this fiscal year.

Pros - City Council will continue to receive quarterly updates to insure city staff are progressing as directed by City Council.

Mr. Richardson asked for direction on the following two tasks:

(1) The focus area of economic development, Goal # 3. It was the consensus of Council for staff to invite Dr. James Johnson, Director of the Investment Strategies Center from UNC-Chapel Hill's Kenan-Flagler Business School to speak at the annual strategic planning summit between the City of Asheville, Buncombe County, AdvantageWest, Economic Development Commission, Tourism Development Authority, Asheville Regional Airport Authority and other economic development organizations.

(2) The focus area of community building, Goal #1, Objective A: Conduct evaluation of City Council's current legislative process to determine if it best facilitates effective Council decision-making. After a brief discussion, it was the consensus of Council to review Task #1 (appoint City Council task force to analyze process) in the second quarter of 2005 with possible appointment in the third or fourth quarter of 2005. In addition, Objectives B and C will be coordinated with direction given for Objective A.

Upon inquiry of Vice-Mayor Mumpower, Mr. Richardson explained the work in progress utilizing the web/internet and other media forms to increase knowledge of vision, city services and Council decision-making. He suggested more frequent feedback on this task.

REPORT ON PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI/COUNCIL PRIORITIZATION OF STAFF PROJECTS

Planning & Development Director Scott Shuford said that Downtown Social Issues Task Force (DSITF) has made recommendations to City Council concerning panhandling, public drunkenness, and graffiti. City Council asked staff to examine these recommendations and report back in terms of implementation.

Pursuant to this direction, staff evaluated the Task Force recommendations and placed them into three "Status" categories. **Status 1** represents items that can readily be accomplished by City staff without additional resources or workload prioritization. **Status 2** items require additional resources and/or workload prioritization. **Status 3** items require action by agencies outside direct Council control, such as statutory authority for an additional tax. He reviewed the following DSITF recommendations and their status rankings.

IMPLEMENTATION ITEM	STATUS	COMMENTS
PANHANDLING		
1. Lock box program • Locate 4 lockboxes • Brochure development/distribution • Support PR campaign • Urban Neighborhood Watch Program	 2 2 2 1	 Legal review needed Support brochure development Support PR campaign Neighborhood Watch program already in place
2. Maintain current ordinance; improve	1-2	Improving implementation may take add'l resources
PUBLIC DRUNKENNESS		
1. Improve detox facilities	2-3	May require legislative authority; need to determine roles of other players
2. Housing First Program	1-2	Part of 5-Year Strategic Plan work; may require funding
3. Emergency detox/treatment/recovery center	2-3	Funding responsibility determination; possible statute change needed
4. Inebriate Safety Zones	2	Legal review; Police implementation
5. City park alcohol possession ordinance	2	Legal review
6. Resolution addressed to District Attorney	1	Council resolution
GRAFFITI		
1. 48-hour graffiti removal pilot program	2	City fund part of program
2. 48-hour graffiti removal ordinance	2	Legal review; City funding
3. Webpage marketing of anti-graffiti program	1	Minor staff time (requires program to be established)
4. Support for *Asheville Mural Project*	1	Council resolution of support
5. Additional kiosks	2	City funding and placement
6. Resolution addressed to District Attorney	1	Council resolution
7. Greater police presence	2	Allocate resources
8. Consideration of "legal graffiti wall" concept	1	Staff may be involved in location and marketing issues

There are several items that can be pursued immediately by staff, including: writing a resolution asking the District Attorney to treat panhandling, public drunkenness and graffiti offenses as serious crimes; writing a resolution in support of the Asheville Mural Project (and exempting the murals from sign code regulation): and maintenance of existing ordinance enforcement and the existing Neighborhood Watch program.

Several of the Task Force recommendations raise issues of constitutionality and/or the City's legal authority and practical ability to implement them. The possibility of such issues was generally recognized by the Task Force in its presentation. There are significant First Amendment issues associated with placing collection boxes on public property or right of way, significant State law pre-emption issues associated with some of the alcohol-related recommendations, and both constitutional and State law consistency issues associated with the designation of inebriate safety zones. These are examples, but not a complete list.

Special legislation--if it is even possible (and there are constitutional limitations on local acts)--may be required for some of the recommendations, and further practical and legal analysis is needed with respect to how some of the recommendations will be administered or enforced.

The City Attorney's Office will be glad to perform the necessary research and analysis, and to make recommendations to Council as to what may be done under current law, what may require special legislation, and what the City may lack the power to do for constitutional or legal reasons. This research will require consultation with other municipalities (in NC and around the country), the Attorney General's Office, and/or the Institute of Government, as well as some of the national organizations that provide assistance in such matters. This is extensive work and may require the department to reprioritize our workload or seek other resources such as added staffing or outside consultants. We will ask the Task Force to direct us to examples of the recommended programs or ordinances elsewhere in the State or country to facilitate our work.

Additionally, several of the recommended implementation items require potentially significant enhancements of existing resources. The Police Department will need to examine the degree to which some of the recommendations, if implemented, will require additional or reallocated staffing (especially the call for greater police presence), although, most of the recommendations would have minimal impact. The Planning and Development Department will need to become involved in marketing and promoting the programs. The Public Works Department will need funds for kiosk construction, graffiti removal kits, and enhanced light pole graffiti/poster removal and other cleanup efforts.

Finally, for the public drunkenness issue, please note that City involvement in the treatment aspect of this matter will represent a major shift in policy. In North Carolina, counties are the local governments statutorily charged with providing social services; cities typically don't run these programs or provide significant financial support to them (most do as we typically do with our outside agency allocations, for example). In the Healing Place example from Raleigh, Wake County is a major funder, while the City of Raleigh funds only 3.2% of the total. (See funding breakdown below.) The City has begun dialogue with Western Highlands area mental health and local health officials about their efforts to expand existing detox facilities within the next year. Once established, this expansion could significantly assist the City in addressing downtown public drunkenness issues. Buncombe County will shortly begin construction of a major detention center and should be approached about assisting with the public drunkenness problem by providing additional overnight detention/treatment space. We recommend considerable dialog with the ABC Board, the County and existing providers of this service before we move forward with any implementation measures.

HEALING PLACE FUNDING – PERCENT OF $1.4 MILLION ANNUAL BUDGET	
ABC Board - $650,000 or **46.4%**	Wake County - $242,000 or **17.3%**
City of Raleigh - $45,000 or **3.2%**	Private Donations - $463,000 or **33.1%**

Also are work program priorities already established by Council for the City departments most affected by the implementation of **Status 2** and **Status 3** items. These departments are: Legal and Planning and Development (possibly, in the future, Police). In order to add these implementation items to our current work programs, we will need to reprioritize our work and will need Council to assist us in determining which work program tasks have a higher level of Council priority. Additionally, Council may choose to provide us with additional resources to allow all priorities to be met.

City staff recommends City Council receive staff presentation and provide direction as to the implementation priorities for the DSITF recommendations.

Upon inquiry of Councilwoman Bellamy about maintenance of our existing kiosks, Mr Shuford said that he will provide Council with information on how they are working from a Public Works perspective.

Discussion occurred regarding the comments and the reasoning behind some status categories.

Regarding funding, Councilwoman Jones said that there be other groups in the community that have an investment in seeing some of these items implemented in terms of tourism.

After discussing the current workload of the Planning & Development Department and the City Attorney's Office, it was the consensus of Council to ask Mr. Shuford to convert the list of items into a checklist with a little more information associated with it, e.g., which legal items will require an extensive amount of research, minor research, extensive funding or less expensive funding. He will send that checklist to Council and ask for each Council member to prioritize them and return the list to him. He will then compile it and give the entire Council a composite of the results at an upcoming worksession.

ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 4:45 p.m.

Magdalen Bouleson
CITY CLERK

Charles B. Worley
MAYOR

Tuesday – September 28, 2004 - 5:00 p.m.

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

U.S. Air Force Staff Sergeant Tabitha Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

GIRL SCOUT TROOP

Mayor Worley recognized Girl Scout Troop 531 who thanked the City of Asheville for their work through the recent Hurricanes Frances and Ivan.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "H" be voted on separately.

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda and discussed as New Business.

Councilwoman Bellamy asked that Consent Agenda Item "K" be voted on separately due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 2004

B. RESOLUTION NO. 04-195 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN

Summary: The consideration of a resolution amending the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended four times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December 1999 to add the 72-hour delay requirements for "good faith efforts; (3) December 2001 to expand certification to two years; and (4) October 2002 to reduce the Minority Business Commission from 13 to 11 members and provide for clarification of the grievance process in the Plan.

At their meeting on August 12, 2004, the Minority Business Commission recommended that the Plan be further amended to enhance and clarify provisions of the Plan. The most

significant changes are the update of N.C. General Statutes in the changes made in the Plan regarding procurement, construction and professional services and the update of definitions.

On September 7, 2004, the Buncombe County Commissioners reviewed and approved the Plan.

Advantages:

- Changes in definitions will make the program easier and less complicated to understand.
- Update of N.C. General Statutes will provide that the current provisions are being used, updating our procedures for construction, procurement and professional services originally provided in the May 1998 adopted MB Plan.
- Removal of any reference to specific forms for minority business compliance so that it is not necessary to update with changes.
- Clerical changes for ease of reading in removing repeated information, clearer wording of procedures.
- Removal of any reference to certification being a prerequisite to contracting with the City of Asheville.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

Upon inquiry of Vice-Mayor Mumpower, Finance Director Bill Schaefer briefed Council on how the City of Asheville is complying with the Minority Business Plan, noting that City staff is committed to the Plan.

RESOLUTION BOOK NO. 28 – PAGE 359

C. RESOLUTION NO. 04-196 - RESOLUTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO DELETE THE OCTOBER 5, 2004, WORKSESSION

Councilman Mumpower understands the positive impact on City staff with City Council holding only one worksession a month, however, he personally thinks that one is not adequate and that we are doing ourselves a disservice only holding one worksession a month. He feels that it forces Council to have condensed deliberations or limits the inclusion of items that Council otherwise would be able to address if we had two worksessions a month.

Mayor Worley said that in a comparison of two worksessions a month in 2003 vs. one worksession in 2004, we spent about 23.9 hours through August of 2003 and about 25.8 hours through August of 2004. His personal prospective is that it makes more sense to do the work in one meeting that is a little longer than two shorter meetings a month. He understands that we might be artificially condensing discussion, however, he thinks that in a lot of Council's deliberations that we artificially expand our discussions as well.

Councilman Dunn said that to sit 4-5 hours in one worksession makes it sometimes difficult to concentrate. He felt that City staff should be brief and only give Council the facts.

Councilman Newman tended to support only one worksession a month but was open to bringing the matter back up in the future.

Councilwoman Jones spoke in support of only one worksession a month.

RESOLUTION BOOK NO. 28 – PAGE 360

D. RESOLUTION NO. 04-197 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENT OF THE STATE RIGHT-OF-WAY ON BRIDGE 740 MILL CREEK

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line in the State right-of-way on Bridge 740 over Mill Creek (NCDOT Project B-3616) and approval of an associated budget amendment, in the amount of $83,000, to provide funding for this project.

The Water Resources Department operates a water main across Bridge 740 over Mill Creek under the policies of the Asheville, Buncombe & Henderson Regional Water Authority (RWA), which is owned by the City of Asheville. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT has estimated the construction cost of this relocation at $74,656. An additional 10% needs to be added to include contingency and inspections, so the total amount that needs to be budgeted is $83,000.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. Funding is currently available from excess funds in the Critical Needs II matching funds. A budget amendment amending Capital Project Ordinance 82-25 (35 Fund) to reflect funding for this project is required.

Pros: Reprogramming funds for this NCDOT project will provide funding for a state mandated project that requires relocation of a water line that conflicts with an NCDOT right of way.

Cons: None noted.

City staff recommends that City Council approve the resolution authorizing the Mayor to execute a Utility Agreement with NCDOT for relocation of a water line and a budget amendment to provide funding for this project

RESOLUTION BOOK NO. 28 – PAGE 361

E. ORDINANCE NO. 3165 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENT OF THE STATE RIGHT-OF-WAY ON BRIDGE 740 MILL CREEK

Summary: See Consent Agenda Item "D" above.

Upon inquiry of Mr. Fred English, City Manager Westbrook explained that the City of Asheville has to pay their portion of the non-betterment costs of the State project.

ORDINANCE BOOK NO. 21 – PAGE 329

F. RESOLUTION NO. 04-198 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE A VACANT LOT ON MAX STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Max Street.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel comprising approximately 0.04 acre located on Max Street (PIN No. 9648.07-59-8495) across from Stephens-Lee Center. The lot is too small to build on. The tax value for the parcel is $1,500.

Brandon Knolls LLC has submitted a bid to purchase the property in the amount of $1,500, and intends to combine it with adjacent property that is improved with a single-family house

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale and combination of this lot with the adjoining lot will eliminate a substandard parcel.

Approval of the resolution will establish a minimum price of $1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids.

Upon inquiry of Councilwoman Bellamy, Field Services Coordinator Ed Vess explained exactly where the property was located.

RESOLUTION BOOK NO. 28 – PAGE 362

G. RESOLUTION NO. 04-199 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF EXCHANGE OF REAL PROPERTY LOCATED AT 14 MICHIGAN AVENUE FOR REAL PROPERTY LOCATED ON LYMAN STREET

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located on 14 Michigan Avenue for real property located on Lyman Street.

The City and Brandon Knolls LLC (Knolls) have negotiated an exchange of real property at 14 Michigan Avenue for Knolls property on Lyman Street.

The property at 14 Michigan Avenue (PIN No. 9638.15-54-8270) is a 0.19 acre parcel zoned RM-8 Residential Multi-Family Medium Density District. The lot is on the east side of Michigan Avenue about 150 feet from its intersection with Haywood Road. It is elevated about 5 feet above street grade and mostly level except for a driveway. It has several large trees and some grass that has been worn bare due to frequent use by customers of the convenience store on the adjacent lot. All utilities are available to the lot. There is a sidewalk across the front of the property at the street. The property has a tax value of $16,800.

The property owned by Knolls (PIN No. 9648.17-01-5372) is a 0.88 acre parcel located on the French Broad River at the intersection of Lyman Street and Amboy Road. It is directly across the river from the French Broad River Park and highly visible from the park. It slopes steeply down from the road at Amboy and levels off at the river. It is long and narrow, wider at Amboy and tapers off as it runs North with the western boundary of Lyman Street. Traveling North, the grade of Lyman Street descends closer to the river thus improving the access to the

property. The parcel has a tax value of $83,600. Knolls purchased the lot at a tax foreclosure sale for the upset bid amount of $7,250. After purchasing the lot, Knolls offered to exchange the lot for City-owned property. An exchange of property was negotiated which includes an additional cash payment to the City in the amount of $5,000.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It is consistent with the greenway master plan.
- It will protect the view from the park across the river.
- Acquisition of the entire parcel will allow greater flexibility than an easement.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located 14 Michigan Avenue for real property located on Lyman Street.

RESOLUTION BOOK NO. 28 – PAGE 363

H. BUDGET AMENDMENT TO HELP SUPPORT THE 2005 LEGISLATIVE WEEKEND

This item was pulled off the Consent Agenda for an individual vote.

I. RESOLUTION APPROVING REQUEST FOR PROPOSALS FOR THE WATERSHED MANAGEMENT PLAN FOR NORTH FORK AND BEE TREE WATERSHEDS

This item was pulled off the Consent Agenda to be discussed under New Business.

J. RESOLUTION NO. 04-200 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY KNOWN AS TRACT I ON CHOCTAW STREET TO TILMAN AND SABRINA JACKSON

Summary: The consideration of a resolution authorizing the Mayor to convey property on Choctaw Street.

A bid has been received from Tilman and Sabrina Jackson, in the amount of $17,400, for the purchase of Choctaw Street, Tract 1, PIN No. 9648.10-25-5447, in the East Riverside Redevelopment Project. This bid amount is not less than the appraisal value of $17,400.

Choctaw Street Tract 1 is a residential zoned lot on the north side of Choctaw Street and opposite the intersection with Congress Street comprising 0.224 acre. The parcel is level with the street and sloping up toward the rear line. It is covered with natural vegetation consisting of grass, small trees and brush.

The Jackson's own the adjoining property where they reside. There are no improvements planned for the subject property at this time.

On September 14, 2004, the City Council directed the City Clerk to advertise for upset bids on Choctaw Street, Tract 1. The advertisement ran in the Asheville Citizen-Times on

September 17, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Tilman and Sabrina Jackson in the amount of $17,400 was not upset and the sale to Tilman and Sabrina Jackson should be approved.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the tax appraisal.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey property on Choctaw Street to Tilman and Sabrina Jackson, in the amount of $17,400.

RESOLUTION BOOK NO. 28 – PAGE 364

K. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 2004, TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

This matter was removed from the Consent Agenda for an individual vote.

L. RESOLUTION NO. 04-201 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville-Buncombe Fair Housing Commission.

Kim Moore has resigned as a member of the Asheville-Buncombe Fair Housing Commission, thus leaving an unexpired term until December 31, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Geraldine Melendez to the A-B Fair Housing Commission, to serve the unexpired term of Ms. Moore, term to expire December 31, 2004, and then to serve a full three year term, term to expire December 31, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 365

M. RESOLUTION NO. 04-202 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND BOARD OF TRUSTEES

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Firemen's Relief Fund Board of Trustees.

Mr. Lloyd Williams has recently died, thus leaving an unexpired term until January 1, 2005.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Eva Estelle Williams as a member of the Firemen's Relief Fund Board of Trustees, to serve the unexpired term of Ms. Williams, term to expire January 1, 2005, and then to serve a full two-year term until January 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 366

N. RESOLUTION NO. 04-203 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Mumpower said that this is the consideration of appointing members to the River District Design Review Committee.

The terms of Marvin Slosman (owner of property within the River District) and Laura Webb (member of the RiverLink Board of Directors) expired on September 1, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Pattiy Tomo, as the owner of property within the River District, to serve on the River District Design Review Committee for a three year term, term to expire September 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 367

O. RESOLUTION NO. 04-204 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Councilman Joe Dunn, as a member on the Regional Water Authority of Asheville, Buncombe and Henderson, expires on September 30, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Councilman Dunn as a member of the Regional Water Authority of Asheville, Buncombe and Henderson, to serve an three year term, term to expire September 30, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 368

P. RESOLUTION NO. 04-205 - RESOLUTION DESIGNATING CITY OF ASHEVILLE'S AGENTS TO THE N.C. DIVISION OF EMERGENCY MANAGEMENT

Summary: The N.C. Division of Emergency Management requires a resolution designating the City's agent. This resolution will designate William F. Schaefer, Jr., Finance Director, as the primary agent and Cynthia A. Fortune, Finance Operations Manager, as the secondary agent.

RESOLUTION BOOK NO. 28 – PAGE 369

Q. ORDINANCE NO. 3166 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR EMERGENCY STORM RELATED EXPENSES

Summary: The consideration of a budget amendment, in the amount of $1.25 million, to provide funding for emergency storm related expenses.

Tropical depression Frances severely damaged all of the water transmission lines from the North Fork Water Treatment Facility including the 36-inch, 24-inch, and twin 16-inch lines supplying Asheville

and an 8-inch line supplying Black Mountain. There was also an 8-inch line that runs along US 70 in Swannanoa that was damaged by floodwaters. Crews and contractors worked around the clock from September 8th to September 16th to make repairs in order to fully restore water to Asheville and Black Mountain. Hurricane Ivan damaged the twin 16-inch lines that supply water to portions of Swannanoa and caused power outages at all of our critical pump stations resulting in widespread water outages.

The Fiscal Year 2004/2005 Water Fund Budget does not contain a provision for expenses related to emergencies such as droughts or floods, so it will be necessary to adopt a revised budget to fund these severe storm events. Expenses include repairs to water transmission lines, purchase of water from Weaverville, and protective emergency measures. These expenses are estimated to be at least $1.25 million.

Pros: FEMA is expected to reimburse the City for a portion of flood related expenses.

City staff recommends City Council approve the budget amendment to provide funding for emergency storm related expenses.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook and Interim Water Resources Director David Hanks responded to various financial questions regarding when the City can expect reimbursement and what would happen to the Water Fund if something else unexpected happens and the reimbursement has not yet been received.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA TO BE VOTED ON SEPARATELY.

ORDINANCE NO. 3167 - BUDGET AMENDMENT TO HELP SUPPORT THE 2005 LEGISLATIVE WEEKEND

Summary: The City has received a request from the Chamber of Commerce for a $10,000 appropriation to help support the 2005 Legislative Weekend.

The Asheville Area Chamber of Commerce, on a biannual basis, invites the North Carolina General Assembly to travel to Asheville and meet with members of the Chamber and local governments. The purpose of the event is to build relationships and familiarize members of the General Assembly with the needs of the Asheville area. In 2003, there were 200 legislators and spouses who committed to attend the event here. Since that was the first and the weather was not at its best, we expect more than 200 this year.

The private sector is supporting the 2005 Legislative Weekend, in addition to an appropriation of $30,000 from Buncombe County. Members of the Chamber of Commerce are working with the local delegation to the General Assembly to plan an appropriate agenda and program. The Chamber is requesting $10,000 from the City to support the program. As you know, the City has some important issues coming before both the local delegation and other members of the General Assembly in the next several years. This will be an excellent opportunity to start previewing those needs and concerns with them.

City staff recommends Council adopt a budget amendment, in the amount of $10,000, from Contingency to the Chamber of Commerce in support of the 2005 Legislative Weekend.

Vice-Mayor Mumpower felt this is a good effort, however, he feels that it is inappropriate to use City taxpayer dollars to help fund a Chamber of Commerce initiative.

Vice-Mayor Worley and Councilwoman Jones both spoke in support of the request in that Council's Strategic Operating Plan includes many other bodies, including state decision-makers, to achieve Council's goals so we need to continue to work closely with them.

Councilman Newman said that this is a good investment of dollars, however, double taxation of City residents is a problem and we do need to review each proposal carefully.

Councilwoman Jones moved for the adoption of Resolution No. 04-196. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE 333

MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 2004, TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in the matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

Summary: The consideration of a motion setting a public hearing on October 12, 2004, to receive public input on a proposed amendment to the 2004 Consolidated Action Plan

The Annual Consolidated Action Plan sets out the City's planned use of federal CDBG and HOME funds for the next fiscal year. The 2004 Action Plan was approved by Council on April 13, 2004, and amended on August 24, 2004, to incorporate American Dream Downpayment Initiative funding from HUD.

Mountain Housing Opportunities has now requested an additional allocation of $25,000 in the form of a HOME Pre-Development Loan. The funds will be used to determine the feasibility of developing a 2-acre parcel on Depot Street, including the former Glenrock Hotel. HOME program income funds are available to budget for this purpose.

Additional information on the potential uses for the site will be provided before the public hearing.

City staff recommends City Council set a public hearing on October 12, 2004, to received public input on the proposed amendment to the 2004 Consolidated Action Plan.

Vice-Mayor Mumpower moved to set a public hearing on October 12, 2004, to amend the 2004 Consolidated Community Development Block Grant and HOME Action Plan. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR REMOVAL/RELOCATION AGREEMENTS FOR NON-CONFORMING OFF-PREMISE SIGNS

ORDINANCE NO. 3168 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR REMOVAL/RELOCATION AGREEMENTS FOR NON-CONFORMING OFF-PREMISE SIGNS

Mayor Worley opened the public hearing at 5:45 p.m.

City Attorney Oast said that this is the consideration of an amendment to the Unified Development Ordinance authorizing the removal/relocation/ replacement agreements for off-premise signs. This public hearing was advertised on September 17 and 24, 2004.

A. History of sign ordinance and enforcement efforts

1. Since 1977, the City has adopted several ordinances regulating the size and placement of billboards. Some of the ordinances contained amortization provisions, requiring the removal of nonconforming billboards within a certain amount of time.

2. Most recently in 1997, the City adopted an ordinance that essentially prohibited the placement of new billboards within the City's zoning jurisdiction, and made existing billboards nonconforming. That ordinance had a companion ordinance providing for amortization of nonconforming off-premise signs, but it was invalidated in 2001 in a case that went to the N. C. Supreme Court.

3. Beginning in 1997, the City undertook enforcement proceedings with respect to some billboards that have been made nonconforming by a 1990 ordinance, and should have been brought into compliance—and in some cases removed--in 1995. These efforts have been contested and are awaiting review by the Board of Adjustment. We have been to court at least twice on issues related to this enforcement effort, and the matter is still unresolved.

4. A new law adopted in 2004 and effective last month requires that cities that adopt amortization ordinances pay compensation based on a formula to the owners of billboards that are removed as a result of amortization. The new law does not affect pre-existing ordinances that provide for amortization.

B. Cap and Replace Ordinance. The all-or-nothing approach of traditional billboard regulation, with amortized removal as the end result, has in some cases hampered the ability of cities and sign owners to come to some other mutual accommodation with respect to signs, frequently resulting in protracted litigation. What has developed over the years in other jurisdictions is a concept known as "cap-and-replace," which essentially freezes the number of billboards within a local government's zoning jurisdiction at a specified number, but allows them to be moved or replaced within certain limitations. The same new N.C. law that now requires compensation for amortized removal also authorizes the use of "removal and relocation" agreements. Although this authorization appears to be set out primarily as an alternative to future amortization efforts, and prescribes requirements for agreements in those circumstances, it also provides for the use of removal-relocation agreements in other circumstances, such as on-going enforcement efforts.

C. Proposed Ordinance. The availability of this tool will permit the City to resolve several on-going or potential enforcement issues without the necessity of initiating proceedings before the Board of Adjustment or in court. The proposed ordinance will require notification to sign owners, and will require registration of signs in order for those signs to be eligible for inclusion in an agreement. The proposed ordinance will permit eligible billboards to be relocated on site in order to deal with site-specific development issues, or to be relocated within designated overlay zones subject to certain restrictions as to height, size and setback. Ineligible signs will remain subject to the provisions of the code that restrict the ability to relocate or replace them.

The proposed ordinance does not allow for any increase in the number of billboards within the City's zoning jurisdiction, nor does it allow for any increase in the size of affected billboards. The ordinance also does not restrict the City's ability to enforce its ordinances with respect to any billboard. Rather, it permits the City and the sign owner to negotiate for the relocation of eligible billboards.

This proposed new ordinance does not restrict the City's ability to adopt ordinances in the future that provide for the amortization of billboards. If the City chooses to do that, however, the new law will require compensation in accordance with the formulas set out in the law.

D. Recommended Changes from Planning and Zoning approved draft. Based on further review by staff, the proposed ordinance as reviewed and approved by the Planning and Zoning Commission has been clarified as to certain provisions as follows (original draft language is shown following each affected provision in the proposed ordinance):

1. The term "Qualified Billboard" has been changed to "Qualified Sign."

2. Paragraph (g)(1) has been changed to provide that Qualified Signs include signs with respect to which enforcement proceedings had been commenced; previously the proposed ordinance expressed these concepts as separate. This is a clarification.

3. Paragraph (g)(2)b. was revised to provide that signs must have been legal when erected in order to become a Qualified Sign.

4. The height limitation in paragraph (g)(2)c.2.ii. has been changed to provide that signs may not exceed 40 feet; the previous draft provided that they could not exceed their height prior to relocation, except with a variance. This change was made because 40 feet is the height limitation applicable to billboards in the 1990 ordinance. Measurement in all cases is from the base of the sign.

5. Paragraph (g)(2)c.2.iv. previously provided that Qualified Signs could only be located within the required separation distance from non-Qualified Signs with the approval of the Planning Director. This requirement was removed because any off-premise sign that is not a Qualified Sign is nonconforming and subject to removal.

Pros:

- Provides an alternative for resolving current enforcement actions regarding billboards, including removal of some billboards.
- Protects a visually sensitive corridor and the Blue Ridge Parkway viewshed.
- Establishes a cap on the number of billboards in the City.

- Makes an additional tool available for resolving some disputes, but does not require its use.
- Does not permit any increase in the number of billboards in the City.

Cons:

- At least with respect to enforcement efforts under the existing sign ordinances, an agreement could mean that some billboards now potentially subject to removal may not be removed.
- Allows billboards to be relocated to new locations.

Staff recommends adoption of the ordinance authorizing the removal/relocation/ replacement agreements for off-premise signs.

At 5:58 p.m., Mayor Worley closed the public hearing.

There was considerable discussion as City Attorney Oast responded to various questions from Council, some being, but are not limited to: where are the designated corridors; what is the compensation formula to owners of billboards that are removed as a result of amortization; how long has the City been dealing with the billboard issue; has there been any input and if so, what has it been, from the billboard owners regarding this proposed amendment; and what happens if the City extends it's extraterritorial jurisdiction or annexes.

Councilman Newman was concerned that the property tax is nowhere near the income generated or the value placed on the billboard by the billboard companies.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3168. This motion was seconded by Vice-Mayor Mumpower.

Councilwoman Jones spoke in support of the ordinance, however, requested that in the future more groups be solicited to review the ordinance.

At the request of Councilman Newman, it was the consensus of City Council to ask the City Manager to contact Buncombe County regarding the value process for billboards in the City and to make sure the value is consistent with the property tax being paid.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 335

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Planning & Development Director Scott Shuford said that this is the consideration of resolutions stating the intent of the City to annex the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area and the Airport Road area.

He said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic

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development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population.

The City of Asheville has initiated annexations for the past four years. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

It is now time for the City to initiate the next phase of annexations. Staff has identified the following four areas: Ridgefield Business Park area, Ascot Point Village area, Long Shoals Road area and Airport Road area.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	September 28, 2004
Council Adoption of Plans of Services	October 12, 2004
Staff-Sponsored Public Informational Meeting	November 15, 2004
City Council Public Hearings	December 14, 2004
Council Adoption of Annexation Ordinances	January 11, 2005
Effective Date of Annexations:	
March 31, 2005 – Ridgefield Business Park area	
December 21, 2005 – Ascot Point Village, Long Shoals Road & Airport Road	

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Ridgefield Business Park area, Ascot Point Village area, Long Shoals Road area and Airport Road area.

Mr. Shuford stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 15th day of November, 2004, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 14th day of December, 2004, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the

public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

Our annexation strategy has been to (1) select areas that are clearly developed; (2) include areas where water and sewer have been extended; (3) improve city limits by eliminating pockets and clarifying boundaries; and (4) disperse areas geographically.

Councilwoman Bellamy felt the process should be delayed until January or February because the public information meeting and the City Council public hearings are near holidays. She felt people might be preoccupied with the season's festivities to adequately deal with potential annexation.

Mr. Shuford said that the statutes require a specific process and if Council wishes to delay action, then he would need additional time to review the statutes to make sure that all timeframes are met.

A brief discussion was held about the scheduling of the meetings around the holidays, noting that the weather is a bigger factor than the holidays themselves.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-206 - RESOLUTION OF INTENT TO ANNEX THE RIDGEFIELD BUSINESS PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-206. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 370

RESOLUTION NO. 04-207 - RESOLUTION OF INTENT TO ANNEX THE ASCOT POINT VILLAGE AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-207. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 374

RESOLUTION NO. 04-208 - RESOLUTION OF INTENT TO ANNEX THE LONG SHOALS ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC

HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-208. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 378

RESOLUTION NO. 04-209 - RESOLUTION OF INTENT TO ANNEX THE AIRPORT ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-209. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 382

B. RESOLUTION NO. 04-210 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority (TDA).

Mr. Chris Cavanaugh has resigned, as the individual who is involved in the tourist business who has demonstrated an interest in tourist development, and who does not own or operate hotels, motels or other taxable tourist accommodations, from the Buncombe County Tourism Development Authority, thus leaving an unexpired term until August 30, 2005.

Councilwoman Bellamy, who is the City Council liaison to the TDA, said that the TDA recommends Randy Fluharty.

Councilman Dunn was concerned about the room tax issue and felt the TDA make-up should be changed.

Councilman Newman spoke highly of Mr. Fluharty's skills, however, he explained why he felt he should be excluded from being eligible for this position. His other concern is about fair taxation in Asheville. In the past several years, City Council has raised property taxes and water rates on families and businesses in Asheville. Asheville has among the highest cost of living in North Carolina and the City taxpayers are paying $800,000 to maintain our Civic Center and $100,000 a year for the Chamber of Commerce's visitor center, yet Asheville has among the lowest hotel occupancy fees in North Carolina. The service sector in the hotel industry specifically pay among the lowest wages in our community, often times not paying living wages. No one has been able to show that if Asheville increased our local hotel occupancy fee to the state average to help pay for infrastructure that benefits the tourism industry and our community as a whole, that we would reduce tourism visitation to Asheville. The TDA provides recommendations to our state delegation regarding the hotel occupancy fees and rates and if we fill this position with people who support the status quo, then it will be harder to increase the local hotel occupancy fee to the state average to help pay for key infrastructure. The tour industry

should help pay their fair share. He felt we need to bring new voices to the TDA and he would support James Rentz.

After a brief discussion about the Council voting process regarding board appointments, Vice-Mayor Mumpower moved to appoint Randy Fluharty, as the individual who is involved in the tourist business who has demonstrated an interest in tourist development, and who does not own or operate hotels, motels or other taxable tourist accommodations, to the Buncombe County Tourism Development Authority, to serve the unexpired term of Mr. Cavanaugh, term to expire August 30, 2005, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Dunn and Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 386

C. RESOLUTION NO. 04-211 - RESOLUTION APPROVING REQUEST FOR PROPOSALS FOR THE WATERSHED MANAGEMENT PLAN FOR NORTH FORK AND BEE TREE WATERSHEDS

Mr. David Hanks, Interim Water Resources Director, said that City Council approved the implementation of a watershed management plan for the North Fork and Bee Tree watersheds. This plan was the first phase in a comprehensive management plan covering the next five (5) years and beyond. The request for proposals (RFP) is the second phase of the watershed plan to ensure long range proper management of the watersheds.

Submitting watershed management firm must be qualified to address the best watershed management concepts and the scope of the proposal must include but is not limited to the following:

- Provide annual detailed recommendations to City of Asheville Water Resources staff for managing the watershed in the next fiscal year (July 1 – June 30)
- Insure that the annual recommendations maintain water quality as the primary objective
- Approval of the annual plan by City Council during the annual budget process for each fiscal year plan in order to proceed
- Provide detailed information on cost and any projected revenues of the annual proposed plan
- Identify areas within the watershed which require annual maintenance and specifically identify ways to address the annual maintenance needs using best forestry management techniques
- Provide recommendations for riparian buffer designs in order to reduce sedimentation and provide protection for streambanks
- Provide recommendations to reduce the risk of catastrophic events, such as fire, insects or disease to preserve the watershed in order to maintain high water quality
- Identify trees, underbrush, plants, shrubs, etc. which require one time maintenance or removal
- Identify trees, underbrush, plants, shrubs, etc. which require ongoing maintenance or removal during the life of the contract
- Identify roads, bridges, stream crossings, and road shoulders that require immediate maintenance
- Identify roads, bridges, stream crossings, and road shoulders that require long-term maintenance
- Identify invasive plant and tree species and provide action plans for removal or termination to insure continued health of the watershed
- Provide annual watershed plans that are compatible with the North Carolina Conservation Trust easement

- Provide annual watershed plans that protect and preserve the scenic view sites of the watershed from the Blue Ridge Parkway
- Assist in determining which emergency access roads should be maintained, closed or developed within the watershed
- Determine sites within the watershed for re-establishment of the American Chestnut tree
- Identify endangered/threatened species in the watershed area and provide recommendations for management
- Provide annual plans that will enhance native plants, wildlife, and other species found within the watershed
- It is the desire of the City to appoint a Watershed Advisory Committee made up of Water Resources and other City staff, representatives from the North Carolina Conservation Trust, Blue Ridge Parkway, and City of Asheville Tree Commission. This committee will be used to provide technical assistance and recommendations to the watershed management plan
- Any water-related work the firm is qualified to do (or sub-contract), as directed and mutually agreeable to both parties

Staff will bring an annual plan to City Council outlining specific details of what will be done within the watershed, except emergency maintenance, for the next fiscal year for Council approval.

City staff recommends City Council's approval of the proposed RFP for the next phase of managing the North Fork and Bee Tree watersheds.

Councilman Newman said that the management activities that are needed in the watershed include the maintenance and restoration of bridges on the watershed property, and the removal of identified exotic species that present a fire threat to the property. His concern is that this RFP is much broader than that and we are going to spend a lot of money paying consultants to develop a very broad plan and really the only pressing management needs that he can see in the watershed are the activities to maintain the road network and remove the exotic species. There is an element of commercial logging activities that is contemplated in the RFP and if we are going to use commercial logging as a management technique in the watershed property, we need to be more clear about exactly why we are doing that. It doesn't seem to him that it meets any of our management goals in the watershed, other than creating a source of revenue. He is concerned that we are unnecessarily vague about the role that we want that to play in the future management of the watershed. Based on the potentially high price we are going to pay for the consulting firm to create the second phase of the management plan, he will not support it.

Mayor Worley noted that this is only a RFP and when it comes back, Council will determine the scope of what, if anything, they want done and the cost associated with that.

Councilwoman Jones would not support the RFP largely because of the costs quoted.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Davis moved for the adoption of Resolution No. 04-211. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 387

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced vacancies on various boards.

Vice-Mayor said that Square D has closed and thanked them for their important service to our community for over 30 years.

The following claims were received by the City of Asheville during the period of September 10-23, 2004: Homer Sams (Water), Eric Hornbeek (Police), Karen Valentine (Streets), Trace Bates (Streets), Vivian Smith (Water) and Marian Jacobsen (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:04 p.m.

Magdalen Bourleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 12, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING – SOMETHING ABOUT OCTOBER, 2004, AS "DISABILITY EMPLOYMENT AWARENESS MONTH"

Mayor Worley read the proclamation proclaiming October 2004, as "Disability Employment Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Bart Floyd, Mr. Richard Arends and Ms. Carol Hubbard who briefed City Council on some activities taking place during the month.

B. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD

Mayor Worley presented City Accountant Pat Leckey with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 24th year.

He also was proud to acknowledge that the City of Asheville's Accounting Division received the Award of Financial Reporting Achievement.

Ms. Lynn Ducker, Ms. Sue Bagwell, Ms. Tia Keith, Ms. Leah Singleton, Ms. Charlene Frankin and Mr. Tim Taylor were also recognized for their work in achieving the awards.

Mayor Worley announced the upcoming retirement of William Schaefer, Finance Director. Mr. Schaefer will be retiring at the end of December 2004, after 37 years of public service including 11 years with the City of Asheville.

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda "L" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE WORKSESSION HELD ON SEPTEMBER 21, 2004, AND CONTINUED UNTIL SEPTEMBER 28, 2004; AND MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 28 2004

B. RESOLUTION NO. 04-212 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON MAX STREET TO BRANDON KNOLLS LLC

Summary: The consideration of a resolution authorizing the Mayor to convey property on Max Street to Brandon Knolls, LLC, in the amount of $1,500.

On September 28, 2004, the City Council directed the City Clerk to advertise for upset bids on a parcel of land on Max Street (PIN No. 9648.07-59-8495) in the East End/Valley Street Community.

The subject property is an RS-8 Residential Single-Family High Density District parcel comprising approximately 0.04 acre located on Max Street across from Stephens-Lee Center. The lot is too small to build on. The tax value for the parcel is $1,500.

Brandon Knolls LLC has submitted a bid to purchase the property in the amount of $1,500 and intends to combine it with adjacent property that is improved with a single family house

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern
- The sale of this lot to Brandon Knolls will assure the continued use of the lot for driveway access to the adjoining lot

The advertisement for upset bids ran in the Asheville Citizen-Times on Friday, October 1, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Brandon Knolls, LLC, in the amount of $1,500 was not upset and the sale to Brandon Knolls, LLC should be approved.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey property on Max Street to Brandon Knolls, LLC, in the amount of $1,500.

RESOLUTION BOOK NO. 28 – PAGE 388

C. RESOLUTION NO. 04-213 - RESOLUTION AUTHORIZING CONVEYANCE OF REAL PROPERTY AT 14 MICHIGAN AVENUE IN EXCHANGE FOR REAL PROPERTY ON LYMAN STREET

Summary: The consideration of a resolution authorizing the City to exchange real property at 14 Michigan Avenue for Brandon Knolls LLC property on Lyman Street.

The property at 14 Michigan Avenue (PIN No. 9638.15-54-8270) is a 0.19 acre parcel zoned RM-8 Residential Multi-Family Medium Density District. The lot is on the east side of Michigan Avenue about 150 feet from its intersection with Haywood Road. The property is elevated about 5 feet above street grade and mostly level except for a driveway. It has several

large trees and some grass that has been worn bare due to frequent use by customers of the convenience store on the adjacent lot. All utilities are available to the lot. There is a sidewalk across the front of the property at the street. The property has a tax value of $16,800.

The property owned by Brandon Knolls LLC (Knolls) (PIN No. 9648.17-01-5372) is a 0.88 acre parcel located on the French Broad River at the intersection of Lyman Street and Amboy Road. The property is directly across the river from the French Broad River Park and highly visible from the park. It slopes steeply down from the road at Amboy and levels off at the river. It is long and narrow, wider at Amboy and tapers off as it runs North with the western boundary of Lyman Street. Traveling North the grade of Lyman Street descends closer to the river thus improving the access to the property. The parcel has a tax value of $83,600. Knolls purchased the lot at a tax foreclosure sale for the upset bid amount of $7,250. After purchasing the lot, Knolls offered to exchange the lot for City owned property An exchange of property was negotiated which includes an additional cash payment to the City in the amount of $5,000.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It is consistent with the greenway master plan.
- It will protect the view from the park across the river.
- Acquisition of the entire parcel will allow greater flexibility than an easement.

Pursuant to N. C. Gen. Stat. sec. 160A-271 a notice was duly published in the Asheville Citizen-Times on October 1, 2004.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. Gen. Stat. sec. 160A-271.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the City to exchange real property at 14 Michigan Avenue for Brandon Knolls LLC property on Lyman Street.

RESOLUTION BOOK NO. 28 – PAGE 389

D. RESOLUTION NO. 04-214 - RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO DELETE THE NOVEMBER 2, 2004, WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 390

E. RESOLUTION NO. 04-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A GRANT TO ASSIST WITH THE PURCHASE OF EQUIPMENT FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Local Law Enforcement Block Grant Program; and an associated budget amendment, in the amount of $44,173, to provide for the local matching contribution.

The City of Asheville has been awarded a grant, in the amount of $39,765, under the Fiscal Year 2004 Local Law Enforcement Block Grants Program. A local match of $4,418 in required for a total of $44,173. The purpose of the grant program is to fund projects, allowed

under the grant program, designed to reduce crime and improve public safety. We have chosen the area of improving police equipment in the area of crowd control and homeland security. The following is planned equipment purchases:

30	Taser X26E units (w/holsters)	Each: $799.95	Total: $23,998.50
90	Taser replacement cartridges	Each: $18.97	Total: $1,707.30
1	Package Appliqués for helmets	Each: $155.00	Total: $155.00
20	Eyeglass prescription inserts	Each: $70.00	Total: $1,400.00
35	V-Top shin guards	Each: $85.00	Total: $2,975.00
35	Torso Protectors	Each: $350.00	Total: $12,250.00
2	Pepper Ball Projectors	Each: $400.00	Total: $800.00
2	40 MM Gas Projectile Units	Each: $250.00	Total: $500.00
4	Training chemical certification	Each: $250.00	Total: $1000.00
	Estimated Freight		Total: $1000.00
			Grand Total: $44785.80

Pros:

- The desired equipment is would allow officers to respond to all types of crowd control and homeland security issues with safety in mind.
- This will contribute to the reduction of officer and citizen injury while improving the effectiveness of crowd control detachments.

Con:

- Though there are many benefits to this program, the one drawback would be our financial expectation of up-keep to the equipment and replacement when needed.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept the grant award; and (2) to adopt the budget amendment, in the amount of $44,173, to provide for the local matching contribution.

RESOLUTION BOOK NO. 28 – PAGE 391

F. ORDINANCE NO. 3169 - BUDGET AMENDMENT TO PROVIDE MATCHING FUNDS FOR U.S. DEPT. OF JUSTICE GRANT TO PURCHASE POLICE EQUIPMENT FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 21 – PAGE 341

G. RESOLUTION NO. 04-216 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE VIVIAN AVENUE

Summary: The consideration of a resolution of intent to close Vivian Avenue and set a public hearing for November 9, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the University of North Carolina at Asheville has requested the City of Asheville permanently close to public use as a public street Vivian Avenue as shown on a plat entitled, "Property of the Christian School of Asheville," at Plat Book 32, Page 28 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this right-of-way is not a City maintained street. Closure of this right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are three parcels that abut this section of right-of-way. They are identified by PIN Nos. 9649.09-17-3141, 9649.09-16-0734, and 9649.09-16-2885. The petitioner has authority over all the abutting parcels.

City staff recommends that City Council adopt the resolution setting a public hearing for November 9, 2004, to close Vivian Avenue.

RESOLUTION BOOK NO. 28 – PAGE 392

H. RESOLUTION NO. 04-217 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR WATER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to apply for a State of North Carolina loan under the North Carolina Clean Water Revolving Loan and Federally Funded State Revolving Fund Program for water system improvements.

The State of North Carolina is making low interest loan funds available to water systems with a 2.20 percent interest rate. The Water Resources Department needs to replace the asbestos water line in the west district of the water system due to health hazard and maintenance concerns. Replacing the asbestos water line and extent the water system will increase pressure and improve fire protection to this part of the system. The asbestos water lines are health hazards that require a third party vendor to handle and dispose of when repairs are made from routine and emergency breaks. Repairs to the asbestos lines take up to three times longer due to safety and health requirements. These lines are concrete inside and water does not come in to contact with the outside asbestos. If approved by the State the City is under no obligation to accept the grant should the stated interest rate change or other funding such as grants become available. The loan approval process from the State should be completed early summer of 2005 with payments starting in Fiscal Year 2005/06. The requested amount to fund the project is $1,771,965.00. The repayment terms will be negotiated with the State to ensure the City receives the best value for this loan.

The water system improvements consist of the following: Approximately 2,200 lineal feet of 16-inch and 13,500 linear feet of 12-inch ductile iron water line and related appurtenances along US 19-23 and Sand Hill Road (NC112) in western Buncombe County will be installed. The intent of the project is to replace existing 6-inch asbestos cement piping and to serve as the initial phase of a regional interconnection project to link the City of Asheville's water system to the Town of Canton's system in Haywood County per the Water System Master Plan.

City staff recommends City Council authorize the City Manager to apply for a loan through the State of North Carolina State Revolving Fund Program.

RESOLUTION BOOK NO. 28 – PAGE 393

I. ORDINANCE NO. 3170 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM A TRANSPORTATION IMPROVEMENT PROGRAM GRANT

Summary: The consideration of accepting $18,993 from the State of North Carolina to purchase up to 40 bicycle racks for installation at public facilities.

The Transportation Improvement Program Project E-3415 was partially executed and this expenditure will close the project. The State will reimburse the City 100% up to $18,993. The total grant was $60,000, of which $41,007 has been previously received. Eighty-three bicycle racks have been purchased and installation continues throughout the City via this grant.

Pros:

- No matching funds required.
- These funds will add bicycle racks throughout the City.

Cons: None noted.

This budget amendment addresses three goals within three focus areas established in the Strategic Operating Plan: (1) Goal #1 in the Natural & Built Environment focus area, (2) Goal #2 in the Planning focus area, and (3) Goal #3 in the Sense of Place focus area.

City staff recommends City Council accept $18,993 from the State of North Carolina to purchase up to 40 bicycle racks for installation at public facilities.

Upon inquiry of Vice-Mayor Mumpower, City Engineer Cathy Ball said that although they have no statistical data on how much the existing racks are being utilized, she believe there is about a 20% utilization, depending on their location, e.g., in front of the library, the racks are heavily used. She said that one advantage is that they don't have a designated location for these new bike racks so they can be placed at a higher utilization location.

Vice-Mayor Mumpower felt the utility and the placement should be measurable at $475 a bike rack.

Ms. Ball said that they were getting a lot of complaints about people locking their bikes to parking meters or putting them in the way, so she does feel they have provided an opportunity for people to use bikes as an alternative mode of transportation. She feels that the more racks are installed, the more use you will see. The Bicycle Pedestrian Task Force provides valuable input and there have been 12 requests for bike rack locations.

Upon inquiry of Vice-Mayor Mumpower about other uses for the grant money, Ms. Ball said that this money is geared for the purpose of bicycle enhancements, whether it is bicycle lanes, bicycle racks, etc. In this community we have identified the need for bike racks. If we find out any additional information or identify a different need, she believes the State would be open to working with us. -Ordinance Book No 21 - page 344

J. **ORDINANCE NO. 3171- BUDGET AMENDMENT TO COVER OVERTIME EXPENSES THAT WILL BE INCURRED AS A RESULT OF THE NEW FAIR LABOR STANDARDS ACT OVERTIME EXEMPTIONS**

Summary: The consideration of a budget amendment, in the amount of $77,500, to cover overtime expenses that will be incurred as a result of the new Fair Labor Standards Act (FLSA) overtime exemptions.

On August 23, 2004, the new FLSA regulations governing overtime pay exemptions for executive, administrative, professional, and computer employees became effective.

The Human Resources Department has reviewed all positions and has determined that 15 job titles will have changes in exemption status to comply with the new regulations.

These exemption status changes will require the City to pay overtime to employees filling these job titles. These positions have previously been considered exempt from overtime. It is estimated that the total cost of additional overtime expenses will be $77,500.

The negative aspect of this change will be the additional costs incurred by the City for overtime; however, these costs are unavoidable as the FLSA regulations must be complied with by law.

The positive aspect of this change is all adjustments made according to the law resulted in a beneficial increase to the employee.

City staff recommends City Council approve the budget amendment, which provides funds for overtime expenses incurred as a result of the new FLSA changes.

ORDINANCE BOOK NO. 21 – PAGE 346

K. RESOLUTION NO. 04-218 - RESOLUTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY PERMIT FROM NATIONAL PARK SERVICE FOR BRIDGE ACROSS SWANNANOA RIVER TO AZALEA ROAD FACILITY

Summary: The consideration of a resolution authorizing execution by City Manager of Park Service Right-of-Way Permit for use of bridge over Swannanoa River to Azalea Road property.

Last month, the City received a permit from the National Park Service permitting the City to use a bridge and appurtenant access roads to access its property along Azalea Road. The property in question is the site for the City's proposed beneficial fill site on Azalea Road. The bridge and access roads may also be used for maintaining the City's adjacent parks facilities, but will not be used for general public access. Since the acquisition of the Azalea Road property by the City, the City and the Park Service have had discussions on whether the roads and bridge can be used by the City, and the permit process was a way of accommodating their competing interests.

The permit authorizes the City to make needed repairs to the bridge and adjacent roadways, and authorizes the use of the bridge and appurtenant roads for access to the beneficial fill site, and for maintenance purposes. The City plans to provide some screening of the beneficial fill site from the Parkway and to take other steps to mask and mitigate the impacts of its use. The permit is good for five years, and may be renewed for additional five-year terms up to a total of 20 years.

This permit has been the focus of negotiations between the City and the Park Service, and has been through a lengthy environmental review process. There are still some minor clarifications and adjustments needed, but these should be handled easily and quickly, and it appears that the permit as drafted will meet the City's needs.

Considerations. (1) Other than the cost of the bridge repair and periodic maintenance, the cost to the City of using this permit will be negligible. (2) The cost savings in transportation and tipping fees will be significant. (3) Care will be taken to mitigate any impacts of the fill site or adjacent residential areas, and to visually screen it from the Parkway. (4) The ability to use this existing bridge means that the City does not have to construct another bridge further downriver.

Staff recommends that Council authorize the City Manager to execute this permit for the City, and to apply for and execute renewals as appropriate.

Councilman Dunn asked how much the City has spent in tipping fees over the past two years because we didn't have a permit to use the bridge to the Azalea Road site. Public Works Director Mark Combs said that it has cost the City approximately $250,000.

RESOLUTION BOOK NO. 28 – PAGE 394

L. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE "BENEFIT OF BILTMORE" EVENT ON OCTOBER 23, 2004

This item was removed from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Newman and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 04-219 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE "BENEFIT OF BILTMORE" EVENT ON OCTOBER 23, 2004

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the "Benefit of Biltmore" event on October 23, 2004.

The "Benefit of Biltmore" special event has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and unfortified wine at their October 23rd event.

This event is co-sponsored by the City of Asheville Parks and Recreation Department for the purpose of providing a benefit for business owners and employees of Biltmore Village due to the recent flooding events.

The location of this event is within the Biltmore Village area located on Kitchen Place between the intersection of Angle Street and the intersection of Boston Way.

The event will consist of several micro-breweries offering samples of their beer.

Pro: To generate funds for businesses and employees in the Biltmore Village area that were affected by the recent flooding.

Con: None noted.

The Asheville Parks and Recreation Department recommends City Council's approval of the resolution authorizing the possession and consumption of malt beverages and/or unfortified wine at the "Benefit of Biltmore" event.

Councilman Dunn moved for the adoption of Resolution No. 04-219. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 395

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY EMERGENCY MANAGEMENT FACILITY LOCATED ON 129 S. LEXINGTON AVENUE FOR A PROPOSED 911 CALL AND COMMUNICATION CENTER, AND EMERGENCY DISPATCH FACILITY**

On October 7, 2004, a letter was received from Buncombe County Manager Wanda Greene requesting "that the hearing on the Conditional Use Permit application for the Union Transfer Building (tax lots PIN 9648.06-48-0774 and 0445), located on Hilliard Avenue, be delayed until the fourth Tuesday in February, 2005." Therefore, Vice-Mayor Mumpower moved to continue this public hearing until February 22, 2005. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. **PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE**

Councilman Newman moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

On October 12, 2004, a letter was received from Mr. Mike Vance, Homeownership Manager from Mountain Housing Opportunities, requesting that their proposal to amend the conditional use permit for the Merritt Park Condominiums, scheduled for October 12, 2004, be continued until the next available City Council meeting. Therefore, Vice-Mayor Mumpower moved to continue this public hearing until November 9, 2004. This motion was seconded by Councilwoman Jones and carried unanimously.

C. **PUBLIC HEARING TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN**

RESOLUTION NO. 04-220 - RESOLUTION AMENDING THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

ORDINANCE NO. 3172 - BUDGET AMENDMENT TO PROVIDE A HOME PRE-DEVELOPMENT LOAN TO MOUNTAIN HOUSING OPPORTUNITIES

Councilman Newman moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Mayor Worley opened the public hearing at 5:26 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution amending the 2004 Consolidated Action Plan to provide a HOME pre-development loan to Mountain Housing Opportunities. This public hearing was advertised on October 1 and 8, 2004.

The Annual Consolidated Action Plan sets out the City's planned use of federal Community Development Block Grant (CDBG) and HOME funds for the next fiscal year. The 2004 Action Plan was approved by Council on April 13, 2004, and amended on August 24, 2004.

Mountain Housing Opportunities (MHO) has requested an additional allocation of $25,000 in the form of a HOME pre-development loan. The funds will be used to determine the feasibility of developing a 2-acre parcel on Depot Street, including the former Glenrock Hotel. MHO envisions a development of about 20 affordable housing units in the rehabilitated hotel building, plus at least 35 new mixed-income housing units and 20 new commercial/retail spaces. Loan proceeds will be used for: option fee, appraisal, environmental studies, and preliminary architectural plans. Funds are available from HOME program income from loan pay-offs.

The HOME program regulations provide specifically for funds to be loaned for pre-development site control and feasibility studies by Community Housing Development Organizations such as MHO. If the project goes ahead, the loan is repaid from project financing; if it proves infeasible the loan is forgiven.

A public hearing is required as this is a substantial amendment to the Action Plan. Two public notices have been published

Potential Advantages:

- Addition of at least 55 new housing units and 20 commercial units
- Rehabilitation of an historic building
- Contributes to revitalization of the "River Arts District", identified in the Riverway Master Plan
- Potential for artist live/work studios
- Adjacent to Reid Community Center and Park
- Attracts Low Income Housing Tax Credits and other resources
- Increase of about $10,000,000 in property tax base.

Disadvantages:

- Loss (forgiveness) of the HOME loan if project proves infeasible because of cost, environmental factors, or market conditions.

Staff recommends City Council approve the resolution for a $25,000 HOME predevelopment loan to Mountain Housing Opportunities and the associated budget amendment.

Mayor Worley closed the public hearing at 5:38 p.m.

Councilman Dunn, Chairman of the Housing & Community Development Committee, spoke in support of the amendment.

Mayor Worley said that members of Council have previously received a copy of the resolution and budget amendment and they would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-218. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 397

Councilman Dunn moved for the adoption of Ordinance No. 3172. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 348

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING FOUR AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) THE RIDGEFIELD BUSINESS PARK AREA; (2) THE ASCOT POINT VILLAGE AREA; (3) THE LONG SHOALS ROAD AREA; AND (4) THE AIRPORT ROAD AREA

Planning & Development Director Scott Shuford said that the Annexation Services Plan is being submitted for Council's approval for the following areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, and the Airport Road area.

City Council approval of this document is the second step in the annexation process that began on September 28, 2004, when Council adopted the resolutions of intent to annex these four areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	October 12, 2004
Public information meeting	November 15, 2004
Public hearings	December 14, 2004
Adoption of annexation ordinances	January 11, 2005

Effective Date of Annexations:

March 31, 2005 – Ridgefield Business Park area

December 21, 2005 – Ascot Point Village, Long Shoals Road & Airport Road

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

He then reviewed with Council the specifics of how each area qualifies for annexation and used photos to show some of the uses in the proposed annexation areas.

Mr. Shuford then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department. Extending service into the proposed annexation areas will require operational adjustment in two primary areas (1) configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service; and (2) filling vacancies in sworn personnel positions to accommodate the anticipated increase in demand for police services. He explained how each area would be served by an expansion of a particular district. Based on the projected population increase at the time of annexation, it will be necessary to add seven (7) officers to maintain the current benchmark ratio of one officer to 407 residents. The plan of services calls for the addition of these officers, at the annual cost of $245,000, on or before August 1, 2005.

Fire protection: Three additional firefighter positions will be required to adequately serve the additional land area, dwelling units, businesses and improvements. The current first unit to be placed out of service is Ladder 4 when personnel are not available for minimum staffing. These positions will reduce the number of "out of service" times for this response company. The annual cost for the positions will be $105,000 for salary and benefits plus associated equipment and safety items of $15,500. The extension of fire protection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.1 to offer existing fire service entities contract opportunities, which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the suburban fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Solid waste collection: With the addition of 1,605 residences, the Sanitation Division cannot absorb the annexed areas into the six existing routes. An additional automated truck and a new position, Motor Vehicle Operator III, are required. The City is required by G.S. 160A-49.3 to offer existing private service entities contract opportunities which allow for the continued service of annexed areas by existing companies. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the existing private companies may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending solid waste collection services; therefore, the City has developed a plan that incorporates alternative solutions to extending solid waste collection services to annexed areas.

Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require expansion of Public Works Department, Street Maintenance Division. The City has evaluated the streets in the annexation areas for inclusion in the maintenance program as follows: (1) Ridgefield Business Park area: Alliance Court, Heart Drive, Ridgefield Boulevard and Ridgefield Court (39 street lights at a total annual cost of $8,327); (2) Ascot Point Village area: Ascot Point Circle (2 street lights at a total annual cost of $418); (3)

Long Shoals Road area – Skyland Inn Drive (3 street lights at a total annual cost of $650); and (4) Airport Road – Machen Road (8 street lights at a total annual cost of $1,677).

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed four annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following two areas require no water line improvements: Ridgefield Business Park area and Ascot Point Village area. In the Long Shoals Road area, there is a lack of fire protection coverage. Therefore, there is a need to upgrade the existing small diameter water line on Plott Place and to upgrade an existing small diameter water line on Overlook Road Extension. Approximately 500 linear feet of six-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Plott Place and approximately 550 linear feet of 6-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Overlook Road Extension. All existing water service connections shall be reconnected to the proposed 6-inch water line and the existing small diameter water lines shall be abandoned. In the Airport Road area, there is a lack of fire protection. Therefore, there is a need to upgrade an existing small diameter water line on Machen Road and install additional fire hydrants to existing water lines in the area to bring fire protection coverage to the same level as other parts of the City. Approximately 1,000 linear feet of 6-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Machen Road. All existing water service connections shall be reconnected to the proposed 6-inch water line and the existing small diameter water line shall be abandoned. Two new fire hydrants will be installed on the existing 24-inch water line along Airport Road, 1 new fire hydrant will be installed on the existing 24-inch water line along Hendersonville Road and 1 new fire hydrant will be installed on the existing 6-inch water line along Glen Bridge Road. Water system improvements for the Ridgefield Business Park area are planned for completion by March 31, 2007, and water system improvements for the Ascot Point Village area, Long Shoals Road area and Airport Road area are planned for completion by December 31, 2007.

Sewer collection: The following two areas require no sanitary sewer system improvements: Ridgefield Business Park area and Ascot Point Village area. In the Long Shoals Road area, major sanitary sewer trunk lines and interceptors are currently in place for the majority of this area; however, upgrades will be required to the existing sanitary sewer infrastructure in order to bring this area to substantially the same level as other parts of the City. Approximately 800 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed cross-country, beginning on Long Shoals Road, approximately 350 feet east of the intersection of Long Shoals Road and CP&L Drive and extending south to tie into the existing sanitary sewer system on CP&L Drive. In the Airport Road area, major sanitary sewer trunk lines and interceptors are currently in place for the majority of this area; however, upgrades will be required to the existing sanitary sewer infrastructure in order to bring this area to substantially the same level as other parts of the City. Approximately 350 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed along Airport Road, beginning 380 feet west of the intersection of Airport Road and Hendersonville Road. Approximately 850 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed along Benwood Drive, beginning approximately 700 feet west of the intersection of Benwood Drive and Bradley Branch Road. Sanitary sewer system improvements for the Ridgefield Business Park area are planned for completion by March 31, 2007, and sanitary sewer system improvements for the Ascot Point Village area, Long Shoals Road area and Airport Road area are planned for completion by December 31, 2007.

Administrative and other municipal services: The City of Asheville is governed by a City Council consisting of a Mayor, Vice-Mayor, and five Councilpersons with general administration responsibilities delegated to a City Manager. Supporting the City Manager are key professionals and department heads specializing in public works, police protection, fire protection, urban land

use planning and zoning, building code enforcement, legal matters, parks and recreation and various other municipal activities and functions. The City of Asheville is active minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities in an effort to make Asheville a better community for present and future residents, businesses and property owners. Employees and employee relations are managed by the City Manager. The City of Asheville is an Equal Opportunity Employer. Three well-qualified practicing attorneys provide legal counsel to the City.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $887,148; Total state utility taxes - $107,936; Total sales tax - $320,556; Total Powell Bill allocation - $64,055; and Total fees, charges and permits - $111,076. Total revenue - $1,490,771.

Annual recurring expenditures: Police (seven additional officers to be hired effective August 1, 2005) - $245,000; Fire (costs for additional personnel and financial impact payments to the rural fire departments (5-year duration) - $193,643; Solid waste - $96,558 (annual costs for solid waste collection and disposal and recycling are not anticipated to be absorbed into current budgets; the solid waste annual expenses include an additional MEO III position plus annual disposal costs of $15,721. Annual costs for street maintenance are anticipated to be absorbed into the current budget with no increase in expenditures at this time); Recycling - $12,209; and Street lighting - $11,072. Total recurring expenditures - $510,645.

Annual capital expenditures: Water lines - $153,650; Sewer lines - $285,000; Solid waste (cost equals potential economic loss compensation for private solid waste haulers of $57,644 plus $182,000 for an additional automated loader truck) - $239,644; Rollout containers - $16,960; Police (police capital costs include equipment, training and vehicles for hired officers) - $186,385; and Fire (fire costs include equipment for hired personnel) - $15,500. Total annual capital expenditure - $897,139.

Mr. Shuford asked City Council to adopt the resolutions approving the report of plans for the four annexation areas.

Mr. Shuford responded to Councilwoman Jones in what the formula is for potential economic loss.

Upon inquiry of Councilman Newman, Mr. Shuford explained the process for sidewalk improvements and street maintenance.

Upon Councilman Dunn, Mr. Shuford explained what the concerns were from the earlier appeal of Ridgefield Business Park area and Long Shoals Road area and how we have now addressed those concerns.

In response to Councilman Dunn, Mr. Shuford said that he would report to Council the number of residents annexed in the last round of annexations.

Councilman Newman felt it would be beneficial to have information on manufacturing facilities in the proposed annexation areas since Council has a concern of the loss of manufacturing in our area. Mr. Shuford responded that one of the goals they tried to follow under Council's direction to minimize that. He said there are two industrial classified properties in the Ridgefield Business Park area - one is a flooring shop and one is a plant in the process of closing. He said in the Airport Road area, there are six businesses.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-221 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE RIDGEFIELD BUSINESS PARK AREA

Councilman Davis moved for the adoption of Resolution No. 04-221. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 398

RESOLUTION NO. 04-222 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE ASCOT POINT VILLAGE AREA

Councilwoman Jones moved for the adoption of Resolution No. 04-222. This motion was seconded by Councilman Davis and carried on a 4-3 vote with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 399

RESOLUTION NO. 04-223 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE LONG SHOALS ROAD AREA

Councilman Davis moved for the adoption of Resolution No. 04-223. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 400

RESOLUTION NO. 04-224 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE AIRPORT ROAD AREA

Councilwoman Jones moved for the adoption of Resolution No. 04-224. This motion was seconded by Councilman Davis and carried on a 4-3 vote with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 401

VI. OTHER BUSINESS:

Vice-Mayor Mumpower thanked District Attorney Ron Moore, Matthew Bacoate, and others who participated in the successful Gun Buy-Out Program, which 500 guns collected and taken off the streets.

Vice-Mayor Mumpower announced the October board and commission vacancies.

The following claims were received by the City of Asheville during the period of September 24-30, 2004: BellSouth (Streets), Cameron Seleska (Fire), Michael Aanonsen

(Streets), J.D. Wallace (Sanitation) and JLS Company (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt City Council should not annex any more until they provide services for those who are already City residents.

CLOSED SESSION

At 6:12 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilwoman Jones and carried unanimously. The following actions occurred in closed session:

Resolution No. 04-225 – Resolution establishing just compensation and authorizing the use of eminent domain to acquire an easement over certain property on New Haw Creek Road for greenway purposes. The appraisal by Mark Morris is hereby accepted, and just compensation for the easement over the property identified by PIN Nos. 9658.08-78-6513 and 9658.08-78-5543 and owned by Ricky K. Wallin and wife, Diana L. Wallin on New Haw Creek Road is hereby established at $1800.00 (Parcel A) and $1500.00 (Parcel B). Acquisition of said easement by the use of eminent domain is hereby authorized in accordance with the provision of Chapter 40A of the N. C. General Statutes. Resolution Book No. 28 – Page 402.

Resolution No. 04-226 – Resolution establishing just compensation and authorizing the use of eminent domain to acquire an easement over certain property on New Haw Creek Road for greenway purposes. The appraisal by Mark Morris is hereby accepted, and just compensation for the easement over the property identified by PIN No. 9658.08-78-8554 and owned by Jolly SIS & B, LLC, Jean Jolly Jaynes, and George Frederick Jaynes on New Haw Creek Road is hereby established at $2400.00. Acquisition of said easement by the use of eminent domain is hereby authorized in accordance with the provision of Chapter 40A of the N. C. General Statutes. Resolution Book No. 28 – Page 403.

At 9:35 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:35 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 19, 2004 – 2:00 p.m.
6th Floor Training Room – City Hall

Joint City of Asheville/Buncombe County Special Meeting

Asheville City Council Members Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Buncombe County Commissioners Present: Chairman Nathan Ramsey, Presiding; Commissioner Patsy Keever; Commissioner Bill Stanley; Commissioner David Young; County Attorney Joe Connolly; County Manager Wanda Greene; and County Clerk Kathy Hughes. Vice-Chair David Gantt was absent.

Mayor Worley and Chairman Ramsey each called their respective meetings to order at 2:00 p.m. and said the meeting will focus on joint efforts in light of the recent Hurricanes Frances and Ivan flood damages.

Mr. Jerry VeHaun, EMS Director, gave a brief overview of the storm damage and a status of assessments.

Ms. Mandy Stone, DSS Director, reviewed with Council and the Commissioners the social impacts of the storm.

Fire Chief Greg Grayson outlined observations and the status of the storm impact from fire, police, building safety and public works prospective.

Mr. Justin DeMello, representing FEMA, updated Council and the Commissioners on FEMA's disaster response.

Mr. Philip Letsinger, NFIP State Coordinator, gave a brief update on flood mapping.

Throughout the presentations, individuals responded to various questions and comments from Council and the Commissioners.

At 3:15 p.m., Mayor Worley and Chairman Ramsey adjourned their respective meetings.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 19, 2004 - 3:15 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

FIRE AND RESCUE NATIONAL ACCREDITATION PROCESS

Fire Chief Greg Grayson said that that this is the consideration of a resolution adopting Asheville Fire Rescue's Strategic Plan and Standard of Response Cover.

Fire and Rescue staff has been working diligently for several years towards meeting the national fire and rescue services accreditation standards. Staff has now completed the requirements to be reviewed by the Commission on Fire Accreditation International (CFAI). A site visit by peer reviewers is scheduled for November with award of accredited status slated for February, 2005. If all requirements are met, Asheville Fire and Rescue will become the eighth accredited fire and rescue agency in North Carolina and the first accredited agency in Western North Carolina. Prior to the site visit by CFAI, City Council will need to endorse the department's standard of cover and strategic operating plan.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operation Plan. It meets that goal in the section on Critical Services and Infrastructure, Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

The recognized national model which a fire and rescue agency validates their services is through the CFAI accreditation commission. The CFAI accreditation commission is comprised of fire service leaders from agencies of differing size as well as the International City Manager's Association (ICMA), city government, county government, the insurance industry, labor representatives, the International Association of Fire Chiefs (IAFC) and citizens at large.

At this time, the accreditation process is completely voluntary and has been in full effect for approximately the past five years. To date, within the State of North Carolina, there are seven accredited fire and rescue departments (Cary, Charlotte, Gastonia, Greensboro, Jacksonville, Rocky Mount, Wilson). Nationally, 96 agencies have received accredited agency status. Many more departments are currently at some point in the process. All metropolitan fire and rescue departments in North Carolina are involved in the CFAI accreditation process.

The accreditation process has several key components. Over eighty (80) members of the fire and rescue department have been actively involved in formulating these three key components. These include:

1. **Performance Indicators**
   There are 254 individual performance indicators that analyze department operations. Of these 254, 108 indicators are considered "core competencies" and must be met in order to become an accredited agency. The indicators are in the following categories:
   a. Governance and Administration
   b. Assessment and Planning
   c. Goals and Objectives

d. Financial Resource Management
e. Programs
f. Physical Resources
g. Human Resources
h. Training and Competency
i. Essential Resources
j. External Systems Relations

2. **Strategic Operating Plan**

The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from. It is envisioned that the department's strategic operating plan be adjusted at least annually in concen with modifications of the city's strategic operating plan.

3. **Standard of Cover**

The standard of cover illustrates the department's level of service. This is developed from a risk assessment that consists of the following:

a. Fire flow – amount of water to control the emergency
b. Probability – likelihood that a particular event will occur within a given time
c. Consequence – life safety as well as economic impact
d. Occupancy Risk – risk to life and property
e. Fire Management Zones – geographical areas of need or risk
f. Community Profile – demographics, level of services provided

In addition, the standards of response coverage consists of three key elements. These are:

a. Distribution of resources – deployment of facilities and apparatus
b. Concentration of resources – ability to deliver and effective response force
c. Staffing levels – personnel and their task assignments

Completion of the comprehensive standard of cover document for the department has required a significant amount of research and data collection and data analysis by our firefighters.

<u>Why should Asheville Fire and Rescue become an accredited agency? (PROS):</u>

- Assures City Council and our community that the fire and rescue department is performing according to national standards and that the organization is being managed in a professional manner.
- Ensures that we have proper procedures, policies and guidelines in place and that we are delivering the services needed by our community through risk analysis.
- Promotes excellence within the fire/emergency service organization.
- Encourages quality improvement through a continuous process.
- Provides assurance to the public that the department has a defined mission and related objectives that will result in improved performance by the department.
- Provides a detailed evaluation of the department and the services it provides to the community that we serve and protect.
- Identifies areas of strength and weakness within the department.
- Provides a forum for the communication of management and leadership philosophies throughout the organization and community.

- Provides a formal mechanism for developing concurrent documents, such as strategic and business plans and continuously analyzes all of the services that the department is involved with.
- Fosters pride in the organization and promotes professionalism.
- The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from.

Concerns (CONS):

There have been no cons identified with the accreditation process for Asheville Fire and Rescue Department at this time. The effort and energy to perform the key components of the process have been completed. There are no substantial continuing costs in maintaining accredited agency status. Re-accreditation is on a five calendar year cycle.

City staff recommends City Council allow the Fire and Rescue Department to complete their accredited agency status from CFAI by giving their support to the Asheville Fire and Rescue Department's Strategic Operating Plan by adoption of the standard of response cover document for the Asheville Fire and Rescue Department.

Fire Chief Greg Grayson responded to various questions from Council.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this matter on the next formal City Council agenda.

BUNCOMBE COUNTY SCHOOLS ACHIEVEMENT UPDATE

Buncombe County Superintendent of Schools Cliff Dodson and Mr. Roger Aiken, Buncombe County School Board Chair, gave City Council a brief report on the testing scores.

Mr. Dodson reported that the System-wide SAT average of 1068 is (1) 42 points higher than national average; (2) 62 points higher than state average; (3) Highest total mean score in NC among school districts with more than 2 high schools; and (4) Fourth highest out of the state's 117 school districts.

Other achievements noted are: (1) Record-breaking End-of-Grade and End-of-Course scores; (2) 95% of schools achieved expected or high growth status compared to the state average of 75%; (3) 21 Schools of Excellence; (4) 12 Schools of Distinction; (5) 68% of schools achieved high growth status compared to the statewide average of 35%; and (6) 53% of schools recognized as Schools of Excellence compared to the state average of 27%.

Mr. Dodson reported that (1) Enrollment increased by more than 400; (2) 10-day headcount totaled 25,274; (3) Widespread growth expected to continue; and (4) Requesting additional positions from DPI.

Mr. Dodson stated that Buncombe County Schools has 3,846 students enrolled within the Asheville city limits.

Discussion occurred on various topics raised by City Council, e.g., drug testing, consolidation, etc.

On behalf of City Council, Mayor Worley thanked Mr. Dodson and Mr. Aiken for sharing this important information.

At 4:50 p.m., Mayor Worley announced a short recess.

DEVELOPMENT REVIEW PROCESS TEAM

Recommendations

Mr. Russ Martin, Chair of the 2004 Development Review Process team, presented Council with suggestions to improve the development process.

As part of the Fiscal Year 2004-05 budget approval process, City Council members requested that a task force be created to evaluate the current processes. Approximately 50 citizens were invited to participate, with as many as 34 citizens attending various meetings. Ideas were developed by the citizens who attended the various meetings, representing the following groups: Architects/Engineers/Designers and Surveyors, Business Owners and Manager, Commercial Contractors & Developers, and Residential Contractors & Developers.

Mr. Martin reviewed with Council the following recommendations:

1. Advocate that major changes be made to the Unified Development Ordinance (UDO).
   - Limit City Council reviews
   - Only those processes that are statutorily required should go to Council (rezonings)
   - Eliminate Level 3 Conditional Use Permits from Council approval
   - Eliminate the formal Technical Review Committee (TRC) reviews since they add delays to the process; recommend informal TRC reviews at least twice a month
   - All non-conditional use projects that meet the UDO and engineering specifications should be approved at staff level.
   - Recommend maximum approval times of Level 1 – one week; Level 2 – three weeks; and Level 3 – five weeks.
   - Reformat the content and presentation of the UDO to be more user friendly (tables, drawings, charts, etc.)
   - The time required to upgrade to current code a non-conforming structure that becomes vacant should be extended to 12 months

2. Restructure some processes to provide for "communication" among parties earlier in the process.
   - Consolidate all forms into one document and designate one location for drop-off of plans for necessary approval for all permits. Utilize technology to coordinate the process
   - The turnaround times for permit and plan review approvals need to be reduced, as previously recommended, even if additional staff is required
   - Need a City staff expeditor to act on customer's behalf (someone with authority over all development processes)

3. Streamline the process by eliminating and combining steps.
   - Make new permit application (single form to be developed) available on-line
   - To speed up the approval processes, City staff should be cross-trained on tasks in order for industry to have to contact fewer persons (i.e., consolidation of inspectors). Example: Driveway inspections by building inspector.
   - Trade permits (electrical, mechanical, and plumbing) should be activated at the time the building permit is approved if subcontractors are known (goal is for the unknowns to be able to call theirs in by phone)
   - New contractors should be able to apply and pay their initial tax privilege license at the "Development Services Center"

- There should be an option of backflow devices being installed on the interior of structures instead of outside in vaults (local regulations should not exceed state law)

4. Establish a "common sense" culture among staff and commissions.
   - Adopt a comprehensive "business friendly" attitude. Both sides to understand expectations of each other. Time is money.
   - Need a balance of having an ISO # 1 rating vs. time and money factor for business/community

5. Eliminate conflicts between ordinances, standards, and codes.
   - Recommend creation of an industry review committee to be involved in changes to the "Asheville Standard Specifications and Details Manual" (updates to come to Council in November)
   - Code interpretation and review shall be consistent between plan reviewers and inspectors as well as among inspectors
   - Eliminate City approval on driveway permits when NC DOT approval is required
   - Recommend the Landscaping/UDO final inspection for commercial projects be done by Planning staff instead of Building Safety's building inspectors
   - Provide incentives (less fees and charges) for installation of fire sprinklers (the State Code provides trade-offs for sprinklers; the Water Authority's fees and policies discourage installing sprinkler systems)

6. Improve permit coordination with outside agencies.
   - Street address assignment to occur at the beginning of the permit process (to help all departments and agencies including the utility companies)
   - Develop computer links with outside agencies (MSD, Air Quality, NC DOT, etc.) as well as other internal departments, i.e., Water, Planning, etc.
   - Recommend payment of MSD fees at a time nearer to the final inspections

7. Create more effective education and informational tools (checklists, guides, etc.).
   - Develop educational programs on the development process and building in the City (Cable TV program, first timers orientation video, etc.)
   - Recommend annual review/update and publishing of Development Guide

8. Strengthen communication between City and industry.
   - Support Building Safety's "Adopt 100 Customers Program" to develop partnerships and better communication
   - City should develop an e-mail "Development eNews" for industry
   - Current turnaround time should be tracked for the different types of approvals and posted on the City website

9. Employ technology when and where practical for both City and industry.
   - The current Internet eGov system needs to be enhanced to do permits on line and provide real time information concerning the status and details of projects in review
   - Consider other enhancements that are business friendly and provide time savings to industry
   - Provide regular customer feedback and training opportunities (classroom sessions, etc.)

10. Encourage development via performance based standards and ordinances.
    - To encourage development the City, not the developer" should pay for public infrastructure (sidewalks, hydrants, etc.)

- There should be an option of backflow devices being installed on the interior of structures instead of outside in vaults (local regulations should not exceed state law)

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    - To encourage development the City, not the developer" should pay for public infrastructure (sidewalks, hydrants, etc.)

Finally, the Task Force recommends an implementation follow-up at 3, 6 and 12 months.

City staff recommends that Council receive the Report from the Task Force and thank them for their service. On November 19, 2004, at the Fall Developers Forum with the City Manager, staff will present an update, and receive more feedback from the industry on revising the Development Process. An implementation plan will be presented to City Council in coordination with the 2005-2006 budget process.

Mr. Martin responded to various questions and comments from Council regarding the recommendations, some being, but are not limited to: how can we made the computer version of the UDO more user friendly; was the one-stop permitting center explored by the Task Force; and is there a problem of one inspector inspecting the property and then another one after that finding other violations.

Mr. Martin felt that some members of the Task Force should be part of an advisory committee so that when changes are proposed, they can provide their input.

Councilwoman Jones said that when Council forms a task force, what the expectations are on the citizens that invest their time is always a concern for her. For example, the recommendation about changes to the UDO, there are a lot of other groups in the community that would need to discuss that. She didn't want the Task Force to think that Council wasn't hearing the recommendations, if they don't implement them all. The timeline is very aggressive and Council is in the midst of recruiting a new City Manager and implementing their strategic plan. In fact, the Downtown Social Issues Task Force has worked two years on their recommendations, which City Council is just now in the process of prioritizing. She noted that a lot of the Task Force's recommendations are great, but most of them require funding. She asked if there was any sense if the Task Force members were open to understanding that the better delivery of service could translate into a higher fee.

Mr. Martin responded that the Task Force understood that possibility, however, some recommendations will be cost savings in the long run. Although the Task Force's implementation follow-up at 3, 6 and 12 months is a goal, they really would like some feedback so they know something is progressing and the City is taking seriously what their recommendations are. In addition, the Task Force members would like the opportunity to approach Council and advise them of their experience on the Task Force and explain some of their recommendations.

Vice-Mayor Mumpower said that through the work of the Task Force, we can make a meaningful, lasting impact in this area.

Upon inquiry of Vice-Mayor Mumpower, Mr. Martin said he was certain some of the Task Force members (including himself) would participate in an advisory body to assist staff with pragmatic implementation of some of these policies, if Council appointed such a body.

Upon inquiry of Councilman Newman, Mr. Martin said that timeliness of the review process was the most important issue to the Task Force members. He said they did recognize fees, however, they didn't dwell on the fee structure in that timeliness was the overall factor. He did not get a sense that the Task Force members would object to fees being raised if they were reasonable and justifiable.

There was discussion about how long it would take City staff to report back to Council with an implementation plan.

Assistant City Manager Jeff Richardson pointed out that this is one of Council's goals in the Strategic Plan. The goal is for an efficient and economical permitting process. One of the

objectives is to improve the plan review process by enhancing effectiveness in customer service. On a parallel track to this Task Force, Mr. Summey, his staff and other department directors have begun to look internally at what we can do to improve and streamline the process; improve customer service; and meet the direction and expectations of City Council. He felt it would be appropriate for Council to give Mr. Summey and his staff an opportunity to look at the recommendations and report back to Council, recognizing that on a quarterly basis, we are formally reporting to Council on the entire Strategic Plan. With regard to the involvement of the Task Force, we will look for Council direction, but it will continue to be a public process.

Mayor Worley said that some recommendations may be capable of fairly short-term implementation, but short-term implementation may mean from 2 weeks to 6 months. Other recommendations are clearly longer-term processes. For instance, major changes to the UDO needs a lot of input. He tends to see staff melting the recommendations in with their own process and then meeting again with the Task Force of those who are willing to continue to serve in an advisory capacity. If there are recommendations that are not doable, the Task Force needs to hear from staff why and what the problems are in trying to implement them. The Task Force may also have some better ideas on the doable things. He felt the dialogue needs to continue in some fashion, but we need to not have an expectation that this is a 2-6 month process, but a process that will take us through the 2005-06 budget process and we may have pieces that are not implemented a year from now.

Councilwoman Jones felt these recommendations should be on a parallel track similar to other committee recommendations that Council prioritizes and interfaces them with budgetary issues. While she felt the recommendations are great and would like for staff to give Council a report on them, she gets the sense that the Task Force is pre-empting Council's role and she is a little uncomfortable with that.

Vice-Mayor Mumpower felt we should follow whatever has merits, whether it is this effort or another one, and based on those merits move forward as quickly as we can. He didn't think Council should just receive the recommendations and disband the Task Force. He said there is a difference between an implementation plan and implementation of that plan. He suggested we ask our staff what is a reasonable period of time to develop an implementation plan, that we keep the Task Force involved in some level and then we be patient with the fact that it takes time to implement these things, some which may not be appropriate.

Councilman Davis liked the Task Force's recommendation regarding follow-up in 3 months. That will give staff time to review the recommendations and see what they feel is workable. Then a follow-up at 6 months and a year all make sense to him.

Mr. Martin felt the Task Force would be glad to reconvene at Council's discretion to hear updates and be a part of this process. It is important to them to know that the 347 hours they spent in developing the recommendations haven't been swept under the rug.

Councilman Newman was interested in staff's perspective on which recommendations what they think they can incorporate. He felt Council should have a discussion, before the next budget cycle, about what Council thinks about the recommendations because some are public policy matters that City Council needs to determine whether they want to proceed with or not.

Mayor Worley said that if we accept the recommendation of the Task Force for a 3, 6 and 12-month follow-up, the 3-month follow-up would be a good opportunity for City Council to have some discussion on the recommendations. He felt City staff could move toward an implementation plan at the 3-month level, but it doesn't have to be a full-blown implementation plan, if Mr. Summey's department has other pressing issues.

Vice-Mayor Mumpower felt this is one of the most important things that Council can undertake and he supported a 3-month process to develop an implementation plan.

Councilwoman Jones was concerned how staff will develop an implementation plan if they assume all of the recommendations are viable, equally prioritized options. They may be moving forward in a direction where City Council doesn't want to go.

Mayor Worley said that there is the Fall Developers Forum on November 19 at which time there will be additional input. He felt that Council should move forward with a 3-month timeframe to get an update and some implementation plan on those things that don't require significant Council policy decision-making as a part of the process and costs associated with the implementation. Also at the 3-month follow-up Council can have their discussion and input on some of the main policy issues and set the direction for some of the bigger items.

Councilwoman Jones felt that Council is being held to an external pressure that doesn't recognize everything else is being balanced. She's not advocating putting this on a shelf or dragging our feet, however, she does feel like some of the pressure is not folding into our larger reality.

Building Safety Director Terry Summey said that even with his Department's tremendous workload increase relating to the two floods, he felt he could have some type of implementation plan for Council's review in 3 months, noting that some of the recommendations will be split up amongst different City departments, e.g., Water Resources Department, Engineering Department, Planning & Zoning Department, etc.

Affordable Housing & Building Safety Fees

Building Safety Director Terry Summey said that this is the consideration of amending the Fees & Charges Manual to implement portions of the City Council's 2004 Strategic Operating Plan.

The Fiscal Year 2004/05 budget proposed amendments to the Fees and Charges Manual to promote the construction of Affordable Housing (AH) and provide 95% operational cost to the Building Safety Department. Council members requested that the proposed amendments receive further review from the public. For the past 6 months, the proposed amendments have been in the possession of the public. To date, no objections or changes have been received from the public or the Development Review Task Force. The amended fees incorporate several proposed goals in the Strategic Operating Plan to include the following:

- Housing Opportunities Goal #1: Increased development incentives for AH – Create incentives and revise the permitting process throughout the City to encourage AH.
  - Objective A. Increase incentives to invest in AH (work to decrease fees and revise development specifications).
    Task#1: Revise fees- (new ranges and reductions) increase AH incentives.
    Task#2: Increase AH Cap-extension of incentives to ensure more AH

- Economic Development Goal #2: Efficient/economical permitting process – Reform to make more conducive to do business in Asheville.
  - Objective B. Encourage independent business development-reduce permitting costs for subcontractors and small renovation projects.
    Task #1: Revise fees/charges structure (subcontractors- more work/smaller fee).

Pros

- Fees support public relations: encourages the development of affordable housing.
- Fee changes support the cost of services provided.
- Public/Industry: No changes or negative comments received in over 6 months of promotion.

Cons - None

Staff recommends City Council adopt the ordinance to amend the Fees and Charges Manual to support AH and the cost of services, effective December 1, 2004.

Discussion occurred as Mr. Summey responded to various questions from Council regarding the fees and the reasoning behind the fees.

City Attorney Oast responded to Councilwoman Newman regarding any legal constraints for waivers, rebates and reductions for permitting.

Mr. Summey noted that the Development Review Task Force said that when fees are waived or rebated, they want the taxpayers (the citizens that pay their annual city/county property tax bill) not the other contractors (paying for permit fees) to subsidize the fees waived or rebated.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this matter on the next formal City Council agenda.

REPORT ON THE NEIGHBORHOOD/DEVELOPER MEETING PROCESS

Planning & Development Director Scott Shuford said that City Council requested an update on the Neighborhood/Development (N/D) meeting procedures, which have been in effect for one year.

Three N/D meetings have been held. One was an "informal" meeting that occurred prior to the formal adoption of the process. Two other meetings were formal N/D meetings involving primarily the Kenilworth Forest neighborhood (Foxwood Apartments and May Apartments).

Our experience with these N/D meetings has been mixed. The informal meeting involving a proposed rezoning went relatively well, with the developer agreeing to a number of voluntary concessions that satisfied neighborhood concerns. The two formal meetings were less successful. In general, during these meetings, there was a real difficulty in getting this highly-organized neighborhood to overcome its adamant opposition to these projects in order to allow negotiation and compromise to occur.

Staff still feels that N/D meetings have the potential to be a valuable tool in our development review toolbox. We are reluctant to recommend either for or against continuing the process based on this limited sample. We are taking several steps to improve the process, such as providing a more clear notice letter (establishing meeting goals and expectations), changes to the format of the start of the meetings, and researching successful programs in other areas. We will also work with the Coalition of Asheville leadership to implement their ideas for improving the process.

Despite the limited success of N/D meetings to result in a less antagonistic development review process, staff recommends that we continue with them for another year. We would like to have experience with other development projects and other neighborhoods before coming to a final decision about whether or not to continue with this type of public involvement.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that he would look for ways in which to address incentives for neighborhoods to participate in this process.

Ms. Barber Melton, representing the Coalition of Asheville Neighborhoods, felt they could enhance the process.

It was the consensus of City Council to continue with Neighborhood/Developer meetings for another year and report back with their findings after that year.

FISCAL IMPACT ANALYSIS REPORT

Planning & Development Director Scott Shuford said that City Council recently debated the advisability of rezoning a property for possible nonprofit use and directed staff to prepare a report on this subject for Council consideration.

Planning staff has researched this issue. Usually when communities have concerns about this type of issue, they utilize a tool called "fiscal impact analysis" to address their concerns.

There are two basic types of fiscal impact analysis – comprehensive and development review. Comprehensive fiscal impact analysis looks at the community as a whole and is used for a variety of purposes, ranging from alternative development pattern analysis to capital improvement programming to operational budgeting to coordinating levels of service to determining intergovernmental impacts of development.

Mr. Shuford reviewed with Council details about this form of fiscal impact analysis, but did not recommend that such an effort be undertaken at this time.

The second type of fiscal impact analysis occurs as part of the development review process. In areas where they are allowed, impact fee exactions are one form of assessing new developments for their service impacts. Since that option is not available to us, we suggest that if Council is interested in adding fiscal impact analysis to our development review process, that we clearly identify the scale of development to which to apply the fiscal impact analysis "tool" (staff recommends Level III projects) and the types of services to be analyzed (staff recommends only analyzing public safety services - we already address water, sewer and transportation using existing requirements such as allocation commitments and traffic impact analyses; schools are largely the County's responsibility and they can project future needs in the City by examining zoning patterns; and we are in the process of preparing an open space ordinance for Council's consideration).

Finally, since there is interest in managing our fiscal matters through land use planning, staff recommends that Council direct City staff to (1) prioritize instituting a higher land value zoning along selected corridors, the river district and in neighborhoods where a plan for such development has been prepared (e.g., WECAN); and (2) add a public safety impact as part of our large scale development review process as an eighth condition to the conditional use process.

Several comments and concerns were raised, including, but not limited to, the schools impact regarding development review and what is the impact of non-profits.

Councilman Newman requested additional information on what the current policy is regarding exemptions for non-profits and what the process would be if Council proposes to the State a more fair policy. In addition he would like to have information on how the current tax-exempt developments are impacting our community.

Regarding the amendment to the Unified Development Ordinance (by adding an eighth condition to the conditional use process), Mr. Shuford said that he would draft a condition and then see how we might apply it in a particular circumstance. Then, he will report back to Council to make sure that they have some level of comfort with the condition and then seek feedback.

It was the consensus of City Council to direct staff to (1) prioritize instituting a higher land value zoning along selected corridors, the river district and in neighborhoods where a plan for such development has been prepared (e.g., WECAN); and (2) add a public safety impact as an eighth condition to the conditional use process.

DESIGNATION OF A LOCAL HISTORIC LANDMARK – RICE CORNELL BROWN HOUSE ON RICE BRANCH ROAD

Planning & Development Director Scott Shuford said that this is the consideration of a motion setting a public hearing on November 9, 2004, to designate the Rice Cornell Brown House on Rice Branch Road as a local historic landmark

The proposed landmark designation consists of the Rice-Cornell-Brown House with its ca. 1850 original portion and subsequent 1890, 1927 and 1953 additions; a ca. 1848 cabin moved to the site in 1975; a ca. 1848 pig pen moved to the site in 1975; a ca. 1848 smoke house moved to the site in 1975; and a tool shed built in 1953, all of which are contributing structures. Also included is a 1968 horse barn, which is a non-contributing structure.

The Rice-Cornell-Brown House is an assemblage of three main side-gabled blocks that reflect the century long development of the house from a single-pen, log cabin to a modest but well crafted log and frame house that retains integrity from each of its periods of development.

The original structure of the Rice-Cornell-Brown House was a one and one-half story plus loft, one room log cabin constructed of half dovetailed, hand hewn logs. The 1890 addition, which extends to the east, is wood frame construction with unpainted clapboard siding and a side gabled roof of asphalt shingles. The inside of this addition exhibits more detailing than the original one-room cabin with beaded ceilings and plaster walls. The 1927 one room addition, located to the southeast of the 1890 addition, is of frame construction, unpainted clapboard siding and gable roof with asphalt shingles, similar to the 1890 addition. Inside the walls and ceiling are of rough sawn boards. The 1953 addition built on the south side and extending the full length of the original cabin has stained board and batten siding with a low pitched gable roof of asphalt shingles. The interior was designed to be in keeping with the rustic style of the rest of the cabin.

The Rice-Cornell-Brown House, the site, as well as the additional structures and outbuildings, with a period of significance from 1848-1953, are historically significant for their contribution to the broad pattern of history of the Beaverdam Valley. They represent the evolution of a small log cabin that housed subsistence farmers, into an early 20th century working farmstead. Additionally, the House is significant as it is the most architecturally intact of only two examples in the County exemplifying the use of native materials and mid-nineteenth century log cabin construction techniques and the later evolution of the building as the family grew and prospered.

The additional mid-nineteenth century log house and structures moved to the site in 1975 are also important as both historic and architectural reminders of the widespread use of this house form throughout Buncombe County. These structures would have been demolished if not moved from their original site.

The Rice-Cornell-Brown House was listed on the National Register of Historic Places on December 24, 1998. The listed property includes a 26-27 acre tract of land, which is the residual

acreage of the tract that was farmed by the J.O. Rice family, builders of the original log portion of the house. The current landmark designation would only include a 6.71 acre portion of that larger tract. The 6.71 acres being the location of the original house and contributing outbuildings. The remainder is a separate 20 acre tract, which is currently in forest use and maintained under a forest management plan.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $224,200. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be $1479.72.

Although designation of the property places no obligation on the property owner to provide public access to the property, the Brown's while being good stewards of the land and structures have allowed and encouraged public access to many organizations and other groups over the years, such as high school clubs, church groups, the Preservation Society and very recently the Sons of the Confederacy, just to name a few.

The ordinance designates the Rice-Cornell-Brown House as a local historic landmark. The property included in the designation consists of Rice-Cornell-Brown House and the 1.61 acre parcel on which it is located. The designation also includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- The designation will provide the property owner with a local property tax deferral that will help with the costs of keeping the structure in good repair.
- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the Rice-Cornell-Brown House, as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the November 9, 2004, formal City Council agenda.

TRAFFIC CALMING UPDATE

City Traffic Engineer Anthony Butzek said that in February 2000, City Council adopted the City's Traffic Calming Policy, setting forth policies for the installation of traffic calming on City streets. At this time, a demonstration project had already been completed on Lakeshore Drive. The first five projects under the new policy were completed between winter 2002 and spring 2003. These projects were 1) South French Broad Avenue, 2) Wyoming Road, 3) Caribou Road

and Booker Avenue, 4) Florida Avenue and Dorchester Avenue, and 5) Gracelyn Road and Ottari Road. The work was completed by private contractors and administered through the City's Engineering Department. It has been, and continues to be the policy to distribute these projects geographically within the City.

In May 2003, the City issued a request for bids for the next project, Murdock Avenue in north, and Ridgelawn Road and Wellington Road in west. Due to the inability to obtain a contractor at a reasonable price, we have not been able to award a contract for the work. The Public Works Department has agreed to fit the work into their schedule. Concrete work (islands and chicanes) is expected to be completed by April 2005, and asphalt work (humps) is expected to be completed in Fall 2005.

The next project scheduled using money allocated by City Council is Kenilworth Road. City staff plans to complete preliminary plans by the end of year 2004 for the neighborhood to undertake the petition process. Funds allocated by Council for traffic calming is $50,000 a year and the funds allocated for '04-'05 and '05-'06 are planned to be used for the Kenilworth Road project.

Several projects are scheduled, in which construction is being funded in conjunction with private development, but designed and administered by City staff. This includes Redwood Forest in east, and Shiloh in south. We plan to request bids on Kenilworth, Redwood Forest, and Shiloh as one project, which will be dependent on receiving required petitions expeditiously. Given past history, this process could take between one and two years, depending on community response and competitiveness of bids.

The engineer's estimate for the most recent project was about $77,000 per mile of traffic calming. The most recent bid for same was about $114,500 per mile. We believe the engineer's estimate is reasonable, and that the contractor's bids were excessive due to lack of local competition, particularly in the asphalt industry.

At this time, we have not prioritized future projects beyond Kenilworth Road. We have requests for traffic calming on about 300 street segments in the City, totaling about 100 miles of streets. The streets which appear to be most impacted by existing traffic, based on measured traffic volumes and measured speeding are:

- Cedar Street and Wood Avenue, 0.74 miles
- Kimberly Avenue and Edwin Place, 1.65 miles
- Montford Avenue, 0.89 miles
- South French Broad Avenue (Phifer to Livingston), 0.47 miles
- Edgewood Road (north), 0.36 miles
- School Road East, 0.52 miles
- Chestnut Street, 1.12 miles
- Bear Creek Road, 0.73 miles
- London Road, 0.70 miles
- Burton Street, 0.56 miles
- Hanover Street, 0.50 miles
- State Street, 1.00 miles
- Forest Hill Drive (Wyoming to Biltmore), 0.23 miles
- Westwood Place, 0.70 miles
- Shelburne Road, 0.67 miles

These total to 10.84 miles. In addition, there are many more residential streets on which traffic volumes are relatively low, but speeding is particularly prevalent, including Cisco Road, Michigan Avenue, and Riverview Drive.

Pros of traffic calming

- Speeding is significantly reduced
- Need for enforcement is significantly reduced
- Quality of life is improved for residents of streets
- Can include aesthetic enhancements to support community

Cons

- Costs for installation
- Require maintenance
- Some opposition to measures (minority of residents)

Traffic calming supports an efficient transportation system by managing traffic demand in neighborhoods.

Upon inquiry of Councilwoman Bellamy, Mr. Butzek said that after the Kenilworth Road project, they will go back to the data they have on the top streets listed above and re-prioritize based on the system that was created with the policy, which is based on the speed along the street, volume on the street and some other geometric factors.

In response to Councilman Davis regarding bidding the work vs. using City forces, Mr. Butzek said that the current plan is to continue to bid the projects and to meet with contractors to find out why they are not bidding so we can get a more competitive process. We are still optimistic that is still a workable solution, because using City forces takes them away from their already prioritized work schedule.

Councilman Davis said that traffic calming has become the things that neighborhoods want the most because it is popular to talk about. However, some neighborhoods who had traffic calming installed are unhappy with speed humps. He is concerned we have a monster and is not sure how we can pay for all the traffic calming. He senses this may be a tread that we see with all kinds of developments, but Council needs to be cognizant that this is very expensive work.

Mr. Butzek said that traffic calming is being more prevalent nation-wide in cities and the residents on the street tend to be happy with the project, although the people driving through are inconvenienced slightly by it.

Upon inquiry of Councilwoman Bellamy, City Engineer Cathy Ball said that regarding maintenance of the islands, we typically try to get a contract with the community to maintain the islands. It was never the intent to use traffic calming money on maintenance. Councilwoman Bellamy responded that it's not realistic to think that we can get neighborhoods to cut the grass every two weeks, so we need to re-think the feasibility of what we are implementing in neighborhoods.

Vice-Mayor Mumpower said there is a point of balance between cost and impact. He said that one of the most cost efficient traffic calming methods is speed humps. Since we have very limited funds, he hoped we would look for ways to spread it out as much as possible and if we have a choice between elaborate concrete work or speed humps, he hoped we would use a the cost-effective effort.

Mr. Butzek said that even though speed humps are the lowest costs, however, in terms of effectiveness, it tends to be more effective to have a mix of measures.

Upon inquiry of Councilman Dunn and Councilwoman Jones, Mr. Butzek reviewed the traffic calming policy with regard to obtaining signatures on the petitions, who is eligible to sign, and is there a time limit on when a petition is completed.

Councilwoman Jones felt that the City should add another variable in their criteria when they look at prioritizing streets for traffic calming. That variable should be future development in the area. Another time-saver variable might be to review the top neighborhoods already identified for traffic calming and to see if they can make the 40% petition requirement.

RESOLUTION NO. 04-227 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 2004, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS

Economic Development Director Mac Williams said that this is the consideration of a resolution setting a public hearing on November 9, 2004, to consider an economic development incentive grant for Highwater Clays.

City Council approved a grant to HighWater Clays in June 2003 and the required performance agreement was signed. In February 2004, HighWater Clays asked to revise that agreement as they anticipated investing a significantly higher amount than was originally programmed. It was determined that a brand new agreement would be needed, including going through the public process again, versus simply revising the original agreement.

Based on new information, the capital investment, for purposes of determining a grant amount is now $1,560,000 (vs. $750,000 originally) in building renovation and new equipment. Further, the owner states that the number of new jobs created will go up from 5 to 7 and that the average hourly wage will go up to $10.43 from $9.00.

As an incentive, Council originally agreed to $7,500 payable in two equal installments. For the new grant, it is proposed to offer $31,000 payable in equal installments over five years.

Support statements:

- Grant supports expansion of local small business. This supports Strategic Plan: Key Area – Economic Development Goal 1, Objective A.
- HighWater Clays continues to invest in riverfront area.

Staff recommends approval of the resolution setting a public hearing on November 9, 2004, to consider an economic development incentive grant to HighWater Clays.

Councilwoman Jones moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Dunn and carried unanimously.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-227. This motion was seconded by Councilman Dunn and carried unanimously.

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KINDNESS CAMPAIGN

Vice-Mayor Mumpower introduced Dr. Barry K. Weinhold who said that the Kindness Campaign has been utilized successfully in 11 other U.S. cities to bring positive changes to the culture of those cities.

He gave a brief background of the Kindness Campaign by saying that (1) a primary prevention program started in 1994 that focuses on creating communities of kindness; (2) designed to recognize positive behaviors in order to create a more positive community, school, family, and workplace climate; (3) basic premise is to eliminate a negative behavior (criminal acts, hatred, discrimination) and focus on it's opposite – kindness; and (4) started in over 600 schools in the U.S. and Canada and 11 other U.S. cities.

The goals of the Kindness Campaign are (1) to help create a more positive climate in schools, communities, families and the workplace; and (2) to create primary prevention programs in communities that address the underlying causes of community, school, family and workplace violence by promoting the collective recognition of acts of kindness.

Dr. Weinhold reviewed the outcomes of the Kindness Campaign. He then said that successes to date for the Kindness Campaign Asheville include (1) selected Citizen-Times as media sponsor; (2) enrolled 50 volunteers; (3) enrolled RiverLink as community sponsor; (4) received grant from Jubilee to purchase buttons; (4) distributed about 2,000 buttons since August, 2004; (5) presented Community of Kindness Awards to Progress Energy and to three area residents; (6) scheduled community kick-off meeting for October 22, 2004, at the First Baptist Church; (7) published article on Kindness Campaign in Asheville in Spirit in the Smokies magazine; (8) Earth Fare offers gift certificates to award winners; and (9) began forming a Community Advisory Board.

Dr. Weinhold asked for City Council support of this Campaign by being models of kindness and encouraging City employees to become part of the Campaign. He invited Council to the kick-off meeting on October 22, 2004.

BOARDS AND COMMISSIONS

It was the consensus of City Council to have the City Clerk arrange interviews with Jim Ellis, Kenneth Kaplan, Fred Slosman, Duane Jarnecke and Lisa-Gaye Hall for vacancies on the Alcoholic Beverage Control Board.

It was the consensus of City Council to have the City Clerk arrange interviews with Robert Middlemas, Starr Silvis and Penny Rush for a vacancy for an alternate position on the Board of Adjustment.

It was the consensus of City Council to have the City Clerk arrange an interview with Brian Tuner for a vacancy on the Civic Center Commission. In addition, it was the consensus of Council to appoint George Keller to fill the unexpired term of Peter Crosa, term to expire June 30, 2006.

It was the consensus of City Council to have the City Clerk arrange interviews with Diane Vander Linden, Rudy Rodriquez, Lisa Sarasohn and Melinda Rains for vacancies on the Film Commission. In addition, it was the consensus of City Council to appoint Vice-Mayor Mumpower and reappoint David Schulman, Lee Nesbitt, Steven Lutz, Diedra Smith and Leni Sitnick to each serve an additional three-year term respectively.

It was the consensus of City Council to have the City Clerk arrange interviews with Joseph Minicozzi and Jerome Jones for a vacancy on the Planning & Zoning Commission.

It was the consensus of City Council to have the City Clerk readvertise for the vacancy on the Recreation Board.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:15 p.m.

Magdalen Bourlesos
CITY CLERK

Charles A. Worley
MAYOR

Tuesday – November 9, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (excused from meeting at 8:16 p.m.); Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Worley said that a couple of weeks ago Col. Ray Green died. After Col. Green retired from the U.S. Air Force he continued to give his time to the community. Col. Green led City Council many times in the Pledge of Allegiance and he will be missed. Mayor Worley then gave the invocation, followed by the Pledge of Allegiance.

I. PROCLAMATIONS:

A. THE ASHEVILLE CITY DEVELOPMENT PLAN 2025

Mayor Worley was pleased to announce that The Asheville City Development Plan 2025 received the 2004 Marvin Collins Outstanding Planning Award from the N. C. Chapter of the American Planning Association for large communities. He recognized facilitator Paul Godfrey and members of the City Plan Advisory Committee. Ms. Hazel Fobes said that the Plan does not specify strategies for the Regional Water Authority and accepted the Award noting that omission.

II. CONSENT AGENDA:

Vice-Mayor Bellamy asked that Consent Agenda items "F" and "G" be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 12, 2004; THE JOINT CITY/COUNTY MEETING HELD ON OCTOBER 19, 2004; AND THE WORKSESSION HELD ON OCTOBER 19, 2004

B. RESOLUTION NO. 04-229 - RESOLUTION SUPPORTING THE FIRE AND RESCUE STRATEGIC PLAN

Summary: The consideration of a resolution adopting Asheville Fire Rescue's Strategic Plan and Standard of Response Cover.

Fire and Rescue staff has been working diligently for several years towards meeting the national fire and rescue services accreditation standards. Staff has now completed the requirements to be reviewed by the Commission on Fire Accreditation International (CFAI). A site visit by peer reviewers is scheduled for November with award of accredited status slated for February, 2005. If all requirements are met, Asheville Fire and Rescue will become the eighth accredited fire and rescue agency in North Carolina and the first accredited agency in Western North Carolina Prior to the site visit by CFAI, City Council will need to endorse the department's standard of cover and strategic operating plan.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operation Plan. It meets that goal in the section on Critical Services and Infrastructure, Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

The recognized national model which a fire and rescue agency validates their services is through the CFAI accreditation commission. The CFAI accreditation commission is comprised of fire service leaders from agencies of differing size as well as the International City Manager's Association (ICMA), city government, county government, the insurance industry, labor representatives, the International Association of Fire Chiefs (IAFC) and citizens at large.

At this time, the accreditation process is completely voluntary and has been in full effect for approximately the past five years. To date, within the State of North Carolina, there are seven accredited fire and rescue departments (Cary, Charlotte, Gastonia, Greensboro, Jacksonville, Rocky Mount, Wilson). Nationally, 96 agencies have received accredited agency status. Many more departments are currently at some point in the process. All metropolitan fire and rescue departments in North Carolina are involved in the CFAI accreditation process.

The accreditation process has several key components. Over eighty (80) members of the fire and rescue department have been actively involved in formulating these three key components. These include:

1. **Performance Indicators**
   There are 254 individual performance indicators that analyze department operations. Of these 254, 108 indicators are considered "core competencies" and must be met in order to become an accredited agency. The indicators are in the following categories:
   a. Governance and Administration
   b. Assessment and Planning
   c. Goals and Objectives
   d. Financial Resource Management
   e. Programs
   f. Physical Resources
   g. Human Resources
   h. Training and Competency
   i. Essential Resources
   j. External Systems Relations

2. **Strategic Operating Plan**
   The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from. It is envisioned that the department's strategic operating plan be adjusted at least annually in concert with modifications of the city's strategic operating plan.

3. **Standard of Cover**
   The standard of cover illustrates the department's level of service. This is developed from a risk assessment that consists of the following:
   a. Fire flow – amount of water to control the emergency
   b. Probability – likelihood that a particular event will occur within a given time
   c. Consequence – life safety as well as economic impact
   d. Occupancy Risk – risk to life and property
   e. Fire Management Zones – geographical areas of need or risk
   f. Community Profile – demographics, level of services provided

In addition, the standards of response coverage consists of three key elements. These are:

a. Distribution of resources – deployment of facilities and apparatus
b. Concentration of resources – ability to deliver and effective response force
c. Staffing levels – personnel and their task assignments

Completion of the comprehensive standard of cover document for the department has required a significant amount of research and data collection and data analysis by our firefighters.

Why should Asheville Fire and Rescue become an accredited agency? (PROS):

- Assures City Council and our community that the fire and rescue department is performing according to national standards and that the organization is being managed in a professional manner.
- Ensures that we have proper procedures, policies and guidelines in place and that we are delivering the services needed by our community through risk analysis.
- Promotes excellence within the fire/emergency service organization.
- Encourages quality improvement through a continuous process.
- Provides assurance to the public that the department has a defined mission and related objectives that will result in improved performance by the department.
- Provides a detailed evaluation of the department and the services it provides to the community that we serve and protect.
- Identifies areas of strength and weakness within the department.
- Provides a forum for the communication of management and leadership philosophies throughout the organization and community.
- Provides a formal mechanism for developing concurrent documents, such as strategic and business plans and continuously analyzes all of the services that the department is involved with.
- Fosters pride in the organization and promotes professionalism.
- The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from.

Concerns (CONS):

There have been no cons identified with the accreditation process for Asheville Fire and Rescue Department at this time. The effort and energy to perform the key components of the process have been completed. There are no substantial continuing costs in maintaining accredited agency status. Re-accreditation is on a five calendar year cycle.

City staff recommends City Council allow the Fire and Rescue Department to complete their accredited agency status from CFAI by giving their support to the Asheville Fire and Rescue Department's Strategic Operating Plan by adoption of the standard of response cover document for the Asheville Fire and Rescue Department.

RESOLUTION BOOK NO. 28 – PAGE 407

C. RESOLUTION NO. 04-230 - RESOLUTION ACCEPTING THE NEW STREET NAME "MAGNUM WAY"

Summary: The consideration of a resolution accepting the new proposed street name "Magnum Way."

George G. Lycan, owner of lots on Magnum Way off of Round Top Road, has petitioned the City of Asheville to accept the street name " Magnum Way." The new street will begin at Round Top Road and end at T-turn on Magnum Way.

City staff recommends adoption of the resolution accepting the new proposed street name "Magnum Way."

RESOLUTION BOOK NO. 28 – PAGE 408

D. RESOLUTION NO. 04-231 - RESOLUTION ACCEPTING THE NEW STREET NAMES "BULLDOG DRIVE" AND "LASER CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street names "Bulldog Drive" and "Laser Circle" in the Campus Crest community.

Campus Crest of Asheville, LLC, owner of lots off of Montford Avenue, has petitioned the City of Asheville to accept the street names "Bulldog Drive" and "Laser Circle" within the Campus Crest community. The new street Bulldog Drive will begin at Montford Avenue and end at Zillicoa Street. The new street Laser Circle will begin at Bulldog Drive and end at Zillicoa Street.

City staff recommends adoption of the resolution accepting the new proposed street names "Bulldog Drive" and "Laser Circle" in the Campus Crest community.

RESOLUTION BOOK NO. 28 – PAGE 409

E. RESOLUTION NO. 04-232 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "APPELDOORN CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street name "Appeldoorn Circle."

C&R Project Development; owner of lots off of Brooklyn Road, have petitioned the City of Asheville to accept the street name " Appeldoorn Circle."
The new drive-around street will begin and end at 200 Brooklyn Road.

City staff recommends adoption of the resolution accepting the new proposed street name "Appeldoorn Circle."

RESOLUTION BOOK NO. 28 – PAGE 410

F. RESOLUTION APPROVING AN AMENDMENT TO THE 2004 CONSOLIDATED ACTION PLAN

This item was removed from the Consent Agenda due to a conflict of interest.

G. BUDGET AMENDMENT TO ALLOCATE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR EMERGENCY HOUSING REPAIRS DUE TO STORM DAMAGE

This item was removed from the Consent Agenda due to a conflict of interest.

H. ORDINANCE NO. 3173 - BUDGET AMENDMENT TO CONTINUE CONSTRUCTION OF THE GLENN CREEK GREENWAY

Summary: The consideration of a budget amendment, in the amount of $50,000, from the National Trails Grant Program to continue the Glenn Creek Greenway across Merrimon Avenue into Weaver Park.

The Asheville Parks and Recreation Department and the Asheville Greenway Commission continue to work towards the development and implementation of the Greenway Master Plan. A critical connection to downtown has always been connecting North Asheville residents to the Glenn Creek Greenway near UNC-Asheville. The Department has been successful in receiving a $50,000 grant from the National Trails Grant Program that will allow the existing trail at Weaver Park to be expanded and a connection made to the Glenn Creek Greenway on Merrimon Avenue. This will allow residents near Weaver Park to safely connect to the Glenn Creek Greenway and then ultimately on to the Reed Creek Greenway into downtown. This grant requires a 20% match, which is being met through in-kind services by the Parks and Recreation Department for design and construction.

Pros:

- This will allow continued development of the greenway system with no taxpayer dollars required.
- This will allow safe connection from North Asheville ultimately to downtown using the greenway system.
- This meets the objectives of the Greenway Master Plan.

Cons: None

This project meets several goals established by the Strategic Operating Plan, specifically, the natural and built environment focus area. This will address the goal for increased greenway benefits throughout Asheville.

City staff recommends City Council approval of a budget amendment, in the amount of $50,000, to continue the Glenn Creek Greenway across Merrimon Avenue into Weaver Park.

ORDINANCE BOOK NO. 21 – PAGE 350

I. ORDINANCE NO. 3174 - BUDGET AMENDMENT TO ALLOCATE FUNDS FROM THE JUNIOR LEAGUE OF ASHEVILLE FOR RENOVATIONS AT THE REID RECREATION CENTER

Summary: The consideration of a budget amendment, in the amount of $97,500, to allocate a grant from the Junior League of Asheville to operate a program at Reid Recreation Center for the Cultural Renaissance of the Arts – Impact Project.

Through the generosity of the Junior League of Asheville, the Parks and Greenway Foundation and the Asheville Parks and Recreation Department are able to provide enhanced cultural arts experiences for youth and teens at the Reid Recreation Center. The Junior League will be providing financial assistance as well as volunteers to assist in a three-year project at the Reid Center. This project includes the funding for renovations at the Center, funds for programming the Cultural Renaissance Program and funds for the After School Program. In addition, the Junior League will assist our staff in developing additional funding resources for continued renovations at the Reid Center. A total of $97,500 will be received over the three-year period as follows:

$15,000 per year for three years for renovations
$15,000 per year for three years for the Cultural Renaissance Art Program
$25,500 per year for three years for the After School Program

Pros:

- This program will address issues facing at-risk youth.
- This program will allow us to leverage additional resources by using these funds as seed money.
- The Junior League will provide assistance for staff to write additional grant for renovations at Reid Center.

Cons: None

This project will address City Council's Strategic Operating Plan by enhancing the focus area of Sense of Place Heritage and the Arts.

City staff recommends City Council approve a budget amendment, in the amount of $97,500, to allocate funds secured from the Junior League of Asheville for renovations at the Reid Community Center.

ORDINANCE BOOK NO. 21 - PAGE 352

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTE

RESOLUTION NO. 04-233 - RESOLUTION APPROVING AN AMENDMENT TO THE 2004 CONSOLIDATED ACTION PLAN

Councilwoman Jones moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: The consideration of a resolution amending the 2004 Consolidated Action Plan to increase Community Development Block Grant (CDBG) funding for Mountain Housing Opportunities' Emergency Repair Program; and the associated budget amendment in the amount of $20,000.

Mountain Housing Opportunities (MHO) has requested a one-time increase in its CDBG grant for the Emergency Repair Program, from $80,000 to $100,000. Following tropical storms Frances and Ivan, MHO received a sharp increase in repair requests. Much of the work is not covered by insurance or FEMA, either because FEMA doesn't accept it as storm damage or because it exceeds the maximum FEMA grant and the homeowners can't afford an additional loan. MHO will work closely with FEMA to maximize federal assistance in each case, before using local CDBG funds.

Typical repairs are for roof leaks; broken sewer lines; repair or replacement of furnaces or water heaters; electrical hazards; and holes in floors or stairs. Grants range from about $800 to $5,000. The typical recipient is an elderly or disabled homeowner with less than 50% of area median income.

Funds are available from the City's CDBG program income account, due to the recent pay-off of several rehabilitation loans.

The Housing and Community Development Committee considered this request at its October 11 2004, meeting and recommends approval.

Potential Advantages:

- Assistance for an additional 6-10 Asheville residents impacted by the storms
- Grant program provides maximum assistance and speed of response
- Addresses only health and safety issues – not general home improvements
- Will not substitute for FEMA assistance where that is available
- Some homeowners may have to leave their homes if not assisted
- Will allow MHO to continue its normal program through the winter months when furnace failures are a serious hazard.

Disadvantage:

- To the extent that CDBG funds are obligated to this program, it reduces the City's ability to respond to other urgent needs that may arise.

No public notice or public hearing is required, as this is not a new program.

City staff recommends City Council approve a $20,000 increase in the CDBG funding for the MHO Emergency Repair Program and a budget amendment to appropriate program income for that purpose.

Councilman Dunn moved for the adoption of Resolution No. 04-233. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 411

ORDINANCE NO. 3175 - BUDGET AMENDMENT TO ALLOCATE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR EMERGENCY HOUSING REPAIRS DUE TO STORM DAMAGE

Councilman Dunn moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Summary: See Resolution No. 04-233 above.

Councilman Dunn moved for the adoption of Ordinance No. 3175. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 354

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

Councilman Davis moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

A letter was received on November 9, 2004, from Mike Vance, Homeownership Manager from Mountain Housing Opportunities Inc., stating that "due to a delay in a required response from HUD, Mountain Housing Opportunities is requesting that our proposal to amend the Conditional Use Permit for the Merritt Park Condominiums scheduled for November 9, 2004, be continued until the next available City Council meeting." Therefore, Councilwoman Jones moved to continue the public hearing until January 11, 2005. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60-UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3176 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60-UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Ms. Patsy Brison, attorney representing the Kenilworth Forest Community Club, moved to continue this matter for the following reasons: (1) The application has not been signed by all of the property owners or agents of property owners whose properties are included within the project, as is required by subsection 7-5-2 (c) (1) of the Code of Ordinances of the City of Asheville; (2) The proposed access to the project is by way of a driveway shown on the tax maps as being named "Springside Park Road." We previously raised a question in our July 14, 2004, letter to you regarding the use of this access road and that issues has not been addressed. As a result, there is no clear access to the project; (3) it was not until 4:00 p.m. yesterday that we received a 'revised traffic study' for the project. The revised traffic study was to take into consideration the change in the access road. There were no changes made in the traffic study other than changing the site plan. Among other problems with the traffic study, there is no analysis or study done regarding the limited site distance from the crest of the hill on White Pine Drive to the proposed access road for the project; (4) As a result of recent floods due to hurricanes in September in our area, the flood plain maps are to be redrawn by FEMA. This project includes a flood plain area. At this point, it is not known how much of this property would be affected by the redrawn FEMA maps; (5) It is impossible to tell the amount of acreage which will be available for this project as there is a proposed subdivision of the property which has not yet been completed. As a result, it is impossible to determine the density allowed for the project; (6) the staff report prepared for the City Council public hearing includes City staff 'findings' on the standards required for approval for issuance of a conditional use permit. All of the standards are noted as being met, without having an evidentiary hearing before City Council. This constitutes clear pre-hearing bias, having instructed the City Council on how to find in a positive manner on all of the standards, without having heard the evidence at its quasi-judicial hearing; and (7) the conditions which were required by the Technical Review Committee and the Planning & Zoning Commission to be met prior to submission of City Council have not been met in that an updated traffic analysis and site plan based on the use of Springside Park Drive and associated improvements have not been submitted and the ability to access Springside Park Drive has not been clarified and the road has not been made public." (Neighborhood Exhibit 1)

Ms. Brison said that if Council chooses to deny the first motion, she moved "to strike the staff report in that it constitutes evidence provided to the City Council outside of the quasi-judicial hearing." This constitutes pre-hearing bias in violation of the standard set forth in Crump v. Board of Education and its progeny. (Neighborhood Exhibit 1)

Ms. Brison further stated that "it remains our view that the access to this property must be resolved before the conditional use permit can be approved. While there may be private property rights involved and at issue, it is our view that a City permit cannot be approved without proof of adequate access to the project site. In addition, it is our view that the property owners who own the underlying fee over which the proposed access road is to be constructed must be a part of the application process. We have found no evidence that the applicant, Virginia May, owns the underlying fee for the properties over which the access road is to be constructed." (Neighborhood Exhibit 1)

City Attorney Oast said that he has considered all of the reasons for continuance and doesn't think that any of them is a basis for continuing the hearing tonight. (1) The access issue has been raised and he didn't think that this is the appropriate forum to resolve the issues regarding private property rights. City Code Section 7-2-4 (c) states that this chapter (meaning the Unified Development Ordinance) "is not intended to abrogate any easement, covenant, or other private agreement." Whatever rights exist in that access are matters that if they are not resolved to the point that a road can be built there, the project can't be built. This Council cannot resolve those issues as they need to be resolved in another forum; (2) As to the issue of pre-hearing bias, he has examined case law and he didn't think that is an issue. This Council receives staff reports all the time and Council frequently makes decisions contrary to those staff reports. He does asks before each conditional use permit public hearing whether Council has any information that they think would cause them to not make a fair decision in the case. There is nothing that he is aware of that prevents Council from receiving this information from staff; (3) Regarding the redrawn FEMA maps, he was not aware of anything where FEMA had indicated that the City should stop development in or near floodplains; and (4) City staff feels that the property owners or their agents have signed the application. In summary, it was City Attorney Oast's recommendation that Council can proceed with the hearing.

Upon inquiry of Councilman Dunn, City Attorney Oast said that the applicant has made application and they asserting that they have access Others say they don't have access. Again, this Council can't resolve that issue. We do require any new development in the City, especially with a conditional use permit, have appropriate access to a public road or on a public road. Even if Council grants the conditional use permit and they find they don't have access, the project can't go forward.

Upon inquiry of Councilman Newman, City Attorney Oast said that the subdivision will occur after the project is approved. As he understands it, the applicant wants to subdivide the piece of property that has the single-family residence on it away from the rest of the project. It doesn't make sense to do that unless the project is approved. And when that is done, it will have to comply with our subdivision regulations.

When Mayor Worley asked for a motion by Council to grant or deny Ms. Brison's continuance motion, there was none. Therefore, in the absence of a motion, Mayor Worley ruled the continuance request denied.

When Mayor Worley asked for a motion by Council to grant or deny Ms. Brison's motion to strike the staff report, there was none. Therefore in the absence of a motion, Mayor Worley ruled the motion to strike the staff report was denied.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site-specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:36 p.m.

Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Springside Park Drive, located off White Pine Drive, for the construction of a 60-unit multi-family development (Kenilworth Forest Village Apartments) in an RM-8 Residential Multi-Family Medium Density District. This project is a request from Virginia May for a Level III site plan approval.

This project was originally submitted and reviewed under the Neighborhood Developer Meeting Procedures. However, prior to the scheduled Council meeting in May of this year, the developer withdrew the project due to unresolved private matters concerning deed restrictions for the use of the property and the legality of using Springside Park Drive as the proposed access for the development. There were also questions regarding the number of units proposed. The owner has since hired legal counsel to address the deed restrictions, and also the question regarding whether this development has legal conveyance to use Springside Park Drive, both considered private matters between the two parties involved.

The site plans for this project have been revised from what was submitted during the initial review and include the following revisions:

1. The relocation of the drive entrance from White Pine Drive to Springside Park Drive.
2. A change in lot sizes for the main tract of land that will house the development and also the proposed lot housing the owner's existing residence.
3. Relocation of the dumpster which has been moved further west of its original location and 58 feet in from the abutting vacant residentially zoned tract on the south side of the site.
4. A reduced buffer with privacy fence has been added along the access drive; and
5. The maximum height of retaining walls has been added to the plans.

The project site is located off of Springside Park Drive, a private street that is located off of White Pine Drive within the Kenilworth Forest Neighborhood (Attachment to City Exhibit 3 – Location Map). The parcel consists of 7.16 acres and is zoned RM-8 Residential Multi-Family Medium Density District. The owner's residence also located on this parcel will be subdivided from the main tract, leaving 6.9 acres (Attachment to City Exhibit 3 – Aerial Map). In this district, 5,000 square feet per unit is required. Based on the remaining acreage, 60 units are permitted.

Single-family development is prominent along portions of the East and south sides of the property closest to White Pine Drive. Single-family development is found along portions of the west sides of the property along with several large vacant-residential tracts of land. A motel,

apartment complex and a large vacant parcel border sections of the northeastern side of the property on the east side of Springside Park Drive (Attachment to City Exhibit 3 – Aerial Map).

The existing topography on the lot portrays a moderately steep decline in elevation along the northern side of the property. The more level areas of the site are located between the west and south sides of the property, where the majority of the development will be concentrated (Attachment to City Exhibit 3 – Aerial Map). Portions of this property are also located within the 100-year flood plain due to the location of Ross Creek, which flows along portions of the northwestern and northern property lines (Attachment to City Exhibit 3 – Aerial Map). A small section of one of the proposed buildings is located within this flood plain area, however, as long as the building is elevated to meet the FEMA requirements, this would be permissible.

The conceptual site plan proposes a 22-foot driveway off of Springside Park Drive as access to the development (Attachment to City Exhibit 3 – Zoning Site Plan). In addition to the new driveway, the City will require that Springside Park Drive be improved to meet the City's street standards and require that the road be made public.

The development will consist of two apartment buildings, housing 30 units each. Ten units in each building will be provided a one-car garage on the lowest level of the building. In addition, a parking lot consisting of 96 spaces will be constructed to serve the facility.

Open space for the development is being provided in two large areas within the site along the north and on west side of the property (Attachment to City Exhibit 3 – Zoning Site Plan). As an added amenity to the facility, the developer is proposing several walking trails and bird watching stations within these areas. Additionally, a 30-foot greenway easement along Ross Creek will be dedicated to the City that will provide for a future greenway connection.

In addition to the vegetation being preserved by the developer in these areas, an equivalent of a 20-foot, type "B" vegetative buffer is required along the entire perimeter of property, with street trees along the access drive and parking lot landscaping as required by the Unified Development Ordinance (UDO). The applicant is proposing a 6-foot privacy fence in lieu of the 20-foot vegetative buffer along the access drive between the owner's residence and abutting residential property along the east side of the site.

The proposed building elevations for the project illustrate the use of high-quality materials and added architectural and design elements that will enhance the appearance of the buildings (Attachment to City Exhibit 3 – Building Elevations). Cultured stonework, hardiplank siding, and architectural shingles are among the list of materials proposed for the façade of the buildings. A total of 36 – one-bedroom units; and 24 – two bedroom units are proposed. The buildings will be constructed in a ¾ story split design, 3 stories in the front facing White Pine Drive, and 4 stories in the rear.

Although not relevant to the process by which we are reviewing this project today, a Neighborhood Developer Meeting with the Kenilworth residents was held on Thursday, April 29, 2004. The residents in attendance at the meeting expressed a number of concerns in regards to the proposed development including: deed restrictions for the use of the property, traffic concerns, location of the proposed entrance and trash compactor, impact of development on Ross Creek, and light and noise pollution generated by the development.

Regarding two of the main issues raised by the neighborhood concerning traffic and deed restrictions, the City's Traffic Engineer Anthony Butzek has stated that the level of service and capacity of the development does not meet the threshold for requiring a Traffic Impact Analysis (TIA). The developer, however, in order to address traffic concerns by the neighborhood, chose to have a traffic study completed for the development that was submitted to the City for review

during the initial application of the project. The City's Traffic Engineer requested a revised copy of the traffic study to be provided before this hearing in order to review site distance requirements at Springside Park Drive and White Pine Drive. It was her understanding that Mr. Butzek has received the revised traffic study.

In regards to the referenced deed issues, staff consulted with the City Attorney who has advised that enforcement of private deed restrictions is a private matter and should be disregarded in our consideration of the request.

Other concerns raised by the neighborhood have been addressed with the re-submittal of plans and also with added conditions, should Council choose to approve the project.

On Wednesday, October 6, 2004, the Asheville Planning and Zoning Commission approved the project subject to the conditions by Technical Review Committee (TRC) and recommended conditions by staff.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

   The proposed use of the property is a multi-family residential project. Prior to the issuance of any permits, the Technical Review Committee will review the final detailed plans to insure technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety, are met.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

   Grading of the site will be necessary to develop the property as proposed. The site has been designed in a manner that is environmentally sensitive by concentrating the development on the more level areas of the site, limiting land disturbance near Ross Creek and significant steep areas; and by preserving existing large vegetated areas that will be reserved for open space.

   A condition has been added to the project for the developer to work with staff to ensure water quality issues in relation to Ross Creek are addressed by means of stream bank stabilization, appropriate wetland species, riparian buffers and use of other Best Management Practice tools.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

   Landscape buffering will be installed in accordance with the standards set forth in the UDO. In addition, several large wooded areas along the North and West sides of the property will remain undisturbed and be reserved toward the required open space standards. The buildings will also be constructed with long lasting materials and enhanced with architectural features that will have a positive effect on the surrounding community.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

   The development is being proposed at the density permitted for the lot. The low-density residential properties along White Pine Drive sit at a higher elevation than the proposed development. This will assist in providing visual relief of the full scale and height of the buildings.

   In addition, landscape buffering will be installed along the entire perimeter of the property that will assist in mitigating any negative impacts the development may have on abutting properties and will also increase the compatibility of the site with the surrounding area. The proposed buildings are also being designed with enhanced architectural features that will increase their compatibility with the neighborhood.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

   The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and transportation goals. The project utilizes the existing zoning on the lot to create a sustainable medium-density residential development within the city limits and where infrastructure capable of handling this type of development exists. The site is also within very close proximity of transit service, potential employment centers, restaurants and shopping centers.

   This project also supports and implements goals specified in the Greenway Master Plan by providing an easement along Ross Creek that will provide for a future greenway connection. Water quality goals as it relates to Ross Creek are also being implemented through the project's design and development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

   Any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development. Several transit service stops on Tunnel Road are within a mile of the site.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The City's Traffic Engineer has determined that the project does not meet the threshold for requiring a Traffic Impact Analysis. As part of the project, the developer must address site distance requirements for the improvements required to bring Springside Park Drive up to City Standards.

In closing, staff feels that the proposed development adequately addresses the seven conditional use standards and provides an appropriate infill development project that meets many of the City's Smart Growth goals.

As such, staff recommends approval of the project subject to the following conditions:

1. That the project meet all conditions required by the Technical Review Committee;

2. Legal and adequate access to Springside Park Drive must be clarified and the road made public.
3. Based on the TIA and the need to address sight distance at Springside Park and White Pine, the developer shall be required to complete one of the following: re-grade White Pine to soften the crest vertical curve near Springside Park and increase sight distance; or reduce the design speed on White Pine through geometry (such as a neighborhood traffic circle at the intersection).
4. All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property.
5. The developer shall work with City staff to address water quality issues in the design and monitoring of stormwater run-off infrastructure and by means of stream bank stabilization, selection of appropriate wetland species, riparian buffers and use of other Best Management Practice tools as approved by the City Engineer and Planning Director.
6. The developer shall work with the Buncombe County Health Department to evaluate safety concerns regarding the abandoned septic tank on the owner's adjoining vacant lot.
7. Developer shall relocate the compactor to an internal location within the development.

Additionally staff would like to the recommend that Council consider adding the following conditions expressed by the neighborhood at the Neighborhood Developer Meeting:

1. Prior to the issuance of the Certificate of Occupancy, the developer shall remove all damaged limbs and trees on their property that overhang abutting properties.
2. The developer shall install a privacy fence along portions of the south side of the property as requested by the abutting property owners.
3. In addition to the required buffers, the developer shall provide additional landscaping along the internal road to deflect headlights from properties along Aurora Drive.

Pros:

- The site is appropriately zoned for this type of development.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development, and transportation goals.
- The conditional use permit will require the developer to work with staff on addressing water quality issues in order to protect the sensitive wetland environment surrounding Ross Creek.
- The proposed development has been designed in a manner that is environmentally sensitive by concentrating the development in the center of the property, leaving the steepest areas on the site undisturbed, and by preserving large areas of existing vegetation around the perimeter of the site.

Cons:

- The buildings will be larger in scale than those found in the surrounding single-family neighborhood (although consistent with building sizes typically found in multifamily-zoned property).
- Properties along the north and west sides of the development are at the same elevation and may visually experience the height and scale of the project. However, in addition to the required buffer plantings, two large existing vegetated areas within these areas will be preserved and dedicated as required open space for the development.
- An increase in traffic on White Pine Drive may be noticeable by current neighborhood residents, but would still be well below the carrying capacity of the road. Most of the traffic concerns expressed by neighbors relate to traffic already generated by the Asheville Mall.

Ms. Virginia May, applicant, said that she has been a contributing member of the community since 1974 and would now like to develop her property.

Mr. Bob Grasso, Land Planner representing Ms. Virginia May, spoke in support of the conditional use permit in that it will be a nice addition to the City. They worked hard to fit 60 apartments in a residential area that has a lot of surrounding single-family residences. He explained the ¾ story split (Attachment to City Exhibit 3 – Zoning Site Plan). They placed the units in the middle of the property so that they could retain a good buffer of existing vegetation around the perimeter of the property. They held a neighborhood/developer meeting in order to work with the neighborhood, hear their concerns and try to alleviate their concerns. They have no problem in complying with any of the recommendations listed by Ms. Hamel. When concerns were raised about traffic impact, they hired a traffic engineer to look at how the project would affect the intersection at White Pine Drive. Also in their original proposal they were showing a driveway access through a lot that the Mays had purchased for that purpose. Because of deed restrictions of that lot they could not use it to serve the back part of the property, so they revised their site plan to show the access on Springside Park Drive to White Pine Drive. They do have a legal opinion that says they have right-of-way to White Pine Drive using Springside Park Drive. They would not be before Council if they didn't think they had legal access.

Mr. Ken Putnam, Traffic Engineer who prepared the traffic study, said that the City did not require a TIA because the anticipated traffic during the peak hour was going to be only 51 new trips, instead of the threshold of 100 trips that kick in a study. However, the developer did hire him to prepare a study to see what impacts her development would have specifically at the intersection with Tunnel Road and White Pine Drive, which is currently signalized. Basically the report concluded that there would be very little impact after the apartment complex is fully built out. The level of service is around a "B" and at build-out it will still be a "B". The study did not address anything else, other than that one intersection. In order to improve the site distance where Springside Park comes into White Pine Drive, City staff has suggested two alternatives. One is to lower the existing grade on White Pine Drive and the other is to create a traffic circle which would lower the design speed.

When Councilman Dunn questioned only 51 trips for a 60-unit apartment complex, Mr. Putnam explained he used the formulas in the Trip Generation Manual, which is based on research of similar sites.

Mr. Grasso said that even though they can't restrict the type of residents that will occupy the apartments, they will market them to retired people. We feel the traffic impact will be even less because they will not be traveling during peak rush hour times. The type of amenities included will enforce that audience we are marketing to. We do not have any tot lot areas or play equipment for young children. We will have passive recreation consisting of trails and bird watching stations. They are also pleased to be able to tie into the greenway system.

Mr. Chris Eller, Civil Design Concepts, said that from an infrastructure standpoint, this is an ideal site for urban infill in that water and sewer are directly adjacent to the site. MSD has just completed an upgrade of the Ross Creek line and as part of that construction we had them coordinate a stub out for us. For stormwater management we will be doing underground detention to minimize above-ground disturbance. In conjunction with that, we will coordinate with water quality and stream improvements.

Mr. Grasso said Ross Creek is a valuable asset to the project as part of the passive recreation and we have agreed to do some natural channel design stabilization to the steam banks so that we could improve the health of the stream and contribute to the water quality of the French Broad River basin. The architect has done a nice job of designing a building that has enough architectural detail so that it makes the massive building smaller and it fits in with the surrounding area as far as the type of residential architecture. These are large building, but we've done is by moving them to the center of site by preserving the perimeter existing vegetation and stepping them down the hill, we have made every attempt to fit this in with the neighborhood

and to keep site disturbance to a minimum. He said one of the concerns by the neighbors was the odor of the dumpster, so they now have a trash compactor which will be totally enclosed. On a scheduled basis, the hauler will remove the trash compactor and replace it with another one. He explained the location of the compactor and the need to have it sited on a downhill slope (Applicant Exhibit 1). Again, to address the concern of the adjoining property owner, they moved the compactor further into the property and addressed the visual impact with a very dense screen which more than exceeds the buffer that is required.

Ms. Brison entered into the record (1) five deeds and two plats where they contend that shows there is not access via Springside Park Drive (Neighborhood Exhibit 2); and (2) a copy of a tax map showing that 10-foot easement that the applicant has discussed having access to, is a separate tax lot not owned by this applicant and also a deed showing ownership of that lot (Neighborhood Exhibit 3). Based upon the limited research that they have done, they believe the applicant does not have access to this property. The applicant has not provided any documentation or oral testimony, other than hearsay testimony, about their access to this property. She entered into the record the Traffic Impact Study referred to by Mr. Putnam dated May 25, 2004 (Neighborhood Exhibit 4). The evaluation of traffic does not make an evaluation of the intersection at Brackettown Road, or at Springside Park Drive – only the intersection of White Pine Drive and Tunnel Road. Also you will see from the traffic study that none of the traffic counts made on April 26, 2004, considered the revised access to the road. In addition, none of the traffic counts were made on a Friday evening after 2:00 p.m., none were made on a Saturday, and none were made on holidays. In addition, on Page 17 of that report, there is a reference to a "D" level and problems with the queuing of traffic accessing that area. Finally, the traffic impact study does not take into consideration that there are 96 parking spaces proposed for this 60-unit apartment complex.

Ms. Brison asked Mr. Putnam the following questions, all to which he replied no: Is there is anything in the study that addresses site distance between the proposed access at Springside Park Road and the crest of the hill on White Pine Drive; have you measured the distance between the crest of that hill and Springside Park Drive; have you done any analysis of traffic counts at the intersection of Brackettown Road and White Pine Drive; have you done an analysis of traffic counts at the intersection of Springside Park Drive and White Pine Drive; other than the change in the site plan from the initial draft given to City staff, were any changes made to the traffic impact study after the access road was changed to Springside Park Drive.

Mr. Jimmy Boyd, resident at 26 East Shore Drive in Kenilworth Forest, showed Council photos of the intersection of White Pine Drive and Springside Park Road (Neighborhood Exhibit 5). He explained that in icy or snowy conditions drivers must maintain speed to avoid sliding back down the hill and even near the crest of the hill, Springside Park Road still cannot be seen. After cresting the hill, Springside Park Drive is visible to a vehicle entering Kenilworth Forest, however, even the safest driver would have difficulty stopping in the short distance available. He showed that Springside Park Drive is a narrow road and it will be a narrow, tight turn for large emergency vehicles entering onto it off of White Pine Drive. One of the two solutions offered for site distance was to lower the crest of the hill. However, the crest of the hill is the natural buffering required by City Council when Highway Business was put there. The other solution would be to put a traffic circle to slow traffic coming in or going from the Kenilworth neighborhood. He said the from the crest of the hill on White Pine Drive to Springside Park Road is 85 feet and because the road is on a north-facing hill, in the winter White Pine Drive stays iced over. It's already hard to slow down and stop when it's dry. And, he was not aware that there is any other ingress or egress to Kenilworth Forest other than White Pine Drive.

Mr. Boyd presented to Council an e-mail copy from Anthony Butzek to Ken J. Putnam dated September 1, 2004 (Neighborhood Exhibit 6).

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In response to Ms. Brison, Mr. Butzek, City's Traffic Engineer, read from Neighborhood Exhibit 6 as follows: "Sight distance at Springside Park and White Pine was raised as a concern. I looked at it, and it is not adequate. At 25 mph, 105' is required, and only about 105-110' exists. I see two options – regrade White Pine to soften the crest vertical curve near Springside Park and increase the site distance – reduce the design speed on White Pine through geometry ... a neighborhood traffic circle at the intersection could accomplish this."

When Ms. Brison said that there has been testimony about the distance from the crest of the hill to Springside Park Road being 85 feet instead of 105-110 feet, Mr. Butzek responded that he would stand by his opinion based on the way site distance is properly measured.

In response to Ms. Brison, Mr. Butzek said the speed limit on White Pine Drive is 25 mph.

In response to Ms. Brison, Mr. Butzek said he made no traffic counts at the intersection of White Pine Drive and Springside Park Road, nor at the intersection of Brackettown Road and White Pine Drive.

Ms. Brison then entered into the record a N. C. Court of Appeals case Ghidorzi vs. Town of Chapel Hill 80 NC App 438 (1986) which stands for the proposition that a city council can deny a conditional use permit on the basis of traffic problems (Neighborhood Exhibit 7).

Mr. Dick Mansfield, resident of 215 White Pine Drive in Kenilworth Forest, showed Council photos of homes in the Kenilworth Forest area (Neighborhood Exhibit 8). He said that most homes are small bungalow-type homes (around 950 square feet). He showed a picture where he measured 85-feet from the center of Springside Park Road to the water meter on the top of the hill. He said that he measured 20 feet from the corner of the Lewis' deck to the center of Springside Park Road. If Springside Park Road is widened, traffic will be 5 feet from the Lewis' deck. He said that there are no 2, 3 or 4 story homes in Kenilworth Forest.

Mr. Alan Driscoll, resident of 30 Ridgecrest Road in the Oakley community and Certified Residential Appraiser for 18 years said that he has appraised homes in the Kenilworth Forest area. He has appraised a single-family residence adjacent to an apartment complex within the past year. There are factors to be considered in single-family home values being located adjacent to an apartment complex. He said there is a concept in appraisal known as conformity. He read an excerpt from the "American Institute of Real Estate Appraisers" textbook (Neighborhood Exhibit 9) as follows: "Conformity, Principle of: In appraising, the theory that value is based (in part) on similarity. The more similar a subject property is to the surrounding property is to the surrounding properties, the greater the value." From the "Basic Real Estate Appraiser 2nd Addition" textbook he read, "Conformity – A reasonable degree of conformity is required for maximum value to result. A serious lack of market conformity in size, style, quality, or use type can be detrimental to value, particularly in single-family residential properties." It is his opinion that the location of an apartment complex adjacent to single-family homes in Kenilworth would substantially injure the property values. He explained another instance where he appraised property in east Asheville that was located adjacent to an apartment complex. He did make an adjustment to that property lowering the value. That was based on its proximity to that apartment complex; lack of buffer; and issues of light and noise. He explained the term location adjustment. If there are adverse factors present that affect the subject property or the subject neighborhood which are not present in other homes that are within that market area, then a location adjustment is made, if warranted. Using Attachment to City Exhibit 3 – Building Elevations, and Neighborhood Exhibit 8, and a portion of a site plan that shows the 3 stories on one side and 4 stories on the other (Neighborhood Exhibit 10), he said it was his opinion that this apartment complex is not in harmony with the scale, bulk, density and character of the Kenilworth Forest neighborhood. Based on the definitions he read earlier, it was his opinion that the 3 and 4

story apartment project would not be compatible with the single-family homes in Kenilworth Forest.

Upon inquiry of Councilwoman Bellamy, Mr. Driscoll said that the topography factors could pay a role in his assessment. The more you can have conformity within any neighborhood, property values will remain more stable and you should realize greater property appreciation if that is the case.

In response to Ms. Brison and using the site plan (Neighborhood Exhibit 10), Mr. Driscoll said that it appears to him that from the base of the building up to just below the roof looks like an additional story and a half, above the 3 or 4 stories planned for the project.

Ms. Brison stated that Council must find that all seven standards for a conditional use permit must be met. The applicant has not submitted hardly any evidence in any of these standards, and it is their burden of proof. In her view, none of the seven have been met. Regarding Standard No. 1, she has provided testimony through the City's Traffic Engineer that the site distance is inadequate at the intersection of Springside Park Road and White Pine Drive and that only with a substantial fix (lowering the crest of the hill or creating a traffic circle) that it might be addressed. In addition, she has presented testimony (Neighborhood Exhibit 7) that says that future traffic improvements may not be considered by city council, but the present traffic situation is what you should consider in determining whether or not to approve or deny a conditional use permit. Regarding Standard No. 2, we have shown disharmony with the area. Regarding Standard No. 3, we have presented competent, material and substantial evidence in support of there being injury to the property value. Regarding Standard No. 4, we provided photographs of the single-family one-story homes in the area vs. the two very large buildings proposed. In addition, Mr. Driscoll testified about the great difference in the bulk and scale. Regarding Standard No. 5, the applicant has not submitted any evidence of any conformity with any of the City's plans. Regarding Standard No. 6, there was testimony that the only way in and out of Kenilworth Forest neighborhood is via White Pine Drive. If that were blocked due to problems at the intersection of Springside Park Drive, then there would be no access for emergency vehicles. Regarding Standard No. 7, there is a problem with traffic impact and there is inadequate site distance as the City's Traffic Engineer testified based on the present situation on the ground.

In addition, Ms. Brison pointed out that there is no access to this property. Council cannot make a determination as to whether or not the density is appropriate because you simply don't know how many acres is included in this project. They have not subdivided it yet. There has been no accounting for unusable land. There is in fact an unopened 30-foot right-of-way across this property that has not been closed. The height limitation of 40-feet has been exceeded – if you add the roof, it adds another story and a half. Again, they request the matter be continued until these issues can be addressed. In the alternative, she feels they have clearly shown that by the substantial material evidence in this record that this project should be denied.

Mr. Grasso said that they have agreed to make the necessary traffic improvements to White Pine Road so that it will be safe. He noted that this property was down-zoned from RM-16 to RM-8 and they have met the standards outlined in the UDO for a RM-8 development. They have done an outstanding job of citing these buildings so that it reduces the impact to the surrounding neighborhood. We are preserving a buffer of existing trees around the perimeter so that it will reduce the visual impact to the surrounding neighbors.

Regarding Mr. Driscoll's appraisal to downgrade property near an apartment complex because of light, Mr. Grasso asked what specifically were the issues with light. Mr. Driscoll said that light is going to be emitted when you have public lighting when you do not have it existing in the neighborhood at the present time. When Mr. Grasso asked Mr. Driscoll if he was aware that

the apartment units are below the elevation of the surrounding residences, Mr. Driscoll replied yes. Mr. Grasso asked how can the light go up the hill and spill onto adjoining properties when they have cut-off light fixtures, Mr. Driscoll replied that he was not a lighting engineering.

Regarding Mr. Driscoll's appraisal to downgrade property near an apartment complex because of noise, Mr. Grasso asked what type of residents were in those apartments. Mr. Driscoll replied that they were typical apartment residents. Mr. Grasso noted that they would be marketing to retirees.

In response to Mr. Grasso regarding buffering, Mr. Driscoll said he didn't feel that a building that size could be adequately buffered with vegetation and a 6-foot privacy fence. Mr. Grasso explained that the 6-foot privacy fence would be installed to screen the driveway between this property and Ms. May's property and in order to have the adequate amount of acreage that is required by the UDO for a single-family residence. This is the only way they can get a road grade that meets the UDO. In addition to the existing vegetation, they are providing a buffer that will meet or exceed the UDO standards. They have had requests from the neighbors to increase the buffer so that headlights won't spill onto neighboring properties and they have agreed to that. They have tried to meet the desires of the neighborhood.

Mr. Grasso said that there would be elevators in the buildings. He said that security was an issue that was built into the design. There will be one entrance on the front side and there will be an entrance on the lower side. This elevation doesn't take into account that the adjoining property owners will be looking down onto the apartments so they won't be seeing the full impact of this elevation. This residential use does conform with the neighborhood. It conforms with the way the property is zoned. They have made every effort to fit into this neighborhood. Regarding the traffic issue, their study has shown they will not be adding to any of the traffic congestion that already exists there.

The following residents spoke in opposition of issuing the conditional use permit for various reasons, some being, but are not limited to: when the Asheville Mall was built the intersection of Brackettown Road and White Pine Drive wasn't adequate and how can it be adequate now; if there is another traffic device at the crest of the hill on White Pine Drive, there will be the potential for traffic to be backed up onto Tunnel Road; people who live on the back side of the building (on Aurora Drive) will be looking directly at the building; in the winter when White Pine Drive is icy, the entire road is hazardous, not only at the crest; since there is only one road into the apartment complex, residents will have a problem getting in and out when it's icy; cut-off fixtures don't work as you can see when you are in White Pine Park looking at the Asheville Mall; traffic counts should be taken between Thanksgiving and Christmas; and it sometimes takes Kenilworth Forest residents 10 minutes to get onto Tunnel Road and if you add 96 more cars, it will be more dangerous:

Ms. Jan Howard, resident of Kenilworth neighborhood
Mr. Fred English, Haw Creek area
Ms. Claire Payne, resident of 291 White Pine Drive
Ms. Addison Martin, resident of 33 East Shore Drive
Mr. Steve Ritt, resident of 24 Swannnaview Drive
Mr. Philip Hawkins, resident of 244 White Pine Drive

Upon inquiry of Vice-Mayor Mumpower, Mr Butzek said that traffic on White Pine Drive is an existing problem and certainly having the development there will increase the amount of traffic. However, the developer is willing to assume the cost to solve the problem. Both solutions proposed have positives and drawbacks. Lowering the crest of the curve would result in some grading and delays during construction. They would have to do a topographic survey to measure the exact profile of the street and compute what kind of grading would be required to achieve the

necessary site distance. A guesstimate on lowering would be somewhere in the range of five feet. The second solution would be to implement a traffic calming measure – something to slow down the traffic so that when they reach the intersection it would have to be traveling slow enough that people could safely turn out of the intersection. He was hoping to hear more from the residents on which they prefer. Since neighbors talked about icing, perhaps grading may be the better solution. City staff has no problem with either option. If Council prefers one option over the other, he would ask Council to make that a requirement. If not, then it would be up to the developer's discretion which option to proceed with.

Councilman Dunn questioned the traffic study not taking into consideration peak times on Fridays and Saturdays. Mr. Butzek said it does not concern him. He said it is very typical for traffic studies to look at the afternoon peak hour. In cases where the morning peak hours is a concern, sometimes they would study that. And for retail developments, a Saturday peak hour is fairly typical to study. But for this type of development and this type of situation, studying the afternoon peak hour is standard practice.

In response to Councilwoman Bellamy Mr Butzek said the traffic count was taken at the intersection of White Pine Drive and Tunnel Road, at the traffic signal. Typically in doing a traffic study it's standard practice to look at the signalized intersections and if there are any other points where we feel we may have an issue. Based on typical practice and discussions with the engineer in this case, we decided the intersection of White Pine Drive and Tunnel Road would be the first thing to have operational difficulties, if any.

Upon inquiry of Councilman Newman, Mr. Butzek said that Springside Park Road will have to be brought up to City standards inasmuch as possible within the right-of-way. That would include street, curb and sidewalks, assuming the right-of-way or available property permits that.

Upon inquiry of Councilman Davis, Mr. Butzek agreed that the Lewis' house was about 20 feet from the centerline on Springside Park Road.

When Councilwoman Bellamy asked how Springside Park Road could be expanded, Mr. Butzek said that there is a public right-of-way that has been platted but he doesn't know the dimensions of it. That is public right-of-way is for the possibility of being used as a public street. The street they are widening would have to occur within that space unless additional property was purchased from those property owners.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that regarding the traffic impact, they looked at the build-out of the project, which is two-years from now, and that is standard practice to use for analysis purposes. They verified that traffic would operate acceptably in that future year.

When Vice-Mayor Mumpower asked Mr. Butzek if he was concerned that there was only one point of access, Mr. Butzek replied that he preferred multiple access points; however, in this particular case there are no additional possible points of access. He said that the Fire Department staff did not raise any objection over the one point of access at the TRC meeting.

City Engineer Cathy Ball responded to Councilman Dunn's question regarding the redrawing of the FEMA maps. She said that we are supposed to work under the current maps that we have. We have not been regulated or told by FEMA that we should use different maps or that we don't' need to go by the existing maps that we have. She has no issues in this specific area or any indication that there will be a great deal of change in where the floodplain is. She doesn't view that as a concern in this case. Part of the property is in the floodway and flood fringe. In the part that has a building in it, they are required to elevate that building so that it is above the 100-year flood elevation and that is a proposal they have in place.

Vice-Mayor Mumpower asked if there are concerns regarding the impact of sediment from this project in Ross Creek. Ms. Ball said that anytime development there is a real opportunity for erosion concerns. Our ordinance requires the developer to design for controlling a 10-year storm event and the erosion that would come from the site from that. It doesn't preclude them from keeping as much erosion on site as possible, but that is a problem when there is a lake. We will work hard with the contractor to make sure that his erosion control measures are in place and operate effectively.

Vice-Mayor Mumpower asked if our current erosion control protections for that area are adequate. Ms. Ball felt that our design standards to control erosion are adequate. She said that Council may impose a stricter penalty if their erosion control measures do not work property. One of the issues that we have is if the measures fail then there is a requirement that they fix the measure and make it not happen again. Very few times are there fines or penalties associated with that. She did not know if that is within the purview of the conditional use permit to have an additional penalty or fine or some type of consequence when the measures fail.

City Attorney Oast said that Council has the ability to impose stricter standards, but he hasn't specifically looked at the issue of imposing stiffer penalties in case where standards are violated. One penalty that Council can impose is revocation of the conditional use permit.

In response to Councilwoman Bellamy, Ms. Ball said their stormwater measures and their stormwater control are different things. They are proposing to put in underground detention in order to control stormwater runoff and that is after construction. The erosion control measures typically are sediment basins, silt fences, straw bales, etc.

Mr. Shuford explained that the reason this project is before Council is because it is a Level III project – it is more than 50 residential units. If this project were 50 or less units, it would be approved by the TRC under the conditions that have been imposed by the TRC. The development intends to be above what the current zoning allows. The property is large enough and able to accommodate 60 units that is triggering the Level III review.

In response to Councilwoman Bellamy about the 40-foot height restriction, Mr. Shuford said that 40-feet is the height limit for almost all of our residential zoning districts. That height is measured from the primary entrance to be used by the Fire Department to gain access to the building to the ceiling of the upper floor. That is the same standard for single-family residential as it is for this project. He said that in Kenilworth Forest on a single-family lot you could build a building as tall as this, with a roof-line like that. He read the definition of "building height" from the UDO as follows: "Building height means the vertical distance from the ceiling of the highest occupied floor to the primary level of fire department access."

Councilman Davis said that this is a fairly tall roof once you get beyond that upper floor, which may be to access the elevator towers. He was concerned about the actual height of the building. Mr. Shuford said that Council has the option of specifying a lower roof pitch.

Upon inquiry of Councilman Dunn, Ms. Hamel used a map (City Exhibit 4) showing elevations. She said that the building is lower and almost sits at the same elevation on the Aurora Drive side. Most of the visual impact will be on the Aurora Drive side.

Upon inquiry of Councilman Davis regarding the building height, Mr. Grasso said that he didn't have the exact height, but guessed it would be four floors (40 feet), and then about another 15 feet. The roof line is designed to be either a 10/12 or 12/12 pitch, which matches a lot of the roof lines in the surrounding neighborhood. The architect tried to mimic the roof lines in neighborhood. The Aurora Drive side of the site will be looking across an area that is wetlands

and has a lot of trees. We will not be doing any disturbance on this side. They will be looking at quite a buffer to the back-side of the units.

When Vice-Mayor Mumpower asked why the developer chose to do 60 units instead of 50, Mr. Grasso said that they looked at the zoning and acreage available and they came up with calculation of 60 units. They knew they would be going through a Level III review, but the 60 units is important from the standpoint of offsetting site construction costs and to make the numbers work as an apartment project.

Councilwoman Bellamy asked if there was a way Council can be sure that people are not deliberately excluded from applying. City Attorney Oast said that they have to comply with the Fair Housing Law. He didn't think there was a lot of control Council can have over how they market the project. They indicated their desired marketing target, but that doesn't guarantee that you're going to have retirees moving in there. He wasn't sure there was anything additional that Council can do to structure the mixture of the tenants in the apartments.

Councilman Newman moved to approve the project, subject to all TRC and staff conditions being met, in that he believes it meets all of the conditions set forth in the UDO. Mayor Worley ruled the motion out of order since the public hearing on this matter has not been closed.

Even though Councilman Davis understood Council cannot control the access issue, he was concerned about the centerline of Springside Park Road being 20-feet from someone's deck. He was also unsure about lowering the crest of White Pine Drive by five feet to make that area functional. He was also not sure a traffic circle is a good solution for traffic calming. He felt a 55-foot tall structure is certainly out of conformity with the rest of that neighborhood as seen from Aurora Drive side. He could not support the project since he felt it was out of scale with the rest of the neighborhood and his concerns regarding access.

Councilman Dunn was concerned with accessibility to the property. He felt that to put a 60-unit apartment complex in the middle of the Kenilworth Forest neighborhood did not conform with the neighborhood, especially knowing that there will be one side looking up at a 4.5 story apartment building.

Vice-Mayor Mumpower asked Mr. Driscoll what loss of property value percentage is attached to property located in proximity to an apartment complex. Mr. Driscoll said that he has not done the market research in this case and that would have to be done to be able to quantify that number. Some objective range, however, would be 10%.

Councilman Newman asked if it was Mr. Driscoll's testimony that if this project were approved, the neighboring property values would go down from where they are today and in five years. Mr. Driscoll said that he feels the property values could continue to escalate, but the way he sees that is if a person has an opportunity to earn a 10% annual growth rate and someone by reason of this type development or any another non-conforming development comes into that neighborhood, you restrict that individual from the opportunity to earn 10% in that market area. To him that is a loss of value. He thinks the property will continue to appreciate, but he thinks for many of them, especially the ones in close proximity, that the rate of appreciation for these properties would be less than properties unaffected.

Councilman Newman stated that the Condition 3 reads that "the proposed or use or development of the land will not substantially injure the value of adjoining or abutting property." He asked the City Attorney if the property is continuing to grow in value, but perhaps at a different rate, is that "substantially" injure. City Attorney Oast said that is a question for Council to determine, but Mr. Driscoll did say that the property would continue to appreciate.

Upon inquiry of Councilwoman Jones, Mr Grasso said that he didn't know if the project wasn't approved today whether the applicant would end up developing the property with a lower number.

Mr. Grasso said that he has the plat information to help Council understand the access issues. He also clarified where Aurora Drive is in proximity to this project and what they would be looking at. Using the topography map (City Exhibit 4), Mr. Grasso again explained that Aurora Drive residents will be looking across wetlands and a lot of trees. The distance of the apartment buildings and Aurora Drive is several hundred feet.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that if they don't have access or the right-of-way, they can't build on the property. Council needs to base their decision on the seven standards that are contained in the UDO. If they can't meet this condition, the project cannot move forward.

Mr. Shuford said that when the applicant originally came in, they proposed a driveway access through another property to White Pine Drive but were unable to proceed with that because of deed restrictions on that property (it limited it to a single-family use). They are using the access point they have available to them.

Upon inquiry of Councilwoman Bellamy, Ms. Hamel said the applicant is required to install a 20-foot Type "B" vegetative buffer. It is required along entire perimeter of the property. They are requesting to do a privacy fence (by Ms. May's house) and plantings that will be outside of the privacy fence in lieu of the 20-foot buffer, which is something that is available to them under the UDO. They can use existing vegetation to count towards the 20-feet. We would ask them to do a tree survey once it comes back in for final approve through TRC. But as part of the conditional use permit and what they have presented, we can make that a requirement that the existing vegetation be preserved. Council may want to add a condition that all the existing vegetation be preserved in addition to the buffer plantings.

Upon inquiry of Councilman Davis, Mr. Butzek said that in order to lower the crest on White Pine Drive there would have to be some grading adjacent to the roadbed to provide for slopes, but it would be just the roadbed and slopes through that crest. He felt that is probably the better long-term solution. The negatives he sees with that is the construction issue, lane closures, etc. to lower that grade. But, in terms of a long-term solution, that is probably the best solution and is probably the more expensive solution as well. It will, however, improve an existing problem as well.

Vice-Mayor Mumpower asked how dangerous is that crest to the residents now. Mr. Butzek said he wouldn't classify it as extreme danger. The available site distance is just over 2/3 of what it needs to be. There is some concern, but he wouldn't say it is a crucial concern. We do have other places in Asheville with the same topography with the same condition.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that on Springside Park Road there are about 8 apartments and one residence. The danger factor would be increased with the addition of the new units, if mitigation were not performed.

Upon inquiry of Councilwoman Bellamy, Mr. Butzek said that they would recommend the traffic mitigation be in place prior to issuing a Certificate of Occupancy for the building.

Councilman Dunn was concerning with the light issue. Mr. Shuford said that we have imposed standards for lighting that do have the 90-degree cut-off. We think that type of lighting standard will be effective in reducing the amount of light trespass that comes from the property.

Mr. Shuford said that if Council was inclined to recommend or require one of the two traffic mitigation measures on White Pine Drive, he asked that in the event that there is some technical reason why that measure can't done that staff proceed with the other alternative.

Vice-Mayor Mumpower asked if there was a condition to require the developer to m· ntain the erosion control system put in place. City Attorney Oast said one possible condition m ght be to require the developer to engage an independent stormwater expert to perform the inspections on a more frequent basis than City staff can and then make reports to appropriate staff if matters are out of compliance.

Mayor Worley closed the public hearing at 7:42 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3176, granting a conditional use permit for property located on Springside Park Drive, located off White Pine Drive, for the construction of a 60-unit multi-family development (Kenilworth Forest Village Apartments) in an RM-8 Residential Multi-Family Medium Density District, subject to the following conditions: (1) all conditions outlined in the Technical Review Committee staff report; (2) An updated traffic impact analysis and site plan based on the use of Springside Park Drive and associated improvements must be submitted prior to City Council; (3) The ability to access Springside Park Drive must be clarified and the road made public; (4) Legal and adequate access to Springside Park Drive must be clarified and the road made public; (5) Based on the Traffic Impact Analysis and the need to address sight distance at Springside Park and White Pine the developer shall be required to complete one of the following: regrade White Pine to soften the crest vertical curve near Springside Park and increase sight distance; or reduce the design speed on White Pine through geometry (such as a neighborhood traffic circle at the intersection); (6) All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property; (7) The developer shall work with City staff to address water quality issues in the design and monitoring of stormwater run-off infrastructure and by means of stream bank stabilization, selection of appropriate wetland species, riparian buffers and use of other Best Management Practice tools as approved by the City Engineer and Planning Director; (8) The developer shall work with the Buncombe County Health Department to evaluate safety concerns regarding the abandoned septic tank on the owner's adjoining vacant lot; (9) Developer shall relocate the compactor to an internal location within the development; (10) Prior to the issuance of the Certificate of Occupancy, the developer shall remove all damaged limbs and trees on their property that overhang abutting properties; (11) The developer shall install a privacy fence along portions of the south side of the property as requested by the abutting property owners; (12) In addition to the required buffers, the developer shall provide additional landscaping along the internal road to deflect headlights from properties along Aurora Drive; (13) In addition to planting the 20-foot buffer, the existing vegetation on the Master Plan should be preserved; and (14) At the developer's expense, the developer shall engage an independent stormwater expert to monitor sedimentation control on a more frequent basis than City staff can and provide regular reports to City staff which would allow for more timely interventions if problems occur. This motion was seconded by Councilwoman Jones.

Councilman Newman feels the project does meet all the seven standards in the UDO. He feels that the site distance on the Aurora Drive side has a big distance of buffer that will remain in a natural state. If you look into the neighborhood it is primarily single-family, but if you look to the immediate east of the project, it is very different. He feels this is a transitional area. He believes it fits the existing zoning and if we don't approve the project, the developer can take ten units off this project and proceed with construction without any Council input. Regarding the two traffic mitigation solutions on White Pine Drive, he will leave that open so that staff can continue to look at it and the neighborhood can have input as well. He understands the traffic mitigation will be one of those two solutions and that it must be addressed in some way for the project to move forward.

Councilman Davis said that he would like to see housing, however, he felt that this project is out of context with the rest of the neighborhood.

Vice-Mayor Mumpower said that he would like to see the project proceed and it sounds like it would be a good addition to the City. However, he didn't think the project meets Standard No. 4, in that he feels the project is not in harmony with the scale, bulk, coverage, density and character of the neighborhood in which it is located.

Councilman Newman's motion passed on a 4-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

City Attorney Oast said that he would bring the ordinance back to City Council for second reading on November 23, 2004. Mayor Worley announced there would be no public comment at the second reading of the ordinance.

At 7:50 p.m., Mayor Worley announced a short recess.

ORDINANCE BOOK NO. 21 - PAGE 356

At 8:16 p.m., Councilwoman Bellamy asked to be excused from the remainder of the meeting. Therefore, Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from the meeting. This motion was seconded by Councilman Newman and carried unanimously.

Vice-Mayor Mumpower commented that the organized opposition and the neighborhood deserve some positive attention for their efforts to be civil, bring facts to the table, and to bring information to Council in order to help them sort through those facts.

C. PUBLIC HEARING RELATIVE TO PERMANENTLY CLOSING VIVIAN AVENUE

RESOLUTION NO. 04-234 - RESOLUTION TO PERMANENTLY CLOSE VIVIAN AVENUE

Mayor Worley opened the public hearing at 8:20 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close Vivian Avenue. This public hearing was advertised on October 15, 22, 29 and November 5, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the University of North Carolina at Asheville has requested the City of Asheville permanently close to public use as a public street Vivian Avenue as shown on a plat entitled, "Property of the Christian School of Asheville," at Plat Book 32, Page 28 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this right-of-way is not a City maintained street. Closure of this right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are three parcels that abut this section of right-of-way. They are identified by PIN Nos. 9649.09-17-3141, 9649.09-16-0734, and 9649.09-16-2885. The petitioner has authority over all the abutting parcels.

City staff recommends that City Council adopt the resolution to close Vivian Avenue.

Mayor Worley closed the public hearing at 8:23 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-234. This motion was seconded by Councilman Davis and carried unanimously.

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D. PUBLIC HEARING RELATIVE TO DESIGNATING PROPERTY KNOWN AS THE RICE CORNELL BROWN HOUSE, LOCATED ON RICE BRANCH ROAD, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3177 - ORDINANCE DESIGNATING PROPERTY KNOWN AS THE RICE CORNELL BROWN HOUSE, LOCATED ON RICE BRANCH ROAD, AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 8:24 p.m.

Ms. Stacy Merten, Historic Resources Director, said that this is the consideration of an ordinance to designate the Rice Cornell Brown House on Rice Branch Road as a local historic landmark. This public hearing was advertised on October 29 and November 5, 2004.

Ms. Merten explained the process the applicant goes through in designating a local historic landmark.

This proposed landmark designation consists of the Rice-Cornell-Brown House with its ca. 1850 original portion and subsequent 1890, 1927 and 1953 additions; a ca. 1848 cabin moved to the site in 1975; a ca. 1848 pig pen moved to the site in 1975; a ca. 1848 smoke house moved to the site in 1975; and a tool shed built in 1953, all of which are contributing structures. Also included is a 1968 horse barn, which is a non-contributing structure.

The Rice-Cornell-Brown House is an assemblage of three main side-gabled blocks that reflect the century long development of the house from a single-pen, log cabin to a modest but well crafted log and frame house that retains integrity from each of its periods of development.

The original structure of the Rice-Cornell-Brown House was a one and one-half story plus loft, one room log cabin constructed of half dovetailed, hand hewn logs. The 1890 addition, which extends to the east is wood frame construction with unpainted clapboard siding and a side gabled roof of asphalt shingles. The inside of this addition exhibits more detailing than the original one-room cabin with beaded ceilings and plaster walls. The 1927 one room addition, located to the southeast of the 1890 addition, is of frame construction, unpainted clapboard siding and gable roof with asphalt shingles, similar to the 1890 addition. Inside the walls and ceiling are of rough sawn boards. The 1953 addition built on the south side and extending the full length of the original cabin has stained board and batten siding with a low pitched gable roof of asphalt shingles. The interior was designed to be in keeping with the rustic style of the rest of the cabin.

The Rice-Cornell-Brown House, the site, as well as the additional structures and outbuildings, with a period of significance from 1848-1953, are historically significant for their contribution to the broad pattern of history of the Beaverdam Valley. They represent the evolution of a small log cabin that housed subsistence farmers, into an early 20th century working farmstead. Additionally, the House is significant as it is the most architecturally intact of only two examples in the County exemplifying the use of native materials and mid-nineteenth century log

cabin construction techniques and the later evolution of the building as the family grew and prospered.

The additional mid-nineteenth century log house and structures moved to the site in 1975 are also important as both historic and architectural reminders of the widespread use of this house form throughout Buncombe County. These structures would have been demolished if not moved from their original site.

The Rice-Cornell-Brown House was listed on the National Register of Historic Places on December 24, 1998. The listed property includes a 26-27 acre tract of land which is the residual acreage of the tract that was farmed by the J.O. Rice family, builders of the original log portion of the house. The current landmark designation would only include a 6.71 acre portion of that larger tract. The 6.71 acres being the location of the original house and contributing outbuildings. The remainder is a separate 20 acre tract, which is currently in forest use and maintained under a forest management plan.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $224,200. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be $1479.72.

Although designation of the property places no obligation on the property owner to provide public access to the property, the Brown's while being good stewards of the land and structures have allowed and encouraged public access to many organizations and other groups over the years, such as high school clubs, church groups, the Preservation Society and very recently the Sons of the Confederacy, just to name a few.

The ordinance designates the Rice-Cornell-Brown House as a local historic landmark. The property included in the designation consists of Rice-Cornell-Brown House and the 1.61 acre parcel on which it is located as described in the deed. The designation also includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- The designation will provide the property owner with a local property tax deferral that will help with the costs of keeping the structure in good repair.
- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the Rice-Cornell-Brown House, as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Worley closed the public hearing at 8:30 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3177. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 365

E. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS

RESOLUTION NO. 04-235 - RESOLUTION TO APPROVE AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS

Mayor Worley opened the public hearing at 8:32 p.m.

City Manager Jim Westbrook said that this is the consideration of a resolution approving an economic development incentive grant for HighWater Clays. This public hearing was advertised on October 29 and November 5, 2004.

City Council approved a grant to HighWater Clays in June 2003 and the required performance agreement was signed. In February 2004, HighWater Clays asked to revise that agreement as they anticipated investing a significantly higher amount than was originally programmed. It was determined that a new agreement would be needed, including going through the public process again, versus simply revising the original agreement.

Based on new information, the capital investment, for purposes of determining a grant amount is now $1,560,000 (vs. $750,000 originally) in building renovation and new equipment. Further, the owner states that the number of new jobs created will go up from 5 to 7 and that the average hourly wage will go up to $10.43 from $9.00.

As an incentive, City Council originally agreed to $7500 payable in two equal installments. For the new grant, it is proposed to offer $31,000 payable in equal installments over five years.

Support statements:

1. Grant supports expansion of local small business. This supports Strategic Plan: Key Area – Economic Development Goal 1, Objective A.
2. HighWater Clays continue to invest in riverfront area.

Staff recommends approval of the resolution approving an economic development incentive grant to HighWater Clays, Inc.

Mayor Worley closed the public hearing at 8:34 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-235. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 414

F. **PUBLIC HEARING TO CONSIDER A MODIFICATION TO THE CONDITIONAL USE PERMIT FOR PHASE I OF RIVER BEND MARKET PLACE (SAYLES BLEACHERIES) TO ALLOW FOR AN INCREASE IN DEVELOPMENT INTENSITY THAT MAY INCREASE TRAFFIC ON SWANNANOA RIVER ROAD (CITY OF ASHEVILLE ORDINANCE NO. 2939, CONDITION NO. 2)**

ORDINANCE NO. 3178 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR PHASE I OF RIVER BEND MARKET PLACE (SAYLES BLEACHERIES) TO ALLOW FOR AN INCREASE IN DEVELOPMENT INTENSITY THAT MAY INCREASE TRAFFIC ON SWANNANOA RIVER ROAD (CITY OF ASHEVILLE ORDINANCE NO. 2939, CONDITION NO. 2)

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is amending a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:41 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning and Development Director Scott Shuford said that this is the consideration of amending the conditional use permit for Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road. City Council will also be considering a modification to the Urban Village Master Plan for Phase 2 of the River Bend Market Place to permit an increase in development intensity. Both public hearing will be summarized in this one staff report, however, City Council will need to hold separate public hearings and take separate votes.

City Council must consider both the conditional use permit modification and the modified master plan pursuant to the revision process for such permits and plans. For technical reasons, the Planning and Zoning Commission will not formally review this master plan (the code process involves only City Council review of master plan changes). Two separate votes will be needed.

The applicant *River Bend Business Park, LLC, is proposing an expansion of the scale of development associated with the Urban Village approved as Phase 2 of the Sayles Bleacheries redevelopment project. As a result, the City Council must consider a proposed modification to the Conditional Use Permit (CUP). Specifically, the applicant proposes a modification to Condition 2 that limits the total development potential for traffic impact reasons. Condition 2 is quoted in part below (emphasis added). The applicant wants to add additional traffic to Swannanoa River Road without adding additional traffic impact mitigation measures.

*2. No changes shall be made in the level of development intensity (Exhibit A) that **will or may increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented**.*

Additionally, the Council must consider modifying the Urban Village Master Plan to accommodate the additional development proposed by the applicant. Staff review of that modification indicates that the applicant is in compliance with the design standards for urban villages. We feel that the development intensity is much more likely to make this a successful project than the limited amount provided for in the original approval. As conditions for added intensity, we feel the applicant should provide 17 of the added 115 units (or 15% of the added residential development) as affordable housing and that a transit stop should be added to the project in a central location.

He summarized that two actions that City staff recommends:

(1) That the City Council approve the proposed modification of the first sentence of Condition #2 of the previously-approved conditional use permit to read as follows:

2. The attached Exhibit A, the level of development intensity approved for this project, is amended to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented. *{The remainder of the condition remains unchanged.}*

(2) That the City Council approve the proposed modification of the Urban Village Master Plan to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) Not less than 17 residential units shall be priced at an affordable level ($130,000 for a 2 or more bedroom unit) at time of initial sale; and (3) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

The Asheville City Development Plan 2025 recommends mixed use commercial and residential centers around the City as a way to provide variety to the marketplace, strengthen the tax base and provide areas for growth within the City limits. The subject property is identified as a possible urban village location on the Future Land Use and Transportation Map.

The original Conditional Use Permit for the River Bend Development was approved on July 23, 2002. The Order issuing the Conditional Use Permit was signed on August 13, 2002.

Mr. Glines showed the properties in question (City Exhibit 4) and the different connecting points to the site (City Exhibit 5). The conditional use permit must be modified because some traffic is generated by the proposed expansion and will be using Swannanoa River Road. A recent traffic study was conducted to understand the impacts of traffic in the vicinity of the project. Three entrances are provided for the River Bend Market Place Shopping Center. The Swannanoa River Road and the Fairview Road entrances were illustrated in the same format in that original proposal. He showed the third entrance from River Ridge Shopping Center (City Exhibit 5). Since 2002, Horne Properties, who is developing the River Bend Market Place project acquired the River Ridge Shopping Center. This common ownership makes more formal efforts to provide a viable third access point more feasible. But even with the third entrance some

additional traffic generated by the project is anticipated to use Swannanoa River Road. The conditional use permit must be modified to allow more traffic generated by the project to use Swannanoa River Road. Specifically, the applicant proposes a modification to Condition 2, that limits the total development potential for traffic impact reasons. The applicant wants to add additional traffic to Swannanoa River Road without adding additional traffic impact mitigation measures. He read Condition No. 2 as follows: "2. *No changes shall be made in the level of development intensity (Exhibit A) that* will or may increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented." The Exhibit A of the conditional use permit provides for the following level of development in the Urban Village: "That 54,000 square feet of general office development and 125 residential condo or townhouse units" be provided in that original permit. The applicant is requesting to build 96,858 square feet of commercial uses and 240 residential units in the new proposal. The proposed level of new development will result in a small increase in traffic on Swannanoa River Road. No mitigation measures have been proposed or appear feasible to address this added traffic. The intent of this Condition No. 2 is to allow some traffic carrying capacity to remain on Swannanoa River Road after Phases 1 and 2 of the development project come online. The standard approved by City Council was for a level of service on Swannanoa River Road to not be decreased below 90% of a level of service "D" volume. In other words, 10% of a level of service "D" volume capacity was to remain after construction of the project. The applicant's proposed impact is 5% to Swannanoa River Road, based on the Traffic Impact Analysis (TIA) submitted by the applicant's traffic engineer.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and ordinarily must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Since this is a modification to a previously-established condition, only those standards directly relating to that condition need to be met. Staff's review indicates that all applicable standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   Not applicable.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Not applicable.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Not applicable.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   Not applicable.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Not applicable.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   Not applicable.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed development will incrementally increase traffic at all intersections nearby. The increase is small, typically not exceeding 2.1% at the critical intersection (Swannanoa River Road & South Tunnel Road) during the critical period (Saturday). With modifications to signal timing, all intersections appear to function at level of service "D" or better. Based on this information, this condition appears to be satisfied.

Pros:

- The additional square footage and type of nonresidential uses and the increased number of units has the potential to ensure a more successful urban village project.
- The urban village project will allow significant new development with minimal traffic impacts because many of the trips generated by the project will be internal.

Cons:

- There will be a minor increase in traffic volume on Swannanoa River Road from the project.

Staff recommends that the City Council approve the proposed modification of the first sentence of Condition #2 of the previously-approved conditional use permit to read as follows: "2. The attached Exhibit A, the level of development intensity approved for this project, is amended to permit the following level of development for Phase 2 (the Urban Village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented. *{The remainder of the condition remains unchanged.}*"

Mr. Glines then reviewed with Council the request for a modification to the Urban Village Master Plan for Phase 2 of the River Bend Market Place to permit an increase in development intensity.

Using maps (City Exhibits, 6, 7 and 8), Mr. Glines showed the Urban Village District and the central drive through the Urban Village. The Master Plan for the Urban Village has also been adjusted to make the uses and buildings more integrated compared to the original submission in 2002. The core of the Urban Village is comprised of 5 multi-story buildings (City Exhibit 8) that will support ground floor commercial uses and upper floors will be comprised of residential units. Wide sidewalks front these buildings as well as a park space that runs the length of the street that separates the traffic (City Exhibit 8). Along the east and south sides of the development, townhouse style development will be provided. Eighty residential units will be provided as townhouses (City Exhibit 8). There is also an internal street that will provide access to these units. Using a map of building elevations (Attachment to City Exhibit 3 – Elevation Study of Buildings Three and Four), he illustrated the character of the buildings. Some of the buildings have pitched roofs and others have flat roofs. Windows and balconies are plentiful. Parking will be located on-street, which is a requirement of the Urban Village District, and some are providing parking lots under the buildings as well. The townhouse units will have garages. Other Urban Village requirements appear to be met and TRC conditions will be specifically reviewed for compliance during formal plan submittal, should the conditional use permit modification and the

modification to the Urban Village Master Plan be approved. Staff feels that the increased development intensity is much more likely to make this a successful project than a limited amount of uses contained in the original approval. As conditions for added intensity, staff would like for the applicant to provide 17 of the added 115 units as affordable housing and that a transit stop be added to the project in a central location. In summarizing the proposal, the additional square footage and type of non-residential uses and the increased number of residential units has the potential to ensure a more successful Urban Village project. The Urban Village project will allow significant new development with minimal traffic impacts, as many of the trips are generated by the project will be internal. Also with that integral activity, pedestrian and bike movement is also a viable option as well. The only real item of concern is that there will be minor increase in traffic volume on Swannanoa River Road from the project.

Staff recommends that the City Council approve the proposed modification of the Urban Village Master Plan to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) Not less than 17 residential units shall be priced at an affordable level ($130,000 for a 2 or more bedroom unit) at time of initial sale; and (3) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director.

Mr. Anthony Butzek, City Traffic Engineer, said that regarding the increase of traffic on Swannanoa River Road, the River Bend development was approved with a condition that traffic volumes would not exceed 90% of the theoretical capacity of the street. This development will put it over that threshold. The composition of the traffic on Swannanoa River Road, composed of the Urban Village, we expect to be about 5%. Additionally in the past two years since the Wal-Mart was approved, we expect the traffic has grown, which constitutes another 2.5%. The previous Urban Village plan also generated about 2.5%, so the increase is from 2.5% of the capacity of Swannanoa River Road to 5%, that would be generated by the Urban Village. Coupled with the growth over the past couple of years, that puts us at about 95% of the theoretical capacity.

Mr. Butzek said the second issue, and this is where the traffic study comes in, is the actual operation of the studied intersections with the addition of growth and with the addition of project traffic. The study looks in a very high level of detail at the critical intersection in the study area. South Tunnel Road and Swannanoa River Road; Swannanoa River Road and the Wal-Mart entrance (with the bridge over the river); Fairview Road and the new street (Bleachery Boulevard); and Fairview Road and the River Ridge entrance (in addition to the internal intersections). All of those intersections are projected to operate at a level of service "D" or better during the morning peak hour, the afternoon peak hour and the Saturday peak hour. One of the reasons why this development does have the ability to handle the traffic load is because we have three good connections to public streets – all of which come out at traffic signals. One thing he sees as favorable in this project is that it allows a fairly high level of development without generating the same level of traffic volumes that the comparable amount of density done in a not so appropriate way would. The synergy created by having a mix of retail and residential uses results in a variety of travel choices to people – they can walk, bike, use transit vs. the more sprawled out development, which really encourages driving. This particular type of development encourages a variety of modes of transportation. The conditions he is recommending based on the review of the traffic study are as follows: (1) to change the plan for the roadway striping on the new bridge that is being constructed over the Swannanoa River. The bridge is being built as a 5-lane bridge with two lanes in and two lanes out and a stripped out median, which will be reserved for a future turn lane. He is recommending that they add that turn lane, so that they will have a left, a through and a right coming out of the development, since there will be a new development across Swannanoa River Road. This adds a very small amount of capacity but it is a very minor improvement; (2) that a roundabout be constructed at the intersection of Bleachery

Boulevard with the River Ridge connector. Without that improvement, and going with an uncontrolled intersection, there is one movement that operates at a level of service "F", which means traffic experiences a high level of delay. That would be making a left turn out of the Shopping Center traveling down Bleachery Boulevard. The roundabout will ensure that the intersection operates at a level of service "A", which means the average car waits less than 10 seconds at the intersection. The only other long-term solution that we can utilize at that intersection would maybe someday need a traffic signal. What the traffic signal would do is delay drivers who have stopped at the red light coming through there, more so than a roundabout, and given that we want to encourage people to use this connection (since we know Swannanoa River Road will be congested), he feels a roundabout will best handle that traffic; (3) that the developer provide a walking path and a right-of-way to connect to the River Ridge Shopping Center. That will ensure that people who live in the River Ridge apartments don't have to get in their cars, drive out to Fairview Road and then drive all the way back in. They can simply walk across; and (4) that the developer implement changes in the traffic control to the River Ridge Shopping Center internal intersection (City Exhibit 4). That traffic control would favor movements following the new connection in and out and that appropriate signage be installed to make sure that is a safe movement.

Mr. Harley Dunn, an owner of River Bend Development, reviewed the background of the project stating that they started the project five years ago. The first phase is well on its way to completion. The second phase is the mixed use project. Throughout the project members of City staff have encouraged them to increase the density in this project. Over a period of time, they agreed with staff after looking at these kinds of projects around the country. He noted there is 3.5 miles of sidewalks just with in the Urban Village, and they connect to 4 miles of sidewalks in Phase I of the large shopping center development – not to mention attaching to the greenway. It is our desire to see a development built that will be a source of pride for Asheville and western North Carolina. He urged Council to approve the modification to the conditional use permit and to also approve the modification of the Urban Village Master Plan.

Mr. David Day, Licensed General Contractor and developer of this project, briefed Council on other projects he has worked on in Asheville. He feels this project is good for Asheville. We have worked with the City for approximately four months in trying to come up with goals to make this a successful project. The first goal was that in order for the project to be successful, we need to maximize density. In order for an Urban Village to be a success, it has to have a mixed use of residential and commercial. It has to have enough density to it that it creates a great environment where people can interact. The second goal was to minimize the traffic. The increase is approximately 2.1%. By doing this type of development, we have created an area where people can live, work and play. He said that the project is approximately 96,000 square feet, consisting of a restaurant, retail space, office space, and also 240 residences. The perimeter of the project will consist of 80 townhouses, a club house and a pool. The five larger buildings shown on the plan will be four stories. The reason we have gone with a four story type of building is to minimize the building footprint. By minimizing the footprint, it allows more green space and a lot more common areas that enhance the project. We have placed parking in the basements. The main floor on grown level will be a retail-type of center that has restaurant, etc. Using elevation drawings (Applicant Exhibit 1), he described the atrium in the building. The second, third and fourth floors will be the residential areas. Each one of the residential areas in the multi-story buildings will have their own private balconies, which will overlook the streetscape. The streetscape located in the center will be a large landscaped courtyard type of area where there will be three large fountains, 91 park benches and more than 220 large trees. Regarding sidewalks, they tried to create a pedestrian friendly environment where this will become a neighborhood where people can access through walking and bicycle-riding. The project is located close enough to the Oakley community where children can get out of Oakley school and walk on a sidewalk all the way into the Urban Village for entertainment and recreation. We believe that the Urban Village will be an excellent neighborhood and that it will be lively and a

good place for people to live, work and play. He said they do not have a problem with a roundabout or helping out with any kind of turn lanes that may be recommended by the City's Traffic Engineer. However, this afternoon he has just found out about the recommendation of 17 affordable housing units and he hasn't had an opportunity to review that recommendation. He did not know what kind of an impact that would have on the project. In the alternative, he would be willing to have a mixed residential area where we have one, two and three bedroom units that will be able to accommodate a family, as well as someone who just needs a one bedroom.

Ms. Gay Sprague, Registered Engineer in three states and Traffic Engineer on the project, said that she did the TIA for this new version of the Urban Village.

Mr. Marvin Slosman, local developer, briefed Council on the successes in Asheville on mixed-use projects. He feels this is a win/win project for all parties. Regarding the affordable housing issue, he said that it is hard to drive a number into affordable housing and what that really means to people. One of the things that is very common in these types of projects is to do a pre-sale effort, which is in effect discounting the market value, so that people that get in early and in effect get a discount on what the market will drive in terms of supply and demand. It is always difficult when you look at the price per square foot. When you talk about affordable housing many times people refer to that as subsidized housing and that is difficult to do because as a developer and builder you don't get the same discount effect from the suppliers that you have and therefore it is hard to pass those along. He felt the pre-sale effort approach might be a solution other than designating a specific number of affordable homes.

The following residents spoke against the modification of the conditional use permit for various reasons, some being, but are not limited to: the third entrance through River Ridge Shopping Center was on the original conditional use permit; the traffic number estimates are on the low side and are subject to error and assumptions; traffic counts are not representative of normal, average traffic – in that they were taken on a rainy day, snowy day, and when Hurricane Ivan came through Asheville, thus reducing traffic counts; earlier traffic count numbers in front of the new bridge disagree with the N. C. Dept. of Transportation (NC DOT) numbers – showing a two year growth rate of approximately 22%; the traffic survey did not consider the gridlock at the South Tunnel Road intersection; the number of vehicles from the side streets were not considered in the input data; we are working toward capacity on Swannanoa River Road right now; there is gridlock even without the Wal-Mart being open; request that the lower end of Beechwood Road be closed; Council should not allow further development until the City has sufficient traffic infrastructure; there will be additional cut-through traffic on Overbrook Road because frustrated people who are tired of waiting will seek alternative routes; Overbook Road is small, has a single-lane, is winding and has a blind-curve and cannot handle cut-through traffic; do a pre-emptive traffic calming measure on Overbrook Road by either closing their road or installing speed bumps; current project will dramatically change the charm of the surrounding neighborhoods and the lifestyles of its residents; any additional square footage will ruin area's property values, peacefulness and sanity; there has been additional commercial development along Swannanoa River Road since the project was approved in 2002, thus increasing the traffic; most pedestrian traffic will contained in the Urban Village and is therefore not a traffic mitigation solution; changes are being made in neighborhoods and the residents are asking the City to compromise too; what will happen when the other businesses on Swannanoa River Road want to expand and they can't because the capacity of the road is full; the third access in River Ridge Shopping Center is not user-friendly; if intersections can be improved with synchronizing the lights, why hasn't it already been done; this has proceeded with the TRC, Planning & Zoning Commission and City Council too quickly and doesn't give the neighborhood associations to meet and prepare the this hearing; what will influence the owners at River Ridge Shopping Center to make improvements to the access there; request for a bike lane to be constructed on Swannanoa River Road; and request for a speed limit reduction on River Ridge Road:

Mr. Ned Guttman, President of the Redwood Forest Homeowners Group
Mr. John Granados, resident at 26 Overbrook Place (Neighborhood Exhibit 1)
Mr. Don Baker, resident at 15 Overbrook Road
A resident at 60 First Street
Mr. David Bailey; resident at 6 Beechwood Road in Redwood Forest
Mr. Christopher Fielden, President of the Community Supported Development
Mr. Fred English, Haw Creek resident
Ms. Barber Melton, member of Coalition of Asheville Neighborhoods
Ms. Debbie Applewhite, resident in Beverly Hills
Mr. Mike Moody, resident in Beverly Hills
Mr. William Lance, property owner in Beverly Hills
Ms. Bonnie Bailey
Mr. Steve Ritt, resident of 24 Swannnaview Drive

Ms. Sprague responded to various level of service questions from Mr. Guttman. Mr. Guttman stated that a statement was made that the overall level of service at the intersections at all times was level of service "D" or better. He wanted to ensure that was true even though there are many turning movements at various times at different intersections that have a level of service that is rather poor and in some cases gridlock.

Upon inquiry of Councilman Dunn, Ms. Sprague said that in performing a traffic analysis at an intersection, you take the peak hour and apply an additional peak hour factor, which means that you have it down to the worst 15 minutes. Her report was for a routine situation but also included the worst 15 minutes as well. In addition, she said that Mr. Butzek requested she look at the volume to capacity ratios of these movements, which she did. She said you can look at delay, which is what level of service is based on, and you can also look at volume to capacity ratio. She did both and Mr. Butzek reviewed them.

Upon inquiry of Mayor Worley, Ms. Sprague explained the TIA in the overall context of how you can have a number of intersections that are rated level of service "E" and yet come out with an overall analysis in the TIA that says it is an acceptable level of service.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that after review of the TIA, he is satisfied the TIA is a realistic estimate that looks at a reasonable estimation of the amount of traffic, the distribution of traffic, and what means are necessary to mitigate the traffic.

Mr. Butzek said that one of the conditions of Target's approval was that they widen Swannanoa River Road at South Tunnel Road by adding a second left-turn lane. We do expect that to be completed and that will help the gridlock at that intersection significantly. Regarding the congestion along South Tunnel Road, it is true there are many traffic signals through there that require very good coordination to move the traffic through. NC DOT has been working to install a coordinated system from the tunnel down to the last intersection near the Circuit City. Once that goes on line, that should improve conditions somewhat on South Tunnel Road.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the original approval on the conditional use permit was based on three access points. He said the third was a little nebulous because it was through the River Ridge Shopping Center, which at the time was under separate ownership. We were unsure of what kind of connection we would get. Home Properties now owns the River Ridge Shopping Center and is expected to make some improvements to that connection to better facilitate the traffic. There is some expectation that more traffic will utilize that connection. There is a very small amount of traffic put onto that connection when it was originally approved, but the current traffic study does anticipate more traffic using that connection.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that on a consistent basis there will be a marginal increase in traffic but it will fall within the typical standards.

At Councilman Newman's request, Mr. Butzek explained there will be a new traffic signal along Swannanoa River Road, which will be a location where people can currently drive straight through without stopping for a traffic signal. That signal operates at a level of service "C" or "D". At the intersection of Swannanoa River Road and South Tunnel Road, there is some increase in delay that will come from that additional traffic. It currently operates at a level of service "F" because of the turn-lane improvement that Target needs to make. Once that improvement comes on line and with the increase in traffic, that will bring our level of service to "D".

Upon inquiry of Councilman Newman, using a table (City Exhibit 9), Mr. Butzek explained what the existing traffic is on Swannanoa River Road, what the increase of 2% per year for two years will be, what traffic will be from the Wal-Mart/associated development; what traffic will be from the Urban Village; and what traffic will be from outparcel development.

In response to Councilman Newman, Mr Butzek explained why be believed that the 2% per year increase is a reasonable estimate.

Upon inquiry of Councilman Newman, Mr. Butzek described what a level of service "E" will look like on Swannanoa River Road.

Councilman Newman asked if the City will not recommend any further development on this part of the City that would add additional capacity to Swannanoa River Road when we reach level of service "E". Mr. Butzek said that his recommendation would be that if there is an improvement that can be made to reasonably mitigate that, he would recommend that. He feels that is a policy determination the City needs to make as to what level of service they want to commit within the City limits. "D" is the most common and we would recommend mitigation measures to preserve a level of service "D". There are other intersection improvements that could be made on Swannanoa River Road but they do get progressively more expensive, for example, adding lanes on South Tunnel Road at Swannanoa River Road. There are some other turn lanes that could be added at some fairly high costs and at some point it may mean widening the bridge on Wood Avenue to increase capacity if that becomes the most appropriate route.

Upon inquiry of Councilman Newman, Mr. Butzek explained that some of the 5% growth on Swannanoa River Road is attributed to the growth over the past two years.

Vice-Mayor Mumpower said that the 90% level is the level that we were considering in the original conditional use permit for Wal-Mart and the existing plan for the Urban Village. At that time staff recommended to us that we leave room for growth. He feels that this is considered new good growth - housing.

Upon inquiry of Mayor Worley, Mr. Shuford explained that growth of this type in some ways may generate less traffic than the same growth somewhere else.

Councilman Newman said that the irony to him is that this is a good development idea, but the problem is that the big box development adjacent to it has consumed all the highway capacity. Now we don't have the capacity to do redevelopments like this without using up most of the rest.

Mr. Butzek said that for the amount of traffic that is being generated on Swannanoa River Road from this development, he feels it is a good deal for the City (City Exhibits 10, 11 and 12).

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the City is not considering any traffic calming for Overbrook Road at this time. He said we will continue to monitor that area and consider it for prioritization in the traffic calming project. If Council determines that a specific allocation should be made, that would need to be done separately for this area, otherwise it will follow the same prioritization.

When Vice-Mayor Mumpower asked is the $50,000 a year allocation for traffic calming projects was enough, Mr. Butzek said that we would be more successful with a larger allocation. Fifty thousand dollars accomplishes typically one street per year. City Manager Westbrook said that the traffic calming process takes time and we are only able to do about $50,000 a year.

In response to Vice-Mayor Mumpower, Mr. Butzek said that the developer contributed $65,000 for traffic calming and that is being utilized in Redwood Forest to mitigate their traffic. We feel that once the traffic calming is complete, we will have mitigated that and improve the quality of life in that neighborhood. As with any transportation funding, more money accomplishes more, but as the City Manager pointed out, City staff is stretched trying to accomplish the projects we need to accomplish in neighborhoods around the City. If additional projects are developed, we would be requesting some portion of that to hiring a consultant or additional staff to augment our current forces. There are additional streets in that area that would love to have traffic calming. It would be beneficial to those communities if Council decides to make that recommendation.

Vice-Mayor Mumpower felt that if we are going to ask anything from the developer, rather than force affordable housing components on him, it seems like for asking some additional traffic mitigation monies might be a more appropriate course.

When Vice-Mayor Mumpower asked for a guesstimate on what might help have a further impact, Mr. Butzek said that the more allocated, the more they can do. He felt maybe an additional $50,000 might be fair to be used in other neighborhoods.

Upon inquiry of Councilman Davis, Mr. Butzek said that the developer is responsible for doing improvements in River Ridge where the intersection comes onto Fairview Road. That work is fairly minimal, which is limited to signs and markings. There was a condition placed on the Wal-Mart approval that Horne Properties spend a certain amount of money to improve that access road. That is separate from the operational changes that he is recommending.

In response to Vice-Mayor Mumpower, Mr. Shuford said that about October 19, 2004, City staff suggested that since the applicant had increased the amount of residential units from 164 to 240, there was an opportunity for affordable housing to be accommodated in that increase. City staff suggested a much larger number than 17 (40). We received a letter back from Mr. Day indicated that number was unacceptable so we put a smaller number in the staff report to Council. The basis we did that is because we have a city-wide policies to promote affordable housing opportunities. This is a fairly large scale development. It is a development that will have characteristics which will be very facilitative for affordable housing, such as the ability to be served by transit, the ability for people to walk easily to places of employment, and to walk for groceries and other services. It seemed like a natural opportunity to suggest that to the developer.

Vice-Mayor Mumpower can understand why we would want to have affordable housing there, but it seems like official blackmail to force them to do it. Mr. Shuford said this is a staff recommendation to City Council. Staff makes many recommendations to Council, some of which Council agrees with and some Council does not.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 10:45 p.m.

Councilman Newman moved to deny the conditional use permit modification to Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road. This motion was seconded by Councilwoman Jones.

Councilman Newman felt this fails to meet Condition No. 7 in terms of traffic impact. He thinks this is a really good development concept, but due to the other developments that have been approved as part of the larger development, we have used up almost all the capacity we have on Swannanoa River Road. We know that traffic will continue to grow on Swannanoa River Road even if there is no other development of other properties on that Road. We will very soon have an unacceptable level of service on Swannanoa River Road and if we approve this additional development intensity on the site, we will greatly hasten that day. Again, he feels the development concept is good and it's the kind of development we need more of in our community, but because of the transportation capacity limits we have on Swannanoa River Road, he doesn't think that it makes sense to approve it.

Vice-Mayor Mumpower said that based on the testimony, there is no question that it will have an impact, but this is new development. If we had a choice between another big box development or some of the other options down there, new residences is good. This is the epitome of everything we say we're going to support in this city and that we try to support in this city – it's an urban village. That is good growth. If we are going to be using that additional capacity at the artificial point of 90%, he can't imagine there is anything we could use it on that would meet our city guidelines, plans and our intent better than this.

Councilwoman Jones said that 90% was an artificial number, but it perhaps is artificially high. While this is a good development proposal, it is probably the largest development proposal that Asheville has seen in years and one neighborhood is taking the brunt of it. We all have good intentions but this is about public trust and for her, that 90% was a real big stretch and now to whittle away at it really is not fair to the neighborhoods that will be significantly impacted.

Councilman Newman said he didn't think this is a new development. This is the same development that came before City Council two years ago modified. He respects the integrity of the studies that have been done, but the original level of capacity on Swannanoa River Road was around 60%. If you have one development that goes from 60% of capacity to around 95% and that doesn't have a level of unacceptable traffic impact, it begs the question what would. He thinks it is too much.

The motion made by Councilman Newman and seconded by Councilwoman Jones to deny the conditional use permit modification failed on a 2-4 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Councilman Dunn moved for the adoption of Ordinance No. 3178, amending the conditional use permit for Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road, by amending Exhibit A, the level of development intensity approved for this project, to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented *{The remainder of the condition remains unchanged.}* This motion was seconded by Councilman Davis and carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Jones and Councilman Newman voting "no."

G. PUBLIC HEARING TO CONSIDER A MODIFICATION TO THE URBAN VILLAGE MASTER PLAN FOR PHASE II OF RIVER BEND MARKET PLACE TO PERMIT AN INCREASE IN DEVELOPMENT INTENSITY

ORDINANCE NO. 3179 - ORDINANCE GRANTING A MODIFICATION TO THE URBAN VILLAGE MASTER PLAN FOR PHASE II OF RIVER BEND MARKET PLACE TO PERMIT AN INCREASE IN DEVELOPMENT INTENSITY

Mayor Worley opened the public hearing at 10:51 p.m.

Mr. Alan Glines, Urban Planner, said that this is the consideration of granting a modification to the Urban Village Master Plan for Phase II of River Bend Market Place to permit an increase in development intensity. This public hearing was advertised on October 29 and November 5, 2004.

Mr. Glines said that his presentation on this matter was covered with the earlier public hearing on the conditional use permit modification.

Mr. Robert Deutsch, attorney for the developer, urged City Council support for this modification to the Urban Village Master Plan.

Mr. Steve Ritt asked how with the developers be financially responsible for the long-term environmental and socioeconomic factors. He said the large parking lot acts just like a roof washing all the water to the river.

Vice-Mayor Mumpower was uncomfortable with the way Council is going about the affordable housing aspect. He feels we should approve or disapprove the project on the basis of its merits.

Mr. David Day, Licensed General Contractor and developer of this project, said that after the Technical Review Committee meeting there was no mention was of doing affordable housing. However, after the meeting he received an e-mail requesting that they be able to incorporate an affordable housing component. We e-mailed them back and said no, that there is no way we can see that would happen. To his knowledge, he has not heard anything for sure that it would be a staff recommendation until a fax he received today. There was a discussion back then, but he did not realize it was going to become a recommendation.

Upon inquiry of Vice-Mayor Mumpower about the impact of the affordable housing component on the development, Mr. Day did not know financially. He said they would be willing to mix some 1, 2 and 3 bedroom units in the development so it would be more affordable for families or singles He said that to address the City's traffic concerns, other areas impose an impact fee on transportation and education; however, he doesn't recommend it but feels it should be considered. He would rather see $50,000 go toward transportation needs to help the neighborhoods, than to go toward demanding that they do affordable housing.

Regarding impact fees, City Attorney Oast said that our ability to use those in North Carolina is limited. Some cities have that authority and some cities don't. He thinks it is something that is being discussed at the legislative level, but it has not been authorized on a broad scale yet.

In response to Vice-Mayor Mumpower, Planning & Development Director Scott Shuford said that the City may see more revenue from the 18 acres of the Urban Village than from the 60 acres of the big box. He anticipated a $60-70 Million tax base.

Vice-Mayor Mumpower asked if the City took affordable housing off the board, is there anything the developer might propose to Council to further assist us with traffic mitigation in the area of this project. Mr. Day felt the problem is that the City needs to acquire more right-of-way for more lanes.

Mr. Butzek said that there are two types of traffic mitigation. One is capacity improvements (turn lanes, etc.) which some may need right-of-way. The other was neighborhood traffic management. From a neighborhood traffic management standpoint additional funds could be used, with the understanding that some of that money may be used to hire a consultant to bolster our staff.

Upon inquiry of Councilwoman Jones about the traffic generated from a proposed movie theatre in one of the outparcels, Mr. Shuford said that the movie theatre is shown as a potential future development. Should a movie theatre be proposed, the peak hours for the movie theatre are not lining up typically for some of the other things He said that in the Wal-Mart project proper there were two outparcels proposed for that location. One outparcel was permitted under the original conditional use permit and the one was taken off the table to make the transportation numbers work. The one outparcel that was taken off the table may come back to Council in a process similar to this. The are talking about a 7,500 square foot restaurant use.

Upon inquiry of Councilman Davis, Mr. Shuford said there is a large number of recommendations about affordable housing in the 2025 Plan. We didn't specifically target them to any specific type of development.

In response to Vice-Mayor Mumpower, Mr. Shuford said that we have a variety of different incentives for developers to build affordable housing. Councilman Newman pointed out that an affordable housing component was a requirement of the contract with the Grove Park Inn for the development of the City-owned property.

Mr. Day said that one of staff's recommends is that a roundabout or a turn lane from the Wal-Mart coming into the Urban Village be constructed as a result of the TIA. He offered that the developer construct the roundabout, which will cost about $125,000. In addition, he offered $25,000 to go toward transportation needs in the City and hoped the City would match that amount.

Councilman Dunn felt that that the City should not be forcing the developer to build affordable units. He also felt that to require the developer to pay for the roundabout and also pay for more traffic mitigation was a little heavy handed too.

Upon inquiry of Councilwoman Jones, Mr. Day said that a 3-bedroom condominium will be approximately $275,000, and one and two bedrooms will be adjusted accordingly.

In response to Councilman Newman, Mr. Shuford said that other than what was discussed here, he did not know of any other developments proposed on Swannanoa River Road.

Mr. Shuford pointed out that the Wal-Mart developer built a new public road, which is a substantial transportation enhancement to the betterment of the City of well over $1 Million. They also gave $65,000 for traffic calming for other areas.

In response to Councilwoman Jones, Mr. Shuford said that in his study of urban villages that have most recently occurred, they have not really been affordable from a residential standpoint.

Councilwoman Jones said that she appreciates staff trying to fold the affordable housing aspect in. She felt we need to educate people what affordable housing is, and that it is not public housing. Affordable housing is for our working professionals. She thinks this is a way to improve our community. She felt that 17 affordable units is a very small number compared to the huge increase of residential units they requested.

Councilman Newman said that if the project of this scale is approved, in conjunction with all the other related developments on it, it basically uses up all our development capacity in this entire part of the City, unless we widen Swannanoa River Road that we built with our taxpayer money. We may not be able to build other projects that have affordable housing over in this part of the City because we don't have any highway capacity left. If we don't get some affordable housing in projects like this, we may not be able to do a lot more. He noted that the City is only requesting 7% of the units be priced at $130,000 or less.

Councilman Dunn said that the tax revenue generated from this development will allow the City to build infrastructure elsewhere in the City for affordable housing. This is a significant amount of tax base coming to the City.

At 11:22 p.m., Mayor Worley closed the public hearing.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3179, granting a modification to the Urban Village Master Plan for Phase II of River Bend Market Place to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director; (3) the developer construct and assume all costs for a roundabout at the intersection of Bleachery Boulevard with the River Ridge connector; (4) the developer pay an additional $25,000 for traffic mitigation; (5) that the developer change the plan for the roadway striping on the new bridge that is being constructed over the Swannanoa River to show a left, a through and a right coming out of the development; (6) that the developer provide a walking path and a right-of-way to connect to the River Ridge Shopping Center; and (7) that the developer implement changes in the traffic control to the River Ridge Shopping Center internal intersection, which traffic control would favor movements following the new connection in and out and that appropriate signage be installed to make sure that is a safe movement. This motion was seconded by Councilman Davis and carried unanimously.

Councilman Jones moved to amend the motion to include the condition that not less than 17 residential units shall be priced at an affordable level ($130,000 for a 2 or more bedroom unit) at time of initial sale. This motion was seconded by Councilman Newman and failed on a 2-4 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

The original motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried on a 4-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3180 - ORDINANCE AMENDING THE FEES AND CHARGES MANUAL ESTABLISHING FEES TO SUPPORT AFFORDABLE HOUSING AND THE OPERATIONS OF THE BUILDING SAFETY DEPARTMENT

Building Safety Director Terry Summey said that this is the consideration of amending the Fees & Charges Manual to implement portions of the City Council's 2004 Strategic Operating Plan.

The Fiscal Year 2004/05 budget proposed amendments to the Fees and Charges Manual to promote the construction of Affordable Housing (AH) and provide 95% operational cost to the Building Safety Department. Council members requested that the proposed amendments receive further review from the public. For the past 6 months, the proposed amendments have been in the possession of the public. To date, no objections or changes have been received from the public or the Development Review Task Force. The amended fees incorporate several proposed goals in the Strategic Operating Plan to include the following:

- Housing Opportunities Goal #1: Increased development incentives for AH – Create incentives and revise the permitting process throughout the City to encourage AH.
  - Objective A. Increase incentives to invest in AH (work to decrease fees and revise development specifications.
    Task#1: Revise fees- (new ranges and reductions) increase AH incentives.
    Task#2: Increase AH Cap-extension of incentives to ensure more AH

- Economic Development Goal #2: Efficient/economical permitting process – Reform to make more conducive to do business in Asheville.
  - Objective B. Encourage independent business development-reduce permitting costs for subcontractors and small renovation projects.
    Task #1: Revise fees/charges structure (subcontractors- more work/smaller fee).

Pros
- Fees support public relations: encourages the development of affordable housing.
- Fee changes support the cost of services provided.
- Public/Industry: No changes or negative comments received in over 6 months of promotion.

Cons - None

Staff recommends City Council adopt the ordinance to amend the Fees and Charges Manual to support AH and the cost of services, effective December 1, 2004.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3180. This motion was seconded by Councilman Davis and carried unanimously.

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VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of October 1-14, 2004: Ben Pace (Water), Linda Black (Sanitation), Amy Lunsford (Sanitation) and Asheville Investments (Police).

The following claims were received during the period of October 15-28, 2044: BellSouth (Streets), Jamie Hutchison (Water), Terry Lee Edgerton (Parks & Recreation), John Petty (Police), Larry Sanders (Transit Services), Charter Communications (Water) and Aban Fritsch (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English, resident in Haw Creek, showed pictures to Council of the poor condition of his street on Pressley Road in Haw Creek. He requested funds be allocated for improvements in the Haw Creek area.

After Vice-Mayor Mumpower discovered that City Council voted on the ordinance regarding fees and charges for affordable housing and fees for the Building Safety Department while he was out of the room (he stated that he indicated he was going to take a break after three hours, which was after the modification to the Urban Village District motion), he felt it was inappropriate to move forward with that vote.

A man who spoke earlier in the modification to the conditional use permit for River Ben Market Place, felt that traffic should have been mitigated by having a mixed residential use in the Urban Village so that people who work in that development could walk to work. He also noted that the traffic mitigations have not been approved by the Redwood Forest neighborhood.

Mr. Michael Patterson, representing Horne Properties, said that the traffic from the outparcel on Phase I of the River Bend project is already incorporated in the Traffic Impact Analysis approved by Council tonight in the conditional use permit modification for River Bend Market Phase.

Ms. Tiffany Kyle, said that in the State's ABC audit of Store No. 3 there was $244,411 reported in 2002 of employee theft and employee embezzlement. After working for the ABC for 13 years, her mother Robin Jones, was wrongfully charged with around $119,000 embezzlement. She questioned where is the rest of the money is that was embezzled. With all of the findings and all of the misused funds found by the Deloitte report and State auditors, why hasn't the SBI or a CPA been brought in to look at everything from 2000 to the present. After that is done, the real truth will be brought out.

Mr. Joe Smith felt that when the Chair of the ABC Board was brought in before Council she failed to adequately answer Council's questions. He felt she should not be reappointed and that she should have been coming forthcoming with answers. Councilman Dunn noted that the District Attorney has advised him that the ABC Board records from 2001 back have all disappeared.

Vice-Mayor Mumpower made the following announcements: (1) a vacancy on the Recreation Board; (2) the importance of Veterans Day on November 11; (3) appreciation to everyone for the For Our Kids day event at McCormick Heights; and (4) recognition of Kathryn Reynolds , Hillcrest resident, for her exceptional effort of cleaning up around her development.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:42 p.m.

Magdalen Bourdeaux
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 16, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Community Meeting – November 30, 2004 – Central Area – Public Works Facility

It was the consensus of City Council to postpone this meeting until the next fifth Tuesday of the month.

Budget Amendment for Traffic Calming Improvements from River Bend Development

Summary: The consideration of a budget ordinance amendment, in the amount of $65,000, from Riverbend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

As part of the conditional use permit for the River Bend Development on Swannanoa River Road, City Council approved a requirement that the developer contribute $65,000 to traffic calming improvements to the surrounding neighborhoods. Staff has been working with Redwood Forest to develop a traffic calming plan. If any funds are remaining after the work in the Redwood Forest Community is completed, staff will work with the Beverly Hills and Oakley neighborhoods to see if any traffic calming measures can be installed in these areas.

Pro

- This money allows traffic calming to be installed in a neighborhood without the City taxpayers funding the improvements.

Con

- The money collected from the developer may not be enough to do as much traffic calming as staff and the neighborhoods would like to complete in the neighborhoods that are impacted by the development.

This request meets Goal #2 in the focus area of Planning in the Strategic Operating Plan:

Goal #2: A multi-modal and congestion management transportation program - In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective 1 Develop a framework for multimodal transportation planning that is based on system performance, is responsive to decision makers and customers, and provides the basis for allocating resources. Task 2) Leverage outside funding to achieve multiple transportation goals where possible

City staff recommends City Council approve the budget amendment, in the amount of $65,000, from River Bend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

City Engineer Cathy Ball responded to questions from Council about the plan for improvements and what if the improvements are more or less than the $65,000 allocated.

Re-Designation of State Development Zone

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone as proposed.

The State of North Carolina has designated certain census tracts and census block groups in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas.

The current State Development Zone for Asheville will expire on December 31, 2004. Application for re-designation is due and, if approved, will take effect January 1, 2005, for a period of one year.

While complete data from all previous years of the State Development Zone program are not available, figures from the years 1999 to 2001 reflect that Asheville saw 19 new jobs created, $6,789,365 invested in machinery and equipment, and $300,235 in tax credit generated within the Development Zone.

Pursuant to the state-mandated guidelines, staff has determined the largest possible area for inclusion in the Development Zone. This area is unchanged from the current designation, approved in 2002. The total zone must have a minimum of 20% population below the poverty level.

Re-designating the Development Zone would provide multiple opportunities to further the City of Asheville's goals as described in the Strategic Operating Plan. The program is designed to stimulate new job creation and employment training, giving more citizens a chance to prosper. The economic incentives also encourage small business development, as well as downtown development, as the Central Business District is located within the Development Zone.

Advantages: Continued incentives for investment in economically distressed areas.

Disadvantages: None.

Staff recommends approval of the resolution defining the State Development Zone to be effective January 1, 2005, through January 1, 2006.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

URTV MANAGEMENT AGREEMENT

Assistant City Manager Jeff Richardson said that this is the consideration of a resolution adopting a final draft of the Management Agreement.

Asheville City Council passed an ordinance on December 16, 2003, authorizing the City Manager to negotiate with URTV, Inc. on behalf of the City, to manage and operate the public access channel provided for in City Ordinance 2500, subject to the following:

1. Compliance with the interlocal agreement adopted on November 25, 2003, with Buncombe County government.

2. That the by-laws of URTV, Inc. provide that the City Council and Buncombe County Commissioners shall each appoint two members to the board of directors of URTV, Inc., and that said appointment power be perpetual for the life of URTV, Inc., and that the membership shall not exceed eleven.
3. That the agreement as negotiated be subject to final approval by City Council.

City Council provided direction to staff that the following must be included in the final draft of the management agreement:

1. There needs to be a unilateral way to cancel the agreement, with or without cause.
2. All financials must be open for public inspection.
3. Diversity language is included.
4. Council liaison role must be stated in the contract, with a copy of the meeting agenda shared with the City of Asheville.
5. URTV, Inc is not able to switch funding between capital and operating fund accounts without City Council approval, once yearly funding allocations are made.

Based on this direction, staff worked to insure this language is included in the enclosed draft.

Other key components of the agreement include:

- A performance review clause that enables the City to conduct performance review audits annually by an independent entity chosen by the City.
- Language encouraging a minimum of four hours of programming per month which discusses local issues and meets the needs of an underserved segment of the community
- Quarterly reporting to the City Manager that includes information on budget tracking, program production, uses of resources and services, revenue generation, to include efforts on grant funding, and other related reporting.

Staff has reviewed URTV's proposed budget for the initial year of inception and operation and has determined that the list of capital items as outlined is consistent with necessary initial start-up costs associated with equipment, maintenance, support, and facilities.

Finally, please be advised that Buncombe County Commissioners, in coordination with the Asheville City Council, will need to formally address and consider URTV, Inc. and their operational needs for initial start-up and on-going needs throughout the first year. The County's final allocation will have a direct affect on URTV, Inc.'s ability to provide services as outlined.

With Council's approval, a budget amendment will be forthcoming after the Buncombe County Commissioners have made a final decision on the level of funding for this fiscal year to ensure that the capital and operating budgets align accordingly.

Staff recommends City Council consider adoption of the proposed management agreement with URTV, Inc., to be used as the primary tool for the City to use regarding PEG fee funding allocation on a year-to-year basis, unless otherwise stipulated by City Council.

Mr. Mark Wilson, Vice-Chair of the URTV Inc. Board of Directors, said they have grown their board to its full size, organized committees, visited potential locations, developed budgets and equipment lists and participated in forums about the larger media industry in western North Carolina. Their most significant accomplishment has been the negotiation of this management agreement with City staff. The Board is in complete accord regarding the management agreement as it has been recommended to Council by City staff. With Council's approval of the

agreement, they can begin the process of building this facility in earnest. When it is complete and operational citizens of Asheville and Buncombe County will be able to participate in a shared resource that will reflect all of the excitement, all of the voices and all of the values that make up this community. This agreement outlines URTV's responsibilities. URTV will provide local producers with the equipment, space and training to develop and produce programming which will air on the cable channel provided by Charter. We will not be producing any programming of our own. Responsibility for program content will be borne by the producers, each of whom will be required to sign an agreement that they will abide by the content guidelines we have established and that reflect community and FCC regulation standards. Conflicts and complaints about program content will be referred to a separate independent advisory panel who will recommend appropriate action. All of the money that URTV will receive from Charter through the City will go toward capital expenditures only. All operational funding will come from Buncombe County and will governed by a separate management agreement. We believe that the URTV Center will become the focal point of this important economic and cultural phenomenon. URTV will be a state of the art tool that will give voice to educators, social service providers, artists, churches, performers, government organizations, and ordinary citizens. It will help train and educate a potential future workforce for this growing segment of our local economy and it will help to unify and celebrate our unique mountain culture. We hope that the City Council share the sense of partnership and interest demonstrated by City staff as we crafted this management agreement. We are confident that once URTV is operational that Council will be able to take no small measure of pride in providing such a vital, important and enduring opportunity to the citizens of Asheville.

Throughout the discussion by Council, Mr. Wilson and members of the URTV Board answered various questions from Council, some being, but are not limited to: is the rent factor in the budget realistic; does the management agreement provide parameters for a reasonable opportunity to operate; what specific criteria will the producers have to follow; is the City open up for a lawsuit if programming is inappropriate; what are the termination provisions of the management agreement; how is the board functioning as a group; will individuals be able to block the channel or is there a way for people to opt out of the channel altogether in their basic package; will religious and political programming be allowed; how will the equipment and materials be maintained; does our agreement dovetail with the agreement with Buncombe County; is the programming non-commercial; if a programming was played consistently or out of primetime, would that invalidate our agreement; what would happen if a candidate raised an issue that they are not being treated fairly regarding program time; and has the City appointed a liaison to the Board.

Councilman Dunn felt that if Charter has the capability of letting the City know how many people are blocking the channel, it can be a useful tool to measure the success in two years from now.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ASHEVILLE STORMWATER PROGRAM UPDATE

City Engineer Cathy Ball said that this is an update City Council on the status of the recommendations from the Asheville Stormwater Advisory Committee (SAC).

In November 2003, City Council authorized City staff to complete a study to determine if a stormwater enterprise fund was a feasible method for funding stormwater quantity and quality needs in the City of Asheville. Part of this feasibility study was to establish a stakeholders group to evaluate the needs of the Stormwater Program and recommend a funding mechanism.

As you may recall, the City of Asheville must comply with the Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) Permitting and Stormwater Phase II Regulations as part of the Federal Clean Water Act. In March 2003, City Council approved a plan to comply with the "Six Minimum Measures" of the regulations, including strategies for:

- Public Education and Outreach
- Public Participation and Involvement in Implementing the Plan
- Detection and Elimination of Illicit Discharges
- Construction site Run-off Control
- Post-Construction Run-off Control, and
- Pollution Prevention and Good Housekeeping by the Municipality.

The SAC has served as an advisor to the City Manager since June 2004. City staff contracted with McGill Associates to serve as facilitator to the group as well as provide engineering and financial assistance to the group.

Pros:

- An enterprise fund would provide a dedicated funding source to address stormwater needs.
- The fee would be equitable in that users would pay a fee based on the amount of impervious surface they have.
- Non-residential customers would pay the majority of the cost of the program.
- This fee does not distinguish between for-profit and non-profit organizations

Con:

- Staff would need to spend time educating the public on the need for this program.

This recommendation meets the City's Strategic Goal in the focus area of Natural and Built Environment:

Goal #1 - A high quality of air and water – Enhance and preserve air and water quality through comprehensive efforts.
Objective D - Improve water quality by complying with EPQA Federal NPDES – Phase II Stormwater Rules.
Task #2 - Adopt and implement a stormwater fee.

City staff requests City Council take action on the SAC's recommendation on December 14, 2004, which is to adopt an ordinance establishing an enterprise fund to pay for a comprehensive stormwater program. The ordinance would not be effective until July 1, 2005. She said that staff is not asking Council to set the rates at this time, as the rates will be a part of the budget structure and would be developed as part of the 2005-06 budget.

Mr. Joel Storrow, President of McGill Associates, made a brief presentation of the SAC's findings and recommendations. He said that managing stormwater has become a strategic issue in Asheville.

Mr. Storrow explained the federal and state mandate: (1)under EPA's Phase II Rules, Asheville must develop, implement and enforce a stormwater management program; (2) the program must reduce the discharge of pollutants to the "maximum extent practicable" to protect water quality; (3) the program must address 6 minimum control measures: (a) public education and outreach; (b) public participation/involvement; (c) illicit discharge detection and elimination; (d) construction site runoff control; (e) post-construction runoff control; and (f) pollution prevention/good housekeeping; (4) Asheville must select "Best Management Practices" (BMP)

and measurable goals for each minimum measure; and (5) This program must be approved by the State.

Asheville's permit status is (1) The City's present stormwater program addresses only construction site runoff control; (2) Asheville has been issued a 5-year permit for a proposed stormwater program; (3) The permit addresses the 6 minimum measures and prescribes a schedule and BMP's for each measure; and (4) The initial permit requirements must be implemented by March 10, 2005.

He explained that the City Manager appointed the Stormwater Advisory Committee in June, 2004. The SAC was established to advise the Manager on matters related to the Phase II stormwater requirements. The established objective of the SAC is to: "Assist the City in implementation of a compliant stormwater program that serves the best interests of the community." He then introduced the SAC members and the areas they represented. He outlined SAC's activities: (1) they held 6 general meetings; (2) reviewed federal and state stormwater mandates and the requirements of the City's stormwater permit; (3) became familiar with City's current soil erosion, sedimentation control, and stormwater ordinances; (4) reviewed the impervious surfaces inventory; (5) heard case studies of other NC Stormwater Programs; (6) identified and prioritized key features of a local stormwater program; (7) developed an annual budget for the stormwater program; and (8) considered alternative program funding vehicles.

He outlined the stormwater priorities: (1) at a minimum, comply with federal and state mandates by protecting and improving water quality; (2) the City must dedicate resources to improve the condition of the existing stormwater system; (3) additional resources are needed for education on water quality issues; (4) attention must be given to the existing system to support future growth; and (5) already our inattention is demonstrated by area flooding and property damage.

He said that key elements of the proposed stormwater program consist of the Engineering Department being responsible for (1) public education about stormwater; (2) program administration and planning; and (3) regulation of stormwater releases. The Public Works Department would be responsible for (1) system operation and maintenance; and (2) rehabilitation of infrastructure.

Regarding current program costs, he said the City will spent about $800,000 for its stormwater program in the current fiscal year. These costs are itemized as follows: (1) in City Engineering, mapping is $12,000 and construction site runoff control is $90,000; and (2) in the Public Works Department, system maintenance is $226,200 and construction is $471,000. Total budget - $799,200.

Regarding allocation of future program costs, (1) the annual stormwater program costs would increase to increase to $2.5 Million (64% would be allocated to increasing capital expenditures to improve the stormwater system and 36% of the increased cost is attributed to stormwater planning, education and regulation); (2) the projected costs are considered minimum for (1) compliance with the federal and state mandate; (2) public education; (3) capital planning; (4) maintenance of the current system; and (5) development of new infrastructure and major repairs to existing facilities.

Their decision is not whether there will be a stormwater program, but what will the scope of the program be and how to pay for it. There are two options for funding the program: The General Fund and an Enterprise Fund.

Regarding the General Fund, the current stormwater program is funded from the General Fund, where the burden of the program is borne solely by those who pay taxes. The burden of

General Fund programs is borne solely by those who pay property taxes. Tax-exempt properties such as hospitals, schools, churches and institutions are contributors, but do not pay. There is no relationship between who pays and who benefits. Those properties which generate stormwater and the quantities of stormwater generated do not influence the monetary contributions. This raises a question of equity.

Regarding the Enterprise Fund, the fundamental concept is that the properties that contribute pay in proportion to their contribution. This is accomplished by calculating the magnitude of impervious surface for each contributor. This system recognizes the contribution of contributors such as UNC-Asheville, hospitals, state government, federal institutions and others that pay no property taxes. This eases the burden on residences and businesses. There is a direct relationship between stormwater contributions and payments.

He explained the comparison of funding alternations. The proposed stormwater program would require approximately 3.87 cents on the tax rate, if it remains in the General Fund. Based on the present estimates of the impervious areas, a basic residential equivalent fee of $2.00 to $2.50 per month would yield revenues to support the proposed annual program. Fee would increase according to the amount of impervious area. The majority of the estimated revenue for the program would come from non-single family land uses.

He then reviewed with Council the monthly residential fees for other stormwater programs in North Carolina cities.

Mr. Storrow reviewed with Council the SAC's recommendations: (1) They recommend that the existing stormwater program be expanded to meet the regulatory mandate to protect and preserve water quality and educate the public; (2) They recommend that the stormwater program be expanded to provide capital necessary to operate and maintain the system and provide for future needs; (3) They recommend funding the stormwater program with a newly created self-sustaining Enterprise Fund; (4) They suggest tiering residential billing categories to promote affordability; and (5) They recommend developing a credited system that encourages users to improve water quality.

He said that establishing an effective stormwater program is the important matter before the City. The scope of the proposed program represents a balanced affordable starting point.

Throughout the discussion, Ms. Ball responded to various questions and comments from Council, some being, but are not limited to: when will the technical component be completed so developers will know what they have to comply with; what will the educational program consist of; how was the non-residential fee range calculated; how are the measurements taken; are aerial maps and field inspections used to determine the amount of impervious surfaces; is the a process for the customer to question a bill; will individuals that go above and beyond the ordinance be apply to have a reduction in their fee; what is the difference from our existing stormwater ordinance; has City Council sent out a letter to our legislators protesting this unfunded mandate; is 36% too much for education when it seems like this is more of an infrastructure issue; how many staff will needed to be hired to implement this program; will the new staff hired do more than education; will this program address localized flooding; will there be some investment the City can make in areas like Pebble Creek, Crowfields and Ballentree; will poor development issues be addressed with this money; what is the specific outcomes that we would want to be different than if we didn't invest in education; will the master plan be done in phases; is the education percentage flexible; what components does Buncombe County have to comply with;

City Manager Westbrook said that the City has never invested the amount of money really needed for stormwater. We don't have some basic backbone infrastructures. We have stormwater control in some areas, but we don't have it networked together to where it finally

winds up in the river and it's filtered the best we can. You overlay that issue of funding in the past with our topography and we will need to spend several years to get curselves in a position to start making major progress.

Councilwoman Jones felt this is a quality of life issue. It sounds like this will really help our community. It would have been great if the federal government could have helped with funding, but in terms of the product we will have, it will help our life in Asheville.

Ms. Ball requested Council to make a decision on December 14, 2004, if this is an appropriate way to fund this unfunded mandate. Is this methodology appropriate to assess people based upon the amount of impervious surface that they have. Other than saying there will be a crediting system, it will be set up in tiers, and it will be implemented on July 1, 2005 - that is all Council is making a decision on. The Enterprise Fund budget will be put together along with what we are going to do with it and presented to Council as part of the budget. Council will then, as part of the budget process, decide on how much the City wants to spend, what we are going to get for that money, and how much on a per user fee will that cost the residential user. The whole separate issue is the technical part - what will the development community have to do when they develop. That ordinance will have to be adopted prior to March 10, 2005.

Councilman Davis wanted an emphasis put on this during the budget process so that there is an opportunity to review this in more detail than we may for one that has been in place for the past five years. City Manager Westbrook also noted that City Council will set the budget for the educational component.

Councilman Newman wanted to learn more about the thinking in terms of what we hope to get out of the educational initiative. This might be the kind of issue that there may be some key groups or organizations that we need to target education around, like the development community. He hoped there will be an opportunity to learn more about SAC's ideas around education before we get fully into the budget process itself.

Councilwoman Jones felt that to develop an Enterprise Fund now will take a little bit of the burden off our taxpayers, because organizations like hospitals, etc. will have to pay a fee for their participation in water quality.

Vice-Mayor Mumpower felt the 36% for education was too high a figure and felt that more money should go into infrastructure.

Councilwoman Jones thanked SAC for their work and recommendations on this issue. As with all other Council committees that bring recommendations to the table, City Council has the discretion and judgment whether or not to implement all, some or none of those recommendations.

On behalf of City Council, Mayor Worley thanked the members of SAC for their hard work and effort on bringing these recommendations to Council.

At 4:52 p.m., Mayor Worley announced a short break.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on November 23, 2004. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Clarification of Two Standards for Bed and Breakfast Inns

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide clarification of two standards for bed and breakfast homestays and inns.

In working with the Unified Development Ordinance (UDO) requirements for bed and breakfasts, the Planning & Development staff has found two statements requiring clarification for the intent to be more clearly understood by developers and property owners. Specifically, the question of how to measure square footage is further defined as "gross floor area" (as defined in Section 7-2-5). The other amendment is intended to clarify that existing bed and breakfast homestays and inns that are legal, nonconforming only due to the separation requirements of 500 feet can be further expanded as long as they comply with other applicable development standards.

Pros –

- Requirements for bed and breakfast uses will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –

- It is possible that certain property owners will disagree with the intent to allow existing bed and breakfasts to expand if only nonconforming due to the separation requirements.

The Planning and Zoning Commission unanimously recommended approval of these code amendments on October 6, 2004, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Elimination of Level III Review of Industrial Uses

Planning and Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to eliminate Level III review of industrial uses.

This code amendment deletes the requirement for industrial developments to receive Level III review, thereby allowing them to be approved without public hearing by the Planning and Zoning Commission and City Council. The intent is to expedite the review and permitting of industrial developments consistent with Goal 2/Economic Development of the Strategic Operating Plan which states: Reform the permitting process to make it more conducive to do business in Asheville.

Large projects would still be heard by the Technical Review Committee (TRC); all existing buffering, landscaping and other site design requirements would apply to the projects. In addition, the change would apply only to properties already zoned for industrial uses; any needed

zoning changes (for example, a change from Highway Business to Industrial) would still require Planning and Zoning Commission and City Council consideration.

Pros:

- Provides a tool to make Asheville more competitive in economic development
- Streamlines the development review process consistent with general Council direction

Con:

- Removes opportunities for the public to be heard on site design issues (although these projects will still receive TRC review)

On November 3, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Councilman Newman, Mr. Shuford said that he would provide a map prior to the public hearing on the areas in which Industrial and Community Industrial zoning categories would apply.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these public hearings on the formal City Council agendas.

HOUSING REHABILITATION LOAN APPROVAL PROCESS

Field Services Coordinator Ed Vess said that this is the consideration of a resolution affirming the revisions to the city-wide housing rehabilitation loan approval process.

The Community Development Director and Planning and Development Director were authorized by City Council Resolution # 95-116 on July 25, 1995, to approve housing rehabilitation loans, with the form of the documentation for such loans to be subject to the approval of the City Attorney. No loan limit was established by Resolution # 95-116, rather the underwriting guidelines and budgetary authority are the effective loan limits.

In 1995, the loans did not generally exceed $40,000. Over the years since then the loans have regularly exceeded that amount and with the authorization of the Section 108 funding of CARROT loans in 1999, some multi-family projects have been approved for several hundred thousand dollars.

Loan applications go through a very stringent underwriting process to assess the credit worthiness of the borrower and the financial strength of the project. Loans to low income homeowners must be affordable. Multi-family projects must be able to operate independently and produce a positive cash flow.

Although the underwriting process provides the technical information required to make the loan approval decision, staff along with guidance from the Housing and Community Development Committee and City Manager have established the following process which provides a higher level of review and approval for larger loans:

"Applications for FAIR and CARROT loans not to exceed the maximum allowed for rehabilitation of a single unit under the FAIR program may be approved by the Community Development Director or the Planning and Development Director. All other rehabilitation loan applications may be approved by the City Manager upon recommendation by the Rehabilitation Loan Committee which shall consist of the Director of Finance or her/his designee, the Director of

Audit and Budget or her/his designee, and the Director of Planning and Development or her/his designee."

The advantages of this process are:

- The expertise of senior staff is availed to review the work of Division staff before large loan commitments are issued.
- Approval authority for large loan is more appropriately placed at the highest administrative level.
- Smaller homeowner loan approval remains at the Department/Division level for efficiency.
- Administrative review and approval of loans helps maintain the financial privacy of applicants.

City staff recommends City Council adopt the resolution affirming the revisions to the housing rehabilitation loan approval process.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

REVISIONS TO THE OUTSIDE AGENCY POLICY

Budget Director Ben Durant said that this is the consideration of a resolution approving revisions to the City's Outside Agency Policy.

Staff has developed proposed revisions to the City's Outside Agency Policy, which was first adopted in 2001, to guide the Outside Agency Committee's process for evaluating outside agency funding requests. The purpose of the proposed changes is to strengthen the current outside agency review process and allow, on a limited basis, for Council to award non-compatitive grants. Specific revision and/or additions to the policy are as follows:

- The Committee may conduct formal interviews with specific agencies as needed to resolve questions about specific programs.
- The grant application requires a complete agency budget and an annual outside audit, as well as a certification of complete and accurate financial data.
- Under very limited circumstances, City funding may be given in the form of non-competitive grants. These grants may be made to organizations that function as quasi-divisions of the City, or as payment under existing contracts authorized by City Council.
- The Outside Agency Committee will complete its review of outside agency requests prior to May and will present its recommendations, along with staff's recommendations, to the full City Council as part of the City Manager's presentation of the annual operating budget.

The Outside Agency Committee has reviewed a draft of the revised policy.

The proposed revisions relate to the City's Strategic Operating Plan in the *Community Building* focus area, and more specifically, Council's goal to "re-evaluate Council decision-making and public input processes and develop a strategy that results in both healthy dialogue and effective decision making".

Pros: The policy revisions will strengthen the review process and make the City requires for the outside agency program clear to various non-profit agencies.

Con: The City may see a proliferation of agencies seeking non-competitive grant status.

City staff recommends City Council adopt the City's revised Outside Agency Policy.

In response to Councilwoman Jones, Mr. Durant said that the agencies will be given a form to sign that will serve as the certification of complete and accurate financial data.

Upon inquiry of Councilwoman Jones, Mr. Durant explained how the Outside Agency Committee is using the feedback that the agencies give to the City on the process.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

USE OF INFRASTRUCTURE FUNDS TO ASSIST AFFORDABLE HOUSING

Field Services Coordinator Ed Voss said that this is the consideration of a resolution approving the use of $200,000 in capital funds for affordable housing infrastructure.

The Fiscal Year 2005 budget includes a capital appropriation of $200,000 for infrastructure improvements to assist the development of affordable housing. At its meeting on November 8, 2004, the Housing and Community Development Committee considered a range of possible uses for this funding that would:

a. Remove specific barriers, e.g. inadequate water supply, so that hard-to-develop land becomes available for development
b. Encourage infill development on vacant urban lots rather than extending infrastructure to 'green field' sites
c. Get the greatest possible housing benefit (no. of affordable units for $$ spent)
d. Make funds available in an equitable manner
e. Increase the tax base
f. Spend funds within a reasonable time period

The Committee recommends using the funds in the first place to support developments that receive low interest loans from the Housing Trust Fund. By offering City funds to pay for necessary offsite infrastructure improvements, such as water line upgrades, or sewer line extensions, it is hoped to encourage the development of affordable housing on sites that have had significant barriers to development.

This approach has advantages over using the funds to address one or more priority infrastructure needs Citywide, since it will be certain that affordable housing will be built as a result of the expenditure.

Other uses of funds considered feasible by the Committee were:

- To hold funds in reserve to address infrastructure concerns arising in relation to future affordable housing developments, case by case
- To resolve infrastructure problems on City-owned lots to make them suitable for housing development

If Council wishes to pursue the Committee's first recommendation, time is of the essence, as this year's Housing Trust Funds Request for Proposals (RFP) has already been issued, with a deadline of January 7.

Advantages:

- Encourages development of sites that have infrastructure barriers

- Ties expenditures to development of affordable housing
- Increases tax base
- Depending on nature of improvements, may spur development of nearby sites
- Makes funds available in an equitable manner, through a competitive RFP process

Disadvantages:

- 2005 Housing Trust Fund RFP has already been issued – all applicants may not see this additional source of assistance
- May be too late for developers to reconsider sites previously considered undevelopable
- Once-a-year RFP may not identify the best possible projects
- May not use all the funds in this round

City staff recommends City Council use all or part of the $200,000 capital appropriation to provide off-site infrastructure improvements necessary for the development of affordable housing that is also assisted with the City's Housing Trust Fund.

Councilman Newman felt this was a good approach to the use of these resources. He felt Council needs to think through whether this is a one-time investment to address the creation of more affordable housing and similar related issues around quality of life in neighborhoods that have high concentrations of poverty.

After Vice-Mayor Mumpower confirmed that this is the $200,000 Council appropriated for the safe neighborhood initiative, he questioned whether this is the appropriate utilization of our limited funds. Our charge to address affordable housing, as a city government, is directly with funds is suspect at best and although he philosophy wouldn't agree with us getting involved in that he would disagree with us getting involved in it to the extent that we pull money away from what is a major responsibility – law enforcement, specifically hard drug intervention. That $200,000 that we would put into something that may indirectly have an impact on our hard drug problem could be much more directly potentially effective if it were put into law enforcement. He said we don't have enough law enforcement officers. We are the only body that has the primary responsibility of protecting our citizens. He didn't think this is a bad thing and he wouldn't argue against the need for affordable housing, but he would argue government being the real solution. He thinks developers are going to be the primary key and our economy and other factors. This is so much more indirect than our law enforcement is. He encouraged City Council to consider using this money for law enforcement that will help us address our hard drug issue.

Councilman Newman said that this is an important area to be looking at because it was governmental policies that created, to a very significant degree, the concentrations of poverty we have in certain parts of the community. Therefore, if we know that those dynamics contribute to crime and some other very significant social challenges that law enforcement will not solve by itself, then we have an obligation to look at what we can learn from our past. We may be able to rectify some of the problems that the government locally and at all levels of government have contributed to creating those concentrations of poverty. There is a Hope 6 process that has started in the community to look at some of these issues.

Vice-Mayor Mumpower agreed that this is an important policy discussion, but right now we have an open air hard drug market in Asheville. We have people dealing hard drugs openly with very limited deterrent. That has a much more dramatic affect on the quality of people's lives.

Mayor Worley was concerned about using the funds in the way specified here. The Hope 6 program, which needs about $15-20,000 in funding for the consultant to come in and help us develop that program to deal specifically with low income housing, and more specifically with that low income housing where so much of the drug activity is taking place. He would like to see

Council have the flexibility to look at this funding source for that. Councilwoman Bellamy and he are on a committee with some members of the Housing Authority and they had a review of the Hope 6 program. There is a lot of promise for some Hope 6 funding but it will need about $15-20,000 to move forward with that project. He felt that is an ideal use of these funds. It will be coming to Council for approval at the appropriate time. Again, he wants us to retain the flexibility in this pool of money to be able to do something like that and maybe something else that we don't know about yet. He thinks we can make it available with our Housing Trust Fund to some degree, but he doesn't want it all tied up with that.

Councilman Newman would support the funding for the Hope 6 program.

Councilwoman Jones felt the staff's recommendation for that flexibility is evident in that Ms. Caplan recommends Council to "use all or part of the $200,000."

Councilwoman Bellamy said that in addition to the Hope 6 funding, which could have a long-term impact on possibly removing some congregated housing within our community, there are other ideas that the Housing Authority staff is coming up with to address the open air drug market that deals with infrastructure needs, e.g., street closings, gates and more tangible ways where it is harder for clients to get into residential areas. She would like for Council to have an opportunity to work with the Housing Authority staff to see if we can get a better proposal to look at each of their developments to see what we can do and hopefully use some of those funds. She suggested that be reviewed by the Housing & Community Development Committee prior to going to the full Council.

Vice-Mayor Mumpower felt that seems a more targeted effort.

Mayor Worley felt this item should not be brought forth to the next formal meeting in that Council may need more time.

Councilwoman Jones felt the $200,00 should be able to do all of this - the Hope 6 program, probably some of the Housing Authority initiatives, and some of things we were initially envisioning. She doesn't want to lose site of that because that is a big part of where we need to go. She feels there is a lot of flexibility in that $200,000 figure. She thinks Ms. Caplan phrased the recommendation so she could have some guidance that identifies some opportunities along the way with Council's approval.

Vice-Mayor Mumpower said that in its current format, there is no mention to hard drugs at all. He felt some Council might be more comfortable in supporting it if there was a more specific plan.

Mayor Worley felt that the resolution is very specific and limiting. He didn't think the resolution wording would allow the use for the Hope 6 program.

Mr. Vess suggested Council not place this on the next formal meeting agenda and let staff work with the Housing & Community Development Committee.

Councilwoman Jones was agreeable to not voting on this next week; however, the trade-off is that we will have some concrete proposals through the Housing Trust Fund for the investment of infrastructure that might be a good match and give some synergy around those developments.

I-26 CONNECTOR

Councilman Newman said that the issue of the lane alignment questions on the I-26 Connector have been significant issues in front of our community for a long time. We have looked at the different information about traffic models that have been developed and what they mean. Until very recently he thought we were getting to a point where we have heard everything there was to hear and we needed to have a voice in the matter. However, there is a possible way for us to move forward that doesn't involve Council taking a specific position on what the lane alignment in West Asheville should be. This past summer, our Traffic Engineer Anthony Butzek, brought this up last summer.

In response to Councilman Newman's question of why he wrote to the NC DOT last summer and requested them to perform a CORSIM analysis for the West Asheville Connector, Mr. Butzek said that there was discussion at that time around the number of lanes and the justification for choosing the number of lanes. Mr. Michael Moule, Traffic Engineer who was retained by the Southern Environmental Law Center, had requested some information from the NC DOT on the analysis they did and he reviewed that analysis. Mr. Moule found some concerns with it. Mr. Butzek felt that a more detailed analysis would provide a real resolution, since there was some disagreement in the different analyses of what the level of service would be for varying scenarios and differing number of lanes. He said that CORSIM analysis is really the state of the art practice for analyzing the operation of freeway segments. The segment that he has seen that was performed by NC DOT was somewhat more simplistic. Simplistic analyses are used all the time; however, since that simplistic analysis showed a result that kind of put it on the borderline, he felt that doing a more detailed analysis might be an appropriate way to resolve that issue. If the basic CORSIM analysis is performed, he expects it will give a lot better information than we have now.

Councilman Newman said that Mr. Butzek does have professional training in the implementation of the CORSIM analysis. Upon inquiry, Mr. Butzek said to do the basic analysis, which is much more detailed that what has been done, would take about 30 hours. With his other work responsibilities, he estimated it would take about a month from the time we acquired the necessary software, which may be two weeks and would cost approximately $500.

In responding to Councilman Newman as to why the NC DOT did not want to perform the study, Mr. Butzek said that NC DOT's response was essentially was that they did not feel it was necessary. They had a differing opinion on the number of hours it would take to complete and putt it in a comparison. They wanted to do a full and complete analysis which is the Cadillac of the analysis. It would be correct to do that, but it is his opinion that to do the basic analysis would be much better than the very simplistic analysis that has been done. The reasons they gave were (1) the amount of time required for them to do the full analysis; and (2) the fact that the Metropolitan Planning Organization (MPO) has passed resolutions in the past in support of the 8-lanes.

Councilman Newman asked Council to instruct City staff to conduct the CORSIM analysis for the I-26 Connector in West Asheville. It is his hope that doing this will accomplish a couple of things. First, it is his hope that it would provide a final and objective basis for all the decision-makes to have to make a decision on how to move forward on this project. It is hope that if the analysis does show that a smaller, with less impact, lane alignment is really viable and will carry future traffic far into the future. It is also his hope that if the analysis shows that only an 8-lane facility will be adequate to carry future traffic that all the people in the community that have been working on this for a long time will understand that and consider it as well. In short, it is his hope that rather than us taking a position now on any particular lane alignment that a better decision would be to get this final piece of objective information, the best information that could be available to us, and have that developed so that the decision-makers in this process can base their decision on solid, scientific information.

City Manager Westbrook asked that if Council wants to have that analysis done, he recommended the "how to" be left up to City staff, whether it be a staff person or someone we hire.

Upon inquiry of Mayor Worley, Mr. Butzek said that the NC DOT would have the software in Raleigh.

Discussion surrounded the NC DOT being the appropriate body to do the study. Even though City staff has made a request to the NC DOT to perform the study and they have refused, City Council has not formally requested they perform the study. If the NC DOT refuses to do the study, then the City will perform it.

Councilman Newman said that this Thursday the MPO is poised to pass a resolution that says we want to move forward with the smallest lane alignment possible to minimize impacts, but it needs to technically be defensible. As one of the City's MPO members, Vice-Mayor Mumpower said he would ask the MPO to postpone their decision until the more definite research is performed.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Newman said that after this study is complete, then Council's part is complete in trying to get to the bottom of what is the best choice on this issue. It is his hope that the decision-makers will consider this best start of the art information.

Upon inquiry of Councilwoman Jones, Mr. Butzek explained the difference between a Cadillac analysis and a basic CORSIM analysis.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that he could not say what conclusions the NC DOT will draw even if we do the CORSIM analysis and it shows different results.

In response to Vice-Mayor Mumpower, Mr. Butzek said that a reasonable timeframe in which the NC DOT should be able to perform the study would be about 3-4 months, taking into account they would have to adjust their workload. It is his understanding that a 3-4 month delay in which to get this research will not delay the NC DOT from moving forward as long as there is a finite point in which the issue is to be resolved.

The following individuals spoke about the I-26 Connector and their support for the CORSIM analysis:

Mr. Willis, County resident
Ms. Leesa Kulba
Mr. Roger Darrow
Ms. Betty Lawrence
Mr. Ron Ainspan

Councilman Newman moved to authorize the Mayor to write a letter to the NC DOT asking them to perform the basic CORSIM analysis (not the Cadillac) in 3-4 months, or a time in which it does not impact the final determination, and let us know with 7-10 days if they will perform that study. If we have not heard back from them within the 10 days, then the City will proceed with performing the CORSIM analysis. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Upon inquiry of Councilwoman Jones, City Manager Westbrook asked that the City staff be allowed to find out the best way to proceed with the study - an engineering firm that may already have that software vs. City staff. If an engineering firm is used, Mr. Butzek will oversee the study.

BOARDS/COMMISSIONS

It was the consensus of City Council to arrange interviews for Eleanor Campbell and Andrew Gall for a vacancy on the Recreation Board.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Robert E. Shepherd to the River District Design Review Committee.

CLOSED SESSION

At 6:45 p.m., Councilman Dunn moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Davis and carried unanimously. The following actions occurred in closed session:

Resolution No. 04-236 – Resolution establishing just compensation and authorizing the use of eminent domain to acquire an easement over certain property on New Haw Creek Road for greenway purposes. The appraisal by Mark Morris is hereby accepted, and just compensation for the easement over the property identified by PIN No. 9658.08-78-5543 and owned by Ricky K. Wallin and wife, Diana L. Wallin on New Haw Creek Road is hereby established at $1000.00. Acquisition of said easement by the use of eminent domain is hereby authorized in accordance with the provision of Chapter 40A of the N. C. General Statutes. Resolution Book No. 28 – Page 415.

Resolution No. 04-237 – Resolution establishing just compensation and authorizing the use of eminent domain to acquire an easement over certain property on New Haw Creek Road for greenway purposes. The appraisal by Mark Morris is hereby accepted, and just compensation for the easement over the property identified by PIN No. 9658.08-78-6513 and owned by Ricky K. Wallin and wife, Diana L. Wallin on New Haw Creek Road is hereby established at $900.00. Acquisition of said easement by the use of eminent domain is hereby authorized in accordance with the provision of Chapter 40A of the N. C. General Statutes. Resolution Book No. 28 – Page 416.

Resolution No. 04-238 – Resolution establishing just compensation and authorizing the use of eminent domain to acquire an easement over certain property on New Haw Creek Road for greenway purposes. The appraisal by Mark Morris is hereby accepted, and just compensation for the easement over the property identified by PIN No. 9658.08-78-8554 and owned by Jolly SIS & B, LLC, Jean Jolly Jaynes, and George Frederick Jaynes on New Haw Creek Road is hereby established at $4200.00. Acquisition of said easement by the use of eminent domain is hereby authorized in accordance with the provision of Chapter 40A of the N. C. General Statutes. Resolution Book No. 28 – Page 417.

At 6:57 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:57 p.m.

Marjorie Bowerson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – November 23, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2004, AND THE WORKSESSION HELD ON NOVEMBER 16, 2004**

B. **MOTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE NOVEMBER 30, 2004, COMMUNITY MEETING**

C. **ORDINANCE NO. 3181 - BUDGET AMENDMENT FOR TRAFFIC CALMING IMPROVEMENTS FROM RIVER BEND DEVELOPMENT**

Summary: The consideration of a budget ordinance amendment, in the amount of $65,000, from Riverbend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

As part of the conditional use permit for the River Bend Development on Swannanoa River Road, City Council approved a requirement that the developer contribute $65,000 to traffic calming improvements to the surrounding neighborhoods. Staff has been working with Redwood Forest to develop a traffic-calming plan. If any funds are remaining after the work in the Redwood Forest Community is completed, staff will work with the Beverly Hills and Oakley neighborhoods to see if any traffic calming measures can be installed in these areas.

Pro

- This money allows traffic calming to be installed in a neighborhood without the City taxpayers funding the improvements.

Con

- The money collected from the developer may not be enough to do as much traffic calming as staff and the neighborhoods would like to complete in the neighborhoods that are impacted by the development.

This request meets Goal #2 in the focus area of Planning in the Strategic Operating Plan:

Goal #2: A multi-modal and congestion management transportation program - In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective 1 Develop a framework for multimodal transportation planning that is based on system performance, is responsive to decision makers and customers, and provides the basis for allocating resources. Task 2) Leverage outside funding to achieve multiple transportation goals where possible

City staff recommends City Council approve the budget amendment, in the amount of $65,000, from River Bend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

ORDINANCE BOOK NO. 21 – PAGE 316

D. RESOLUTION NO. 04-239 -RESOLUTION RE-DESIGNATING THE ASHEVILLE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone as proposed.

The State of North Carolina has designated certain census tracts and census block groups in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas.

The current State Development Zone for Asheville will expire on December 31, 2004. Application for re-designation is due and, if approved, will take effect January 1, 2005, for a period of one year.

While complete data from all previous years of the State Development Zone program are not available, figures from the years 1999 to 2001 reflect that Asheville saw 19 new jobs created, $6,789,365 invested in machinery and equipment, and $300,235 in tax credit generated within the Development Zone.

Pursuant to the state-mandated guidelines, staff has determined the largest possible area for inclusion in the Development Zone. This area is unchanged from the current designation, approved in 2002. The total zone must have a minimum of 20% population below the poverty level.

Re-designating the Development Zone would provide multiple opportunities to further the City of Asheville's goals as described in the Strategic Operating Plan. The program is designed to stimulate new job creation and employment training, giving more citizens a chance to prosper. The economic incentives also encourage small business development, as well as downtown development, as the Central Business District is located within the Development Zone.

Advantages: Continued incentives for investment in economically distressed areas.

Disadvantages: None.

Staff recommends approval of the resolution defining the State Development Zone to be effective January 1, 2005, through January 1, 2006.

RESOLUTION BOOK NO. 28 – PAGE 418

E. RESOLUTION NO. 04-240 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE URTV INC. MANAGEMENT AGREEMENT

Summary: The consideration of a resolution adopting a final draft of the Management Agreement.

Asheville City Council passed an ordinance on December 16, 2003, authorizing the City Manager to negotiate with URTV, Inc. on behalf of the City, to manage and operate the public access channel provided for in City Ordinance 2500, subject to the following:

1. Compliance with the interlocal agreement adopted on November 25, 2003, with Buncombe County government.
2. That the by-laws of URTV, Inc. provide that the City Council and Buncombe County Commissioners shall each appoint two members to the board of directors of URTV, Inc., and that said appointment power be perpetual for the life of URTV, Inc., and that the membership shall not exceed eleven.
3. That the agreement as negotiated be subject to final approval by City Council.

City Council provided direction to staff that the following must be included in the final draft of the management agreement:

1. There needs to be a unilateral way to cancel the agreement, with or without cause.
2. All financials must be open for public inspection.
3. Diversity language is included.
4. Council liaison role must be stated in the contract, with a copy of the meeting agenda shared with the City of Asheville.
5. URTV, Inc is not able to switch funding between capital and operating fund accounts without City Council approval, once yearly funding allocations are made.

Based on this direction, staff worked to insure this language is included in the enclosed draft.

Other key components of the agreement include:

- A performance review clause that enables the City to conduct performance review audits annually by an independent entity chosen by the City.
- Language encouraging a minimum of four hours of programming per month which discusses local issues and meets the needs of an underserved segment of the community
- Quarterly reporting to the City Manager that includes information on budget tracking, program production, uses of resources and services, revenue generation, to include efforts on grant funding, and other related reporting.

Staff has reviewed URTV's proposed budget for the initial year of inception and operation and has determined that the list of capital items as outlined is consistent with necessary initial start-up costs associated with equipment, maintenance, support, and facilities.

Finally, please be advised that Buncombe County Commissioners, in coordination with the Asheville City Council, will need to formally address and consider URTV, Inc. and their operational needs for initial start-up and on-going needs throughout the first year. The County's final allocation will have a direct affect on URTV, Inc.'s ability to provide services as outlined.

With Council's approval, a budget amendment will be forthcoming after the Buncombe County Commissioners have made a final decision on the level of funding for this fiscal year to ensure that the capital and operating budgets align accordingly.

Staff recommends City Council consider adoption of the proposed management agreement with URTV, Inc., to be used as the primary tool for the City to use regarding PEG fee funding allocation on a year-to-year basis, unless otherwise stipulated by City Council.

RESOLUTION BOOK NO. 28 – PAGE 419

F. MOTION SETTING A PUBLIC HEARING ON DECEMBER 14, 2004, TO CONSIDER AN ORDINANCE ESTABLISHING AN ENTERPRISE FUND TO PAY FOR A COMPREHENSIVE STORMWATER PROGRAM

G. RESOLUTION NO. 04-241 - RESOLUTION AFFIRMING THE REVISIONS TO THE CITY-WIDE REHABILITATION LOAN APPROVAL PROCESS

Summary: The consideration of a resolution affirming the revisions to the city-wide housing rehabilitation loan approval process.

The Community Development Director and Planning and Development Director were authorized by City Council Resolution # 95-116 on July 25, 1995, to approve housing rehabilitation loans, with the form of the documentation for such loans to be subject to the approval of the City Attorney. No loan limit was established by Resolution # 95-116, rather the underwriting guidelines and budgetary authority are the effective loan limits.

In 1995, the loans did not generally exceed $40,000. Over the years since then the loans have regularly exceeded that amount and with the authorization of the Section 108 funding of CARROT loans in 1999, some multi-family projects have been approved for several hundred thousand dollars.

Loan applications go through a very stringent underwriting process to assess the credit worthiness of the borrower and the financial strength of the project. Loans to low-income homeowners must be affordable. Multi-family projects must be able to operate independently and produce a positive cash flow.

Although the underwriting process provides the technical information required to make the loan approval decision, staff along with guidance from the Housing and Community Development Committee and City Manager has established the following process, which provides a higher level of review and approval for larger loans:

"Applications for FAIR and CARROT loans not to exceed the maximum allowed for rehabilitation of a single unit under the FAIR program may be approved by the Community Development Director or the Planning and Development Director. All other rehabilitation loan applications may be approved by the City Manager upon recommendation by the Rehabilitation Loan Committee which shall consist of the Director of Finance or her/his designee, the Director of Audit and Budget or her/his designee, and the Director of Planning and Development or her/his designee."

The advantages of this process are:

- The expertise of senior staff is availed to review the work of Division staff before large loan commitments are issued.

- Approval authority for large loan is more appropriately placed at the highest administrative level.
- Smaller homeowner loan approval remains at the Department/Division level for efficiency.
- Administrative review and approval of loans helps maintain the financial privacy of applicants.

City staff recommends City Council adopt the resolution affirming the revisions to the housing rehabilitation loan approval process.

RESOLUTION BOOK NO. 28 – PAGE 420

H. RESOLUTION NO. 04-242 - RESOLUTION APPROVING REVISIONS TO THE CITY'S OUTSIDE AGENCY POLICY

Summary: The consideration of a resolution approving revisions to the City's Outside Agency Policy.

Staff has developed proposed revisions to the City's Outside Agency Policy, which was first adopted in 2001, to guide the Outside Agency Committee's process for evaluating outside agency funding requests. The purpose of the proposed changes is to strengthen the current outside agency review process and allow, on a limited basis, for Council to award non-competitive grants. Specific revision and/or additions to the policy are as follows:

- The Committee may conduct formal interviews with specific agencies as needed to resolve questions about specific programs.
- The grant application requires a complete agency budget and an annual outside audit, as well as a certification of complete and accurate financial data.
- Under very limited circumstances, City funding may be given in the form of non-competitive grants. These grants may be made to organizations that function as quasi-divisions of the City, or as payment under existing contracts authorized by City Council.
- The Outside Agency Committee will complete its review of outside agency requests prior to May and will present its recommendations, along with staff's recommendations, to the full City Council as part of the City Manager's presentation of the annual operating budget.

The Outside Agency Committee has reviewed a draft of the revised policy.

The proposed revisions relate to the City's Strategic Operating Plan in the *Community Building* focus area, and more specifically, Council's goal to "re-evaluate Council decision-making and public input processes and develop a strategy that results in both healthy dialogue and effective decision making".

Pros: The policy revisions will strengthen the review process and make the City requires for the outside agency program clear to various non-profit agencies.

Con: The City may see a proliferation of agencies seeking non-competitive grant status.

City staff recommends City Council adopt the City's revised Outside Agency Policy.

RESOLUTION BOOK NO. 28 – PAGE 421

I. RESOLUTION NO. 04-243 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: The term of Laura Webb, as a member of the River Design Review Committee, expired on September 1, 2004.

On November 16, 2004, it was the consensus of City Council to appoint Mr. Robert E. Shepherd to the River District Design Review Committee to serve as one of the two members of the RiverLink Board of Directors for a three-year term. Mr. Shepherd's term will begin immediately and expire on September 1, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 425

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY IDENTIFIED AS 44 BEN LIPPEN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED COTTAGE INDUSTRY (SPECIALTY MACHINE SHOP) AND AN OWNER-OCCUPIED SINGLE-FAMILY DWELLING

ORDINANCE NO. 3182 - ORDINANCE REZONING 44 BEN LIPPEN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3183 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 44 BEN LIPPEN ROAD FOR A PROPOSED COTTAGE INDUSTRY (SPECIALTY MACHINE SHOP) AND AN OWNER-OCCUPIED SINGLE-FAMILY DWELLING

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:04 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a request to rezone property located at 44 Ben Lippen Road from RM-6 Residential Multi-Family Low Density District to Community Business I District/Conditional Use, and a request to issue a conditional use permit for a proposed cottage industry (specialty machine shop) and an owner-occupied single-family dwelling.

The site is located at the edge of City zoning. Nearby properties located on the north side of the road are in unzoned unincorporated Buncombe County.

The *Asheville City Development Plan 2025* calls for strengthening and enhancing neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment. It also suggests that, due to changes in technology, there can be a wider range of uses considered compatible with neighborhoods. Smart Growth Policies encourage staff to utilize existing zoning tools that allow flexibility in site design to promote compatible land use projects and protection of industrial and environmentally-sensitive land.

The applicant, David Ingram, is requesting a conditional use rezoning of a 2.02-acre parcel located at 44 Ben Lippen Road (Attachment to City Exhibit 3 – Aerial Map). The property, consisting of a single-family dwelling, is currently zoned RM-6 and is located in the City's extraterritorial jurisdiction area. Surrounding land uses and zoning include single-family and multiple residential dwellings zoned RM-6 to the east and south of the site, the Eliada Home orphanage zoned Institutional to the west and single-family manufactured housing to the north.

Mr. Ingram is requesting a conditional use rezoning of the entire parcel to Community Business I (CB-1) in order to permit a "cottage industry" (a specialty machine shop) and the construction of a 6,000 square foot building on the lot. The single-family residence located on the east side of the site will remain occupied by Mr. Ingram.

The RM-6 zoning district is intended to permit a limited range of low-density multi-family housing types with single-family detached and attached residences. The district is also intended for areas where low-density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential. RM-6 also allows other non-residential uses appropriate for providing the basic elements of a balanced add attractive area including schools, places of worship, home occupations, recreational and public uses.

The CB-1 district is to provide areas for medium-density business and service uses serving several residential neighborhoods. The Community Business I District is designed to be located primarily along streets that serve multiple residential neighborhoods.

The concept plan illustrates the location of the existing single-family residence and the proposed location of the 6,000 square foot block building that will be used to house the cottage industry (Attachment to City Exhibit 3 – Site Plan). A 4-space parking lot and loading area to the rear of the building will serve the use. A 20-foot vegetative buffer will be required along the east and south sides of the site where adjacent to residential uses (Attachment to City Exhibit 3 – Building Perspective). The applicant is proposing a thick evergreen buffer along Ben Lippen Road in lieu of the standard street tree requirement.

Mr. Ingram currently has two employees who assist him in the operation of the specialty machine shop. Deliveries to the shop are expected daily via small delivery truck. Approximately 4,000 square feet of the proposed building space will be utilized for storage of large machinery. The remaining 2,000 square feet will provide office space and workshop area.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The applicant is utilizing the existing topography on the site by locating the proposed building along the west side of the property. This side of the property sits below Ben Lippen Road and much lower than the single-family dwelling located along the east side of the property. The building will be located at least 250-feet from Ben Lippen Road and adjacent to the property owned by Eliada Home, zoned Institutional. In addition to the gradual slope of the land, the applicant is proposing a thick evergreen buffer along Ben Lippen Road. Vegetative buffers required by the UDO will further mitigate the impact of the development from adjacent residential uses.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The applicant is utilizing the existing topography on the lot to minimize land disturbance and locate the building where it is less visible to adjacent residential uses. Vegetative buffers will be provided along the north, east and south sides of the site that will assist in mitigating the impact of the development.

   The proposed use, however, has the potential to injure the value of adjoining and abutting properties if not properly constructed to mitigate noise generated from the use of large machinery and other site activities that could be associated with the development. Specific conditions have been added to the project that will assist in mitigating any negative impacts the development may have on abutting and adjoining properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The site is surrounded by residential uses on the north, east and south sides of the property, zoned RM-6. It is problematic to locate an intense use of this nature in close proximity of residentially zoned and developed areas due to the potential negative

impacts it may cause to the adjoining properties. The site is, however, being developed in a manner that works with the existing topography of the land. The proposed building is being designed to resemble a barn-like accessory structures typically found on large lots in rural areas. The site will be fully buffered from adjacent residential uses with the installation of a 20-foot vegetative buffer and screened from the street with a dense evergreen buffer.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The proposed development may not be directly consistent with some goals and strategies outlined in the City Development Plan that call for strengthening and enhancing neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment. It may, however, be consistent with the Plan's direction that compatibility may be dependent on appropriate mitigation of the impacts of uses such as that proposed by the applicant. Utilizing the conditional-use zoning tool, one of the City's smart growth policies, can provide mitigation controls that enhance neighborhood compatibility through design and can also assist in mitigating any negative impacts to neighboring properties.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

This project is located in an area of the City's ETJ where transit service is currently unavailable. Fire and police protection are handled by Buncombe County. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Engineering Department, MSD, and Public Works Department who suggested that adequate infrastructure was available to support the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed use is not expected to generate any noticeable amounts of traffic. The site will be developed with an off-street parking and loading area that will adequately serve the proposed use.

Pros:

- The applicant is working with the existing topography of the land by locating the building on the lower areas of the property that will assist in mitigating the visual impacts of the structure.
- The building is being designed to resemble a barn-like structure that may strengthen its compatibility with the neighborhood.
- By using the conditional use rezoning process, conditions can be placed on the design and development of the site that can further limit any negative impacts it may have on adjacent residential properties.
- Approving the application will allow the owner the opportunity to relocate a small specialty business from its current location on Amboy Road that has been subject to repetitive flooding and operate it from his residence.
- The proposal moves a business from an environmentally- sensitive flood-prone location and allows it to remain in operation.

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- Staff has not received any negative comments or concerns from any of the surrounding property owners.

Cons:

- The proposed project may not specifically meet or support goals concerning compatible development.
- The development will result in the loss of multi-family residential property for multifamily uses.
- The development could set a precedent for similar requests for non-residential uses in neighborhoods.
- Noise pollution may be generated from the use of large machinery associated with this type of business. Staff has, however, suggested several conditions that may assist in mitigating any negative impacts the proposed development may have on abutting properties.

During the Planning and Zoning Commission meeting on Wednesday, November 3, 2004, staff was hesitant to fully support the proposal due to compatibility concerns. Staff encouraged the Commission to utilize public input concerning compatibility with the surrounding neighborhood. The project did not receive any negative comments or produce any persons in opposition to the project during the public hearing portion of the review. After carefully considering the steps the applicant is taking to mitigate potential impacts and including the facts that the use is occurring on the home-site of the applicant, the limited number of employees and the site design, the Commission voted unanimously to recommend approval of the project subject to the TRC conditions, conditions recommended by staff, and three additional conditions (listed below) that the Commission felt would further enhance the projects compatibility with surrounding properties.

Based on the seven findings and that the project has not received any negative comments or concerns from those most affected by the development, staff concurs with the Planning and Zoning Commission by recommending approval of the project subject to the following conditions:

1. That all TRC conditions be met;
2. No outdoor activities associated with the business shall occur between the hours of 9:00 p.m. - 8:00 a.m.;
3. That the building be constructed in a manner that reduces noise generated by the use of the machinery;
4. The maximum size of any delivery vehicles serving the site shall be limited to panel truck sized vehicles;
5. No commercial outdoor lighting shall be permitted;
6. Signage shall be limited to 8 feet in height, 32 square feet in size, and not be internally illuminated;
7. The maximum number of employees shall be limited to four; and
8. The business owner/operator shall live on the property.

The following added conditions by the Planning and Zoning Commission:

1. There shall be no outdoor storage.
2. The building shall be constructed with split-faced block as proposed by the applicant.
3. There shall be no testing of engines on-site.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 5:10 p.m.

Responding to Councilman Dunn and Councilman Davis, Mr. David Ingram, property owner, said that he has no problems complying with any of the conditions, specifically the no outdoor activities between the hours of 9:00 p.m. - 8:00 a.m. and the size of any delivery vehicles.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3182 to approve the conditional use rezoning for property located at 44 Ben Lippen Road from RM-6 Residential Multi-Family Low Density District to Community Business I District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 318

Vice-Mayor Mumpower moved to adopt Ordinance No. 3183 to issue a conditional use permit for property located at 44 Ben Lippen Road for a proposed cottage industry (specialty machine shop) and an owner-occupied single-family dwelling, subject to the following conditions: (1) That all TRC conditions be met: (2) No outdoor activities associated with the business shall occur between the hours of 9:00 p.m. - 8:00 a.m.; (3) That the building be constructed in a manner that reduces noise generated by the use of the machinery; (4) The maximum size of any delivery vehicles serving the site shall be limited to panel truck sized vehicles; (5) No commercial outdoor lighting shall be permitted: (6) Signage shall be limited to 8 feet in height, 32 square feet in size, and not be internally illuminated; (7) The maximum number of employees shall be limited to four; (8) The business owner/operator shall live on the property; (9) There shall be no outdoor storage; (10) The building shall be constructed with split-faced block as proposed by the applicant; and (11) there shall be no testing of engines on-site. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 290 MACON AVENUE (GROVE PARK INN) FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO PERMIT CONSTRUCTION OF CONDOMINIUM UNITS AND FOR A MASTER PLAN APPROVAL

ORDINANCE NO. 3184 - ORDINANCE REZONING 290 MACON AVENUE (GROVE PARK INN) FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3185 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO THE GROVE PARK INN TO PERMIT CONSTRUCTION OF CONDOMINIUM UNITS AND FOR A MASTER PLAN APPROVAL

ORDINANCE NO.3186 - ORDINANCE GRANTING CONDITIONAL USE PERMIT FOR THE GROVE PARK INN MASTER PLAN

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed regarding the conditional use zoning of 5.8 acres associated with the Bynum House property, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit part of the conditional use zoning is subject to a simple majority vote. If the conditional use rezoning does not pass and Council does not move on to the conditional use permit part of that conditional use rezoning, Council can still proceed to consider the conditional use permit for the Master plan, which is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:25 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at 290 Macon Avenue (Grove Park Inn), from RS-4 Residential Single-Family Medium Density District to Resort District/Conditional Use, and a request to issue a conditional use permit to permit construction of condominium units and for a Master Plan approval.

The Bynum House and Country Club are both designated as local historic landmarks. The Grove Park Inn neighborhood is a nationally registered historic district.

The *Asheville City Development Plan 2025(ACDP 2025)*, through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages adaptive reuse and sustainable and compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning) to ensure some level of protection for compatibility and environmental sensitivity. Historic Preservation and its relationship to Smart Growth are also clearly described as being an effective way to revitalize and stabilize neighborhoods. Lastly, there is significant discussion regarding the need to adapt the economically sustainable tourism industry to meet changing needs and provide a wider variety of recreational and retail options while incorporating a high quality "package experience" including attention to aesthetics and character.

The Grove Park Inn Resort and Spa (GPI) originally submitted an application and master plan documents in June 2003 (Attachment to City Exhibit 3 – Location Map); the application was subsequently withdrawn before moving forward and in the intervening months, representatives from the GPI met with representatives of the neighborhood in an effort to re-examine the proposed expansion plan. The revised application and Master Plan documents are, at least in part, a reflection of these discussions and have been scaled back from the original application.

Because the details surrounding the project are not very typical of the average application, Ms. Tuch explained the process associated with the application. The GPI is requesting both a conditional use rezoning and Master Plan approval. The Unified Development Ordinance (UDO) requires that all projects done by the same developer within 1500 feet and/or three years of each other be reviewed as a single project. Because of this, the separate phases

of the project are all being reviewed in conjunction with one another as one large level 3 project. All level 3 projects in the City, because of their scale and impact, also require a conditional use permit. In this particular case, we also have a conditional use permit associated with the conditional use rezoning. For the purposes of this discussion, the conditional use permits for both aspects of the project are rolled together since the rezoning is part of the multi-phase development plan but they will require separate votes, as described by City Attorney Oast.

Because of the conditional use aspect of the project, we do allow the applicant to proceed with concept plans only. If council were to approve this project, then the different phases of the Master Plan would have to return to the Technical Review Committee (TRC) for a much more detailed technical review; and then, even once the technical review is complete, before any final approval would be given, the applicant would have to secure any other applicable permits that may be issued outside of the Planning Department or the City.

The revised application requests a conditional use rezoning of a five acre RS-4 Residential Single Family Medium Density District parcel to Resort/Conditional Use to allow for the construction of 20 single family detached condominium units along with preservation of the locally designated historic Bynum House. Along with the rezoning request, review of an associated Master Plan showing four additional project areas on the larger resort property along with road and traffic improvements is being requested (Attachment to City Exhibit 3 – Aerial Map). It is the intention of the owner to initiate development of subsequent phases of the master plan as earlier phases are completed. Other phases of the larger project include (Attachment to City Exhibit 3 – Resort Master Plan):

Phase 1, Battle House Condominiums – Removal of the old Battle House and redevelopment of a new building into 30 residential condominium units, approximately 1600-1700 s.f. each with basement storage, underground parking (56 spaces) and a 30,000 s.f. open space terrace area. The new building will be larger in size but is intended to architecturally reflect the original structure (Attachment to City Exhibit 3 – Phase I Master Plan Details).

Phase 2, Parking Terraces, Old Toll Road Suites, & Traffic Roundabout – 3-½ level parking terrace to occupy an existing low area internal to the Inn property. Terrace will provide a total of 350 parking spaces displacing 87 existing spaces for a net gain of 263 spaces. The Old Toll Road Suites will consist of four separate 2-story buildings housing 20 units total with a reconfigured 43 space surface parking lot. Also part of this phase is the construction of the new traffic roundabout and entry feature located on Macon Avenue at the main entrance to the Inn (Attachment to City Exhibit 3 – Phase 2 Master Plan Details).

Phase 3, Sunset Mountain Condominiums (Conditional Use Rezoning) – Renovation of the Bynum House, a locally designated historic landmark, into a single family residence or clubhouse amenity along with the new construction of 20 single family detached condominium cottage homes and their associated drives, sidewalks, and open space areas (Attachment to City Exhibit 3 – Phase 3 Master Plan Details).

Phase 4, Country Club Improvements & Vanderbilt Pools – Renovation of the existing Country Club to include the addition of 11 new resort "golf" suites. In addition, renovation of the existing Cabana along with construction of a new covered "All Season" Pavilion and 10,000 s.f. pool and terrace. Also part of this phase is the addition of the new Vanderbilt Pools along with 45 surface parking spaces located adjacent to the Vanderbilt wing of the Inn (Attachment to City Exhibit 3 – Phase 4 Master Plan Details).

Phase 5, Old Toll Cottages – 13 new buildings for a total of 26 new resort units. Each building is to house two 1,000 s.f. suites and one outdoor parking space per building. In association with

this project is the reconfiguration of a 72 space surface parking area and walking trails (Attachment to City Exhibit 3 – Phase 5 Master Plan Details).

In total, all five phases of development will include:

- 48-51 privately owned residential units (with parking and amenity areas)
- 57 new resort suites (for a total of 48,800 s.f.)
- 432 new parking spaces (263 in parking terrace, 56 underground parking spaces, 45 new surface parking spaces, plus 68 individual parking spaces associated with resort suite and residential development)
- Construction of a covered pavilion, parking terrace, amenity areas, 2 pools, traffic roundabout & entry feature, and new sidewalk
- Preservation of open space and existing vegetation (where possible)
- Renovation of the designated local historic landmarks of the Bynum House and Country Club/Cabana.
- Reconstruction of the old Battle House

The project site is located within City limits in North Asheville on, or adjacent to, the larger resort property. The majority of the development plan is located on the already developed larger resort property currently zoned Resort District. The subject property is surrounded almost entirely by single family residential uses with a small corner (northwest) occupied by the Biltmore Industries property which houses artist studios, galleries, museum and restaurant.

Skipping the first two phases of the project for a moment, she discussed the conditional use zoning. The rezoning request is for the 5.8 acre parcel that currently houses the Bynum house, which is a designated local historic landmark. This 5.8 acre parcel is a moderate to steep sloping site with significant natural vegetation and access off of Macon Avenue (no new vehicular access points are proposed as a result of the development plan). In addition to the restoration of the home as a private residence or clubhouse amenity, the GPI is proposing the addition of 20 new condominium homes. Originally, it was believed that the rezoning was not being sought for density purposes since the 5.8 acre lot could support up to 23 units under RS-4. However, now that we know that the property would be subject to hillside development standards, which for this particular piece of property would cut the density in half. This means that a rezoning would be required for anything over 12 units. In addition to the extra density, the rezoning is being sought for use. Normally, the RS-4 zoning district does not permit more than one principle structure on a lot at a time and would not allow any kind of residential development that was anything other than single family detached homes. Although the proposed residential units have the appearance of single family detached homes and will be privately owned, they are, technically, condominium homes and as such, would require the rezoning (Attachment to City Exhibit 3 – Mountain Cottages Sketch). It is the developer's intention to avoid a major subdivision and place the proposed cottage homes relatively close together off of a common drive that follows topography in order to minimize grading and other land disturbances, and maximize preservation of the existing natural vegetation.

The Resort zoning designation is being requested for consistency's sake since the rest of the GPI property is zoned Resort and the grounds will be maintained and kept in character with the rest of the resort property. Now although it is true that a rezoning is required for the proposed 20 units, the 16 units an acre normally allowed in Resort isn't being maximized. If you apply the hillside standards to Resort density, then you get about 8 units an acre and the proposed project only needs about 4 units an acre. Nevertheless, when City staff realized that the hillside standards ordinance was going to come into play, it caused us to examine the density and hillside issue a little more closely before making a recommendation. (City Exhibit 5 – Density Comparison of Bynum Property to Adjacent Properties) (City Exhibit 6 – Sunset Mountain Cottages Overlay).

She then reviewed the other phases of the development again:

Phase I – The development of the Battle House will involve, essentially, the tear down of the existing structure that would be replaced with new construction that is a little larger than the original, but architecturally reminiscent of the previous building. This new structure will house up to 30 units and include underground parking, storage and a 30,000 square foot terrace.

Phase 2 – This phase is for the parking terrace and Old Toll Suites. The terrace is positioned to take advantage of the existing low spot on the property and will displace a number of existing surface spaces to result in a net gain of 263 spaces. The Suites are additional resort suites that will include 4 separate 2-story buildings for a total of 20 units. This phase would also include the addition of the traffic roundabout.

Phase 3 – This phase is for the conditional use rezoning and condominium homes previously discussed.

Phase 4 – This phase includes improvements to Country Club (another locally designated landmark), which would include the addition of another 11 resort suites, renovation of the Cabana, and construction of a new Pavilion and pool area. In addition, there will be the creation of 45 new surface parking spaces.

Phase 5 – This final phase is the Old Toll Cottages consisting of 13 new buildings with 2 (1000 square feet) units per building. In addition, there will be one outdoor parking space per building along with walking trails.

She reviewed with Council the proposed elevation drawings (Attachments to City Exhibit 3 –Building Elevations).

At their October 6, 2004, meeting, the Planning and Zoning Commission reviewed the conditional use rezoning and Master Plan proposal and made a positive recommendation that the project be forwarded to the Asheville City Council, stipulating the following conditions summarized as follows:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
   a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
   b. implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project;
   c. such traffic calming measures shall be fully funded by GPI;
   d. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
   e. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle

and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.

In addition, the City Engineering Department would like to reiterate, as a condition, the need for sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

Several phases of the project involve the redevelopment of existing structures and features and it is expected that these activities will not significantly contribute to land disturbance. Other phases attempt to either take advantage of existing topography (parking terrace) or place structures appropriately in respect to topography so as to minimize grading and other land disturbances. In addition, retaining walls are shown around the proposed resort suites (Old Toll Suites and Old Toll Cottages) along with the new residential units (Sunset Mountain Condominiums) and proposed roundabout, which will effectively reduce hillside disturbance and allow for the preservation of existing vegetation. Lastly, the developer has contacted storm water consultant(s) specializing in Low Impact Development (LID) techniques that improve water quality as well as quantity and velocity in an effort to better control existing and future run-off.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

Property values around the Inn property have continued to rise for the surrounding homes despite increases in resort activity over the years. Professional Literature has well documented that homes located near open space areas (including golf courses) and historic structures experience an appreciation in value due to the proximity of these amenities. In addition, the applicant has been in communication with residents of the adjacent neighborhood(s) in an effort to better understand their concerns and priorities.

As a result, GPI has revised their Master Plan and established new policies in an attempt to be a "better neighbor" both during construction and regular operation. More sensitive design and operation is expected to maintain or improve current conditions through improved storm water management, preservation and supplementation of existing landscape buffers, and installation of new traffic control measures, sidewalk, and walking trails.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

Several of the proposed phases of development involve the renovation of existing features with modest expansion/improvements and/or are internal to the resort property. The renovations are not only in harmony but also help preserve the existing character while those uses that are internal are very appropriately in perfect harmony, scale, and character with the rest of the resort property. Other phases such as the Sunset Mountain Condominiums appear to be in scale, density, and character with other homes in the area, most notably, the cottages located on Sunset Terrace. Similarly, the rebuilt Battle House condominiums, the most visible phase of development, will architecturally reflect the character of the former structure and be well within scale, density of the adjacent resort property and Long Champs Condominiums.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville City Development Plan 2025(ACDP 2025), through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages adaptive reuse and sustainable and compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning) to ensure some level of protection for compatibility and environmental sensitivity. Historic Preservation and its relationship to Smart Growth is also clearly described as being an effective way to revitalize and stabilize neighborhoods. Lastly, there is significant discussion regarding the need to adapt the economically sustainable tourism industry to meet changing needs and provide a wider variety of recreational and retail options while incorporating a high quality "package experience" including attention to aesthetics and character.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is within close proximity to transportation facilities with the Route 5 bus line running regularly down Charlotte, Macon, and Kimberly including hourly stops at the Grove Park Inn. Any adjustment of the existing bus circulation pattern and shelter location shall be coordinated with the Transit Services Department and shall include installation of a bus shelter. In addition, tests to try to determine the extent of impact to the surrounding neighborhood utilities will be conducted and may result in improved infrastructure. Lastly, technical review has not identified any problems for future emergency service.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The applicant is proposing significant road improvements with the addition of a traffic circle (roundabout) at the main entrance along with pedestrian paths and sidewalks. The

applicant has also submitted a detailed Traffic Impact Analysis that acknowledges an increase in traffic loads to surrounding roads that although are within capacity, could benefit from traffic calming measures. Based on current and extrapolated conditions, adjacent roads have been prioritized to receive additional traffic calming measures. These measures have not been specifically described since it is the desire of all affected parties to involve the surrounding community in the design and application. In addition, the applicant wishes to have some delineation of responsibility and financial contribution before proceeding.

Pros:

1. Allows for infill residential development.
2. Promotes the renovation of several local historic landmarks.
3. Will result in public road improvements including traffic calming.
4. Will result in a more interconnected pedestrian network of sidewalk and walking trails.
5. Contributes to the economic sustainability of one of the City's largest employers.
6. Promotes the adaptation of the growing tourism industry.
7. If determined to be needed, project will result in infrastructure improvements.

Cons:

1. Adds traffic to already heavily trafficked residential roads.
2. Will result in the disturbance of natural areas with steep topography.
3. Construction activity will have to utilize residential roads.
4. Removal of the old Battle House.

For the reasons outlined in this report, City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change from RS-4 to Resort/Conditional Use and approval of the associated conditional use permit with detailed Master Plan.

Mr. Gerald Green, representing the GPI, gave a brief history of the GPI, in that it is the fifth largest employer in Buncombe County and one of the oldest on-going businesses in Asheville and Buncombe County. The GPI is also the largest provider of open space in North Asheville with the historic golf course, which has recently received an award. The improvements to the property epitomize the City's smart growth principles. We are preserving historic structures and historic landscapes and providing a variety of housing types. Unfortunately there are no affordable housing units due to the cost of the land in the area and the existing property values. The Inn is not within the Grove Park Historic District, however, they are trying to preserve the integrity of the neighborhood. Although the plan is a 10-year plan, he didn't anticipate 10 years of construction. It may possibly be 5 years of construction – depending on how they phase the projects and the gaps in between the different phases. Regarding the rezoning of the Bynum property (Attachment to City Exhibit 3 – Resort Master Plan), it is in Phase 3 and has 5.8 acres and the historic Bynum House, which will be renovated. We will be able to cluster development in order to take advantage of the existing topography. We will work with the existing topography in designing the road. We have a design concept to assure that the homes that are built on this property are compatible with the existing historic homes in the neighborhood. We will limit the tree cutting and clearing. One provision is that they maintain a minimum 25-foot undisturbed buffer along the adjacent residential property lines and along Macon Avenue to limit the visibility of these homes. We will maintain the property to a certain standard. The closest home to the property line under this plan is over 100 feet away. Under the standard subdivision regulations under the current zoning, the setback would be either 6 or 15 feet. There will also be increased

property tax revenues because of more homes being built. He explained what could happen with the standard subdivision of that property as an option (Applicant Exhibit 2 – Resort Master Plan). Because, the decision before Council is not whether this property will be developed, but how it will be developed. Regarding traffic, the GPI did have a Traffic Impact Analysis (TIA) prepared. In looking at the traffic generated by this proposed improvement, we saw approximately 90 trips per hour, which is below the threshold required by the City for a TIA, which is 100 trips per hour. The GPI proposes to take reasonable steps and incur reasonable costs to mitigate those impacts. The mitigation measures they have identified include traffic calming, construction of new sidewalks and consideration of a provision for bicyclists. The traffic generated by the residential uses on the Bynum and Battle properties will not be greater than that what was generated by the previous user of the Battle House, WLOS-TV. We have heard from the neighborhood their environmental concerns for streams and forested areas. We have contacted an arborist/forester to review the area and identify how they can protect existing trees, improve their health and overall manage the wooded area, while doing some development in the area. We are also working with a stream mitigation specialist to address water quality and other issues related to the stream that flows through the Bynum property and onto the golf course. In terms of working with the neighborhood, our plan was originally brought forth in June of 2003 and we went back and worked with the neighborhood to identify and address those concerns. We met with the neighborhood committee 12 times over the past year. In addition to those meetings, we have undertaken a number of other steps to improve relations with the neighborhood. We created a quarterly newsletter (Applicant Exhibit 2) that goes out to all neighbors. We have changed the plans significantly over what was presented last June. We have reduced the scale; reduced the density of development; changed guest units to owner-occupied units; reduced the number of residences; relocated buildings, especially on the south end and the north end, to move them away from existing neighborhoods; preserved the buffer; included parking because parking on Macon Avenue was a major concern to the neighbors and to the City; and we are redesigning the entrance so that guests and visitors can better identify the Inn and not go wandering through the neighborhood. Overall, these improvements to the property will permit the Inn to use underutilized and vacant properties. They will address the concerns and add value to the Inn, the neighbors and the City.

Upon inquiry of Councilman Newman, Mr. Green said that there will be about 4-5 different basic architectural design plans.

Mr. Michael Moule, Traffic Engineer for the GPI, said he and the City's Traffic Engineer identified that the major traffic issues aren't congestion at intersections or traffic operations intersections. The major issue is the impact of traffic on residential streets. The GPI is within a residential area and the concern there is how much of the increased traffic on the streets would impact the neighborhood residents. The trip generation of 85-90 trips per hour doesn't even meet the threshold for requiring a TIA. We did this TIA in order to identify the impact on the residential streets because the GPI wants to be a good neighbor and mitigate that impact. This analysis was intended to look at the need for traffic calming on streets. It looked at the environmental capacity, which is a volume threshold for a given type of street. Some streets (e.g., Macon Avenue) already exceed the environmental capacity and in the projected future years others will exceed it as well. The major streets (Macon Avenue, Edgemont, Country Club, Club View, Grovewood Road) have very significant GPI traffic. The recommendation from City staff for traffic calming on most of those streets is something that the study will support. He noted that speeds can be reduced through traffic calming as well. The streets that were added most recently to the list of streets where traffic calming should be required is a concern for the GPI. Two of those streets are Evelyn Place and Grovewood Road. The main reason those are in question is because he didn't have good traffic data from the City to evaluate the full impact of the existing speeds and existing volumes. The streets that the Planning & Zoning Commission added – Edwin Place and Kimberly Avenue – while they are heavily traveled streets, the TIA (Applicant Exhibit 3) shows that in the build-out year 2010, the new traffic from the GPI on those streets would represent

about 2-3% of the total traffic on those streets. The total traffic estimated on those streets currently is 10,000 vehicles per day and in the build-out year of 2010 it is estimated to be higher, in part from the natural growth of 2% per year, and in part from the 2-3% GPI traffic to where they are closer to 11-12,000 vehicles per day. The existing traffic on Kimberly Avenue is about 10% of GPI traffic. Most of the traffic on those streets is traffic going to the Beaverdam area, people using Kimberly and Edwin as an alternative to Merrimon Avenue, and other places north of town. The point is it doesn't seem reasonable to require the GPI to pay for traffic calming on those streets since the existing problem and the future build-out isn't created by the GPI traffic.

In response to Councilman Newman, Mr. Moule said that the only place he would have a potential concern is the intersection of Edwin Place and Charlotte Street, which has been studied in the past. The projected increase in traffic at this intersection from this project is about 4-5%. Although he didn't do that sort of analysis, he didn't feel it would make a significance difference based on that small percentage growth.

Upon inquiry of Councilwoman Jones, Mr. Moule said that the current traffic on Macon Avenue is estimated to be 80-90% of GPI traffic. In 2003, 2,600 vehicles per day was counted on Macon Avenue. It was his opinion that the lowest capacity of Macon Avenue would be around 14,000 vehicles per day.

Councilman Newman asked if resort traffic generates different peak hours. Mr. Moule said that sometimes people are leaving for work when the hotel employees are going to work going in opposite directions. Right now, a lot of the traffic to the GPI is employees.

Councilman Newman asked if there was any discussion about shift changes as a possible way to manage traffic congestion. Mr. Moule said that the issue of shift changes has been done in areas where the real capacity of the street is an issue - where you would want to shift something away from the peak hour. He doesn't see that as a major issue because of the fact that they are not near the actual capacity thresholds on these streets and intersections.

Councilwoman Jones asked about if any of the traffic improvements would alleviate the bottle-neck of traffic on Macon Avenue when the GPI holds special events. Mr. Moule said that the GPI is proposing parking terraces and that may eliminate the back-ups on Macon Avenue. In addition, the roundabout may move traffic a little smoother around the entrance as well with improved signage.

Upon inquiry of Councilman Newman about parking on Macon Avenue, Mr. Moule said that the GPI can only control where their employees park and that better enforcement of the no parking will have to be enforced by the Police Department. Mr. Green also said that starting at the entrance to the Battle and Bynum House, we will be working with the City's Traffic Engineer to narrow Macon Avenue in that area. That will be either through a median in the street or by bringing in sidewalks on either side and plantings to narrow down the street – to make it less attractive for parking. We are taking a pro-active approach to providing the parking, making the street less attractive and also working with the Police Department to minimize the parking on the street.

The following residences spoke in opposition to the conditional use rezoning for various reasons, some being, but are not limited to: improvements are too large, too long in duration and too burdensome for the neighborhood; neighborhood integrity is being compromised by this massive 10-year construction project in the heart of a mature, historic community; TRC and Planning & Zoning Commission did not consider the affect of the hillside ordinance; hillside ordinance should be fairly, consistently and equitably applied to all; GPI bought Bynum property knowing it was RS-4; proposal encroaches on existing neighborhood; Sunset Terrace is much less dense than proposal on Bynum House property; historic fabric of neighborhood will be

destroyed with the addition of 20 modern houses; GPI intends to clear entire communities of mature forest from steeply-sloped land; loss of irreplaceable greenspace; slopes will be destabilized and runoff and surface erosion will increase dramatically; additional sediments will be deposited in stream, increasing the likelihood of extension flooding; blasting will jeopardize the structural integrity of the historic homes and further destabilize the steeply-forested areas; natural environment will be irreparably harmed; there will be 10-years of construction traffic, noise and pollution; complaining of issues of prior GPI expansions to the City and to the GPI did very little to solve the problems; there needs to be a comprehensive traffic calming plan in place and a network of sidewalks completed on all approach roads before the project begins; streets are already over-burdened and area has inadequate sidewalks; safety problem for children taking the school bus when construction traffic begins; sidewalk improvements should be totally paid by the GPI and the City; project needs to be scaled back; if approved, keep all Planning & Zoning Commission's recommendations; if approved, firm rules regarding construction must be adhered to; need for ombudsman paid for by the GPI with authority to intervene when the GPI breaks the construction rules; need strong control on the areas that have daily and weekly rental units with appropriate fencing; request to include Evelyn Place in traffic calming because it carries a lot of the GPI traffic; two solutions to traffic problems would be to (1) tunnel under Charlotte Street and the golf course, and (2) construct a transfer station where 18-wheelers can download and shift employees can meet to carpool; additional pollution will be created by cars, trucks and tour buses; concern of maintenance of buffer areas; the GPI cannot be trusted since during the transfer of the property to the GPI, the GPI said the property would not be rezoned; if approved, it will open the doors for the GPI to do anything they want; the Resort District in the middle of the City is inappropriate; Macon Avenue is a narrow, two-lane road with many curves and no sidewalks and any increase in traffic will be too much; the use will only benefit the GPI and will not provide an essential service to the community; property near the GPI will become less desirable; development is out of character with the neighborhood; GPI has ignored City plans; low water pressure in the neighborhood currently exists; include Kimberly Avenue for traffic calming; alternative connection along a cart path should be made to eliminate GPI traffic on residential streets; on-street parking on Macon Avenue should remain because it protects pedestrians; to construct the roundabout on two public streets (Macon Avenue and Old Toll Road) will require extensive grading on the side of Sunset Mountain and is not an appropriate use of a public thoroughfare; allowing the GPI to expand will encourage urban sprawl; homes in the GPI area are being viewed as less desirably due to its proximity to the GPI because of the loud noise of City buses, mammoth tourist coaches and delivery trucks; existing incessant 24/7 noise from the Sammons' wing, including repetitive beeping, crashing and banging of industrial dumpsters being emptied; speeding hotel traffic; expansion will eliminate buffers between existing neighborhood and the Inn; GPI should build in downtown Asheville, but not on the publicly-owned park on which they proposed to build on earlier; project does not comply with the 2025 City Plan; if approved, request a TIA for the segment of Charlotte Street to I-240 because Charlotte Street Corridor Plan notes area on Charlotte Street to I-240 operates at a Level of Service "D" and "E"; if approved, establish an oversight panel to review architectural designs, building materials and construction to ensure that the cottages and condominiums be in character with the existing homes; Edgemont Road residents have requested help in traffic calming and now the GPI will be placing additional traffic on their road; impact on the City as a whole will result in over-expansion, poor development and unmanaged growth; GPI is not salvaging history of the area; City residents will have to bear the costs of upgrading infrastructure; guests of GPI stay on the GPI property and money does not circulate to Asheville businesses; job generated by GPI will be low paying jobs; and Council should recall their obligation promises to protect neighborhoods:

Mr. Joe Franklin, resident at 26 Sunset Terrace
Mr. Gordon Pirie, resident at 48 Sunset Terrace (Neighborhood Exhibit 1)
Mr. Clay Ballentine, resident at 63 Macon Avenue
Mr. Bob Burgin, resident on Old Toll Road
Ms. Barbara Hodgson, resident at 107 Evelyn Place

Ms. Judy Williams, resident at 98 Kimberly Avenue
Ms. Gloria Dastoli, resident at 31 Innsbruck Road
Mr. Sherman Fearing, resident at 163 Macon Avenue
Mr. Tom Smith, resident who lives off Macon Avenue (Neighborhood Exhibit 2)
Ms. Leah Karpen, resident at 400 Charlotte Street (Neighborhood Exhibit 3)
Mr. Max Haner, resident at 5 Kimberly Avenue
Mr. Fred English, Haw Creek resident
Ms. Kathryn Scott, resident at 54 Macon Avenue (Neighborhood Exhibit 4)
Mr. Tom Hartmann, resident at 180 Patton Mountain Road
Ms. Sue Hunter, resident at 4 Evergreen Lane (Neighborhood Exhibit 5)
Mr. Chris Lambrecht, resident at 81 Edgemont Road (Neighborhood Exhibit 6)
Ms. Mary Lois Kirby, resident at 185 Macon Avenue
Ms. Grace Curry, resident at 59 Edgemont Road (Neighborhood Exhibit 7)
Mr. Tommy Hayes, resident on Edgemont Road
Mr. Joe Scott, resident at 54 Macon Avenue (Neighborhood Exhibit 8)
Mr. Mike Lewis, resident at 48 Gracelyn Road
Ms. Jane Northway, resident at 80 Edgemont Road
Ms. Kim Wood, resident at 23 Sunset Terrace

Ms. Leesa Kulba, resident at 354 Kimberly Avenue, spoke in support of the GPI expansion and felt it big of the GPI to pay for traffic calming to develop their own property.

Mr. Don Martin, resident at 107 Norwood Avenue, spoke in support of the development and would be honored to live in the Battle House Condominium.

At 7:47 p.m., Mayor Worley announced a short break, at which time there will be no deliberations of this issue.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek did not expect the level of service to change. The amount of traffic generated is large enough to have a significant on the neighborhoods, but it is small enough that it does not present any particular capacity concerns or level of service concerns for the street network. He explained the different ways to analyze level of service. He said that level of service "E" is fairly common for an urban area and he did not have a strong concern in the segment of Charlotte Street and I-240. He said the signal coordination effort City-wide will provide some benefit.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek was not aware of any old studies regarding the traffic generated by WLOS-TV when they were housed in the Battle House.

In response to Vice-Mayor Mumpower about the traffic calming measures be implemented before construction begins, Mr. Butzek said that phasing the project is something for Council to consider. Typically, the City requires the traffic calming to be in place either prior to the Certificate of Occupancy (CO) or for the money to be transferred to the City, if the City was to do the work prior to the CO. We certainly would prefer measures to be in place prior to any CO. To have the traffic calming completed prior to any construction work beginning would be a little different that what happened in other projects, which is not to say that it would be wrong. He thinks it could be doable, but he hasn't talked with the GPI on that matter. But he felt it is physically possible. They may have to delay constructing their site to do all the traffic calming first, but he would consider it feasible.

In response to Vice-Mayor Mumpower about costs, Mr. Butzek said that some rough preliminary cost estimates on what we felt would be appropriate were developed. For the streets that were initially recommended by staff, which included Macon Avenue, Edgemont Road, Country Club Road, Grovewood Road, a short section of Charlotte Street and Evelyn Place, we

estimated the cost of that at about $125,000 in construction costs. The Planning & Zoning Commission recommended Edwin Place and a section of Kimberly Avenue be considered as well. We estimate that at about an additional $50,000.

When Vice-Mayor Mumpower asked for clarification on a study that illustrated 85% of the traffic on Macon Avenue was traveling an average speed of 35 mph, which is 10 miles above the posted limited of 25 mph. Mr. Butzek understood that the top 15% are going 35 mph or above.

Councilman Davis wondered if we could limit the streets for construction traffic. Mr. Butzek said that every street goes through a neighborhood and so there is no good route to limit construction traffic. He has heard discussions from neighbors that the people on Macon Avenue don't want to bear all the brunt and neighbors on the other side don't want to bear the brunt either. What may be a fair resolution is that the traffic be distributed along several different ways and no one neighborhood bears the complete brunt of the construction.

Upon inquiry of Councilman Davis about the connectivity from the end of Charlotte Street to the GPI, Mr. Butzek said that it is his understanding that the GPI has explored that option. His understanding from them is that it is not a feasible route in terms of existing property and existing topography. Mr. Green also responded that the connectivity alternative was so extreme, including the acquisition of additional right-of-way, it would make the project financial unfeasible and it would also destroy the historic integrity of the neighborhood.

When Vice-Mayor Mumpower asked about the 10-year construction schedule, Mr. Green said that they have heard concerns about the scale of the construction schedule and also the time period over which it would be. We might be able to compress the phases and do parts of phases together to create maybe 3 phases in possibly 5 years. We have made a commitment to continue working with the neighborhood through the construction process. Ideally, instead of the ombudsman, they would like to continue to work with the neighborhood committee and have a representative of the City too.

In response to Vice-Mayor Mumpower, Mr. Craig Madison, Chief Executive Officer of the GPI, said that they did not make a commitment to not rezone the Bynum House when they purchased it.

In response to Vice-Mayor Mumpower about the concerns the GPI has with the recommendations, Mr. Green said that there will be a precedent set by requiring the GPI to do traffic calming on Kimberly Avenue, which only 1.5% of the traffic on Kimberly will be generated by the proposed improvements. The GPI does not mind, and they fully intend to addressed, those impacts on the streets in other places that are caused by their construction. The ombudsman recommendation is loose and they would rather work on that.

In response to Vice-Mayor Mumpower, Mr. Green said that $125,000 for a total cost for traffic calming seems appropriate. We also talked with Mr. Butzek about the sidewalk improvements which is about $150,000 for the off-site sidewalk improvements and about $10,000 for the bicycle lanes and signage. That would be a total cost of $285,000 the GPI will be providing to the City to address traffic calming, sidewalks and bicycle lanes – all off-site.

Mr. Butzek said that one of the things he is recommending with those improvements is that one of two things happen. One is that the GPI administer the process, including administration of the design. The other is that an amount be added to that figure to pay those engineering administrative design cots. We estimate for the sidewalk would be 50% which would include easement acquisition and 25% for the traffic calming to hire a consultant and to absorb administrative costs.

Mr. Green felt that 50% for administration and engineering is a bit high for sidewalks. He said that a 25% adc on to that $285,000 for administration and engineering fees appears to be adequate. Also, the GPI would rather have the City manage that process.

City Engineer Cathy Ball responded to Mr. Green about the 50% figure being too high. She said a lot of that is in right-of-way acquisition. There is a whole process aside from the design and construction of the sidewalk that includes doing easements and obtaining property from adjacent property owners on this project. That is the reason why the sidewalk figure is higher than the one for traffic calming.

Ms. Tuch clarified the costs would be approximately $360-400,000.

Upon inquiry of Mayor Worley, Mr. Green explained the neighborhood process they have gone thorough over the past 1.5 years, noting that they have met 12 times. Those meetings resulted in many changes to their original plan, some being, but are not limited to: the southern portion of the site is residential to blend in with the residential component; addressed the scale; moved units further away from residential property lines on both the north and south end; reduced the number of homes in Sunset Mountain condominium units; increased the undisturbed buffer area adjacent to residential properties; addressed concerns resulting in a roundabout; and addressed concerns resulting in a parking garage. We have tried to address the many concerns over the past 1.5 years. They had made a commitment to have someone work with the neighborhood and interface with the construction contractors to distribute the traffic on different roads.

In response to Mayor Worley, Mr. Green said that a comment was made that they might be building too much parking, so the 45-space parking lot proposed near the southwest portion of the Vanderbilt Wing may not be constructed, if it proves that we have adequate parking.

In response to Councilwoman Jones, Mr. Green said that initially there was no residential component in the original Master Plan. In addition, the parking deck was thought of, but it evolved totally different after hearing neighborhood concerns.

Councilman Newman hoped that the GPI will continue to look at the alternative connectivity for the long-term future if there is going to be other development in order to avoid the overloading of traffic on existing residential streets.

In response to Councilman Newman, Mr. Green said that the shift change schedule to manage traffic during the peak hours is something the GPI can look at. They have looked at an off-site location for a parking garage for employees to park and shuttle to the GPI. The owner of that property on Charlotte Street was not amenable to releasing it so we could not do that. He felt the GPI will continue to look at those types of options to address the traffic problems.

Upon inquiry of Mayor Worley, Mr. Green felt that if the property is not conditionally rezoned, then the property will be developed, whether the GPI does it or sells it to another entity. He stated that they do have an arborist/forester who will be working with the GPI to assure that they preserve as many trees as possible.

In response to Councilwoman Bellamy about including Edwin Place for traffic calming, Mr. Green said that less than 1-2% additional traffic on Edwin Place would be generated by the proposed improvements. He did not think that was fair for the GPI to pay for the traffic calming on that street.

In response to Mayor Worley regarding the roundabout width, Mr. Green said that they will have to do a bit of grading on the right side, but they will try to minimize it as much as possible.

In response to Vice-Mayor Mumpower, Ms. Tuch said that City staff tries to be very balanced in terms of development and the neighborhood needs. In terms of the residential development, Mr. Green showed the 11-12 lot subdivision and that is a very high likelihood and that is something that City staff would consider, given the desirability of this real estate. If this doesn't get rezoned, there is the likelihood that a single-family lot subdivision could be built, and if that were to be the case, it would result in a higher impact. As far as grading or clearing, we are talking about the difference of 8 units.

Responding to Vice-Mayor Mumpower about the hillside ordinance, Ms. Tuch said that the hillside ordinance reduces the amount of density that could happen in an area. And, in this particular case, we evaluate that based on a mathematical formula to determine the average natural slope. When you determine the average natural slope, anything over 15% and above the elevation 22/20, kicks in the hillside development standards. In this particular case, that average natural slope cut the density in half and that would be the underlying density of any zoning district. Our original review of the application we originally thought under RS-4 they could develop up to 23 units, so they are not seeking the rezoning for density purposes. Later when we determined that it would be subject to hillside standards, we realized they do need the rezoning for density purposes. It reduces the underlying density in half – the Resort District allows 16 units an acre and that would reduce it to 8 units an acre. The applicant is proposing a density of less than 4 units an acre (City Exhibits 5 and 6). She further explained that if Council rezones the Bynum House property to Resort, they are in full compliance with the hillside standards. Currently, if the rezoning does not occur, the GPI cannot build that many units.

Ms. Tuch also clarified about the hillside standards is in addition to reducing the density, it restricts the total amount of area that can be graded. That amount, in this particular case, is somewhere between 45-50%. That 45-50% is based on the slope (not the density). So whether we are looking at 5 units vs. 20 units, the total amount of area that can be cleared would be exactly the same.

In response to Councilman Davis, Ms. Tuch said that the GPI is showing a clustered development along the road, in order to try to minimize grading and clearing. She said that we cannot control the footprint of single-family homes. Even after that home is built, there is no mechanism in place to stop that homeowner from doing additional work. It is common to see additional areas being cleared and graded for patios, additional parking spaces, improvements to a driveway, or the removal of some trees for a better view. She said that given the contours in that area, this is the only way we can ensure that there is a buffer left in place, that the homes are placed sensitively, and that the homes are in character with the neighborhood.

Upon inquiry of Councilwoman Bellamy of what can be built on the property without Council's approval, Ms. Tuch said that the bulk of the property is currently zoned Resort. We have the clause in the ordinance that catches developments that are within 1500 feet in 3 years of each other to be reviewed as one project. The GPI could break this down into smaller pieces and only go to the TRC. There would be no conditional use permit involved. They could even take two phases of the site plan that are further than 1500 feet apart and develop those, then wait 3 years and do another phase, and then wait 3 years and do another phase. That would not have any of the Planning & Zoning Commission's recommendations – only the TRC recommendations.

Councilman Newman asked if Council approves the Master Plan, does that mean that the GPI could not do other development during that 10-year period. Mr. Shuford said that Council can condition the Master Plan to require any further substantial development to the areas covered

by the Master Plan to come back before City Council within a 10-year period. City Attorney Oast said that as to the other development on the property, not covered in the Master Plan, he didn't think Council can require them to bring that back. Mr. Shuford also noted .hat most of the developable areas are in the Master Plan, so it would be fairly unlikely for the GPI to do additional developments that would be outside the 1500 feet unless they modified the golf course.

Upon inquiry of Vice-Mayor Mumpower about low water pressure, Ms. Tuch said that issue has been brought to the attention of the Water Resources Department. The TRC asked that some of those property owners who were experiencing problems with water pressure to get in touch with the Water Resources Department so they could test it in a more specific location. The TRC did indicate that any infrastructure improvements would have to be undertaken by the GPI to maintain or improve that water pressure.

In response to Vice-Mayor Mumpower regarding erosion control, blasting and construction violations, Ms. Tuch said that staff would have to sit down with the neighborhood and the GPI to determine exactly what a violation would be and then what kind of fine would be assigned to the gravity of that violation. We have standards currently in place, irregardless of that condition, that would exact violation fines The typical zoning violation fine is $100 a day. If there were a perceived violation that maybe wouldn't technically be a violation by City standards, but could be perceived a violation by the neighborhood standards, that would not be caught. City Attorney Oast said that he will work on ways to strengthen the oversight in those areas.

Councilman Newman clarified that the Planning & Zoning Commission recommended that Council approve a provision to direct staff to develop a graduated set of penalties if there are violations of our conditional use permit. If staff is directed to sit down and evaluate a variety of violations and what their allotted penalty should be, she would like to involve a number of people from our Zoning Enforcement Office, City Attorney's Office, etc. City Attorney Oast noted that we do have a graduated penalty provision in our noise ordinance and that would be the kind of thing we would try to work on for this.

Ms. Tuch said that in addition to the $100/day penalty for zoning violations, we do have other measures that we have instituted, e.g., if a tree gets cut down in the buffer, we do require it to be replaced at a one-to-one ratio. We do have a number of measures in place, but whether that is adequate for the neighborhood, she wasn't sure.

City Attorney Oast noted that when Council adopts conditional use permits, they do it by ordinance and if Council imposes those kinds of conditions, that will be an ordinance and enforced like one.

In response to Councilwoman Jones about design oversight, Ms. Tuch said that typically when staff looks at architecture, we allow an application to proceed with concept plans or character sketches. In a case like this, she would consult with the Director of the Historic Resources Commission and determine what are the key elements that are important for that character, e.g., roof pitch, materials, etc. Those type of elements is what they would be looking for in that final product. That is part of staff's evaluation as to whether or not this application would be in harmony and character with the rest of the neighborhood.

Councilwoman Jones said there was a concern about the buffer on Old Toll Road when the leaves are off the trees. Mr. Tuch said that when the leaves are down it is difficult to screen against many things. There is a pretty substantial buffer left in place with this application. That is one of the reasons that staff encourages this kind of application because we can hold them to the buffer requirements.

When Councilman Newman asked why the City was asking the GPI to administer the sidewalk administration, Mr. Butzek said that it is not a lack of desire for the City to administer it, but a lack of having staff resources since it gets fairly complex when you get into the design, administration, right-of-way acquisition, etc. So, if Council felt that is something City staff should do, we would likely have to hire an engineer to actually do those design plans and work through that process.

Councilman Newman asked if we are counting administration to include acquisition of sidewalk right-of-way. Mr. Butzek replied yes and that is why it was a markedly different percentage than for the traffic calming because there is that added element and that was the major difference. He also added that any monies that are not spent, because these are rough estimates at this point, would be returned to the property owner.

Mr. Tuch said that she believes some of the GPI's hesitation about administering the sidewalk is that there are some property owners that would be affected by that new sidewalk who are not happy with the sidewalk being in their front yard. She feels the GPI would like some help in right-of-way acquisition so it doesn't look like the GPI is seizing their property. Councilman Newman confirmed that the City's only reservation about administering it ourselves is that we don't have the staffing and we would need to contract with someone to help administer it, if we were to administer it.

Councilman Davis felt that instead of an ombudsman, it might be a better for a committee to be formed with a neighborhood representative, a GPI representative and City staff. Ms. Tuch said that the Planning Department does not normally get involved in these type committees and it may be difficult to coordinate. If there was an ombudsman, he would be hired by the developer who would monitor the development and construction activity. If there was a concern or violation then he would contact the appropriate individual and take the necessary measures.

Vice-Mayor Mumpower would speak against a committee formation. He felt we should require the GPI to identify a contact person for the neighborhood and then hold the GPI responsible for any violations. And then for the City to do its job and enforce our ordinances, rather than creating another level of beau racy.

Councilwoman Bellamy also felt the GPI should be responsible for communicating with the neighborhoods on a regular basis. Mr. Shuford said the City can put some type of meeting process in place that when the GPI nears the start of another phase that they would hold a community meeting or send out notices. There are things you can do on the ground to indicate where grading and clearing will occur and that information can be shared as well.

Mr. Green said that the GPI has promised to continue it's quarterly newsletter to let the neighborhood know what is going on in the neighborhood. In addition, the GPI has committed to continue working with the neighborhood committee and develop special committees that would be composed primarily of people within the different areas affected. He said they will comply with existing ordinances.

Upon inquiry of Councilwoman Jones, City Attorney Oast was familiar with the court case presented in Neighborhood Exhibit 5 and it doesn't raise any concerns to him with respect to this conditional use permit. In fact, it reinforces a lot of the advice he gives Council every time a conditional use permit is being considered by City Council.

Upon inquiry of Councilwoman Jones about blasting, Mr. Green said that there have not been any slope borings on any of the properties so we don't know what lies under the top soil. Therefore, he could not answer if there would be any blasting.

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Mr. Moule clarified the issue about the WLOS-TV use of the Battle House generating more traffic than the proposed development for the Battle and Bynum House combined. He said that in December of 2000, when WLOS was still in the Battle House, Macon Avenue showed 3,800 vehicles a day. Based on the 2002 count from the City, his TIA included a number of 2,600 vehicles a day.

Councilwoman Jones asked whether the GPI's vacancy rate has increased, decreased or stayed the same from 2000 to 2002 (spa opened in 2001). Mr. Madison said that the GPI's occupancy has stayed steady at about 71-72% throughout that period.

Hearing no further rebuttal, Mayor Worley closed the public hearing at 9:40 p.m.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3184 to approve the conditional use rezoning for property located at 290 Macon Avenue (Grove Park Inn – Bynum Property), from RS-4 Residential Single-Family Medium Density District to Resort District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 396

City Attorney Oast reminded Council to not base your decision on anything you have heard except at this hearing and that includes letters from the applicant, conversations with the applicant or letters or conversations with people in the neighborhood.

Councilman Newman moved to adopt Ordinance No. 3185 to issue a conditional use permit for property located at 290 Macon Avenue to permit to permit construction of condominium units, subject to the following conditions, plus any other stipulations that City staff and the Planning & Zoning Commission have recommended that are relevant to the Bynum House property:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
   a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
   b. implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project;
   c. such traffic calming measures shall be fully funded by GPI;
   d. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
   e. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to

exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.

This motion was seconded by Councilman Davis.

Councilwoman Jones asked for a friendly amendment that the traffic calming and sidewalks be completed prior to construction.

Councilman Dunn felt that if we build the sidewalk first, there will be construction traffic next to the sidewalks. It might not be appropriate to have pedestrians around certain construction sites until the development is built, for their own safety.

Mr. Shuford said that doing a traffic calming process is a neighborhood involvement process and that will take some time to accomplish. In addition with regard to the sidewalks, it's clear that at least portions of the sidewalks are going to be built outside of the City's rights-of-way and we can easily have a property owner be reluctant to have the sidewalk cross his/her property. A lawsuit might be filed and then a considerable amount of time for that process. Taking those two things into account, a motion might be phrased to tie the traffic calming improvements being completed to some specific phase of the development process of perhaps no Certificates of Occupancy or something along those lines. With regard to the issue of safety, we certainly wouldn't want to do anything to attract people to the areas that are under construction, but we will still have pedestrian traffic in the area and they'll be safer off the road.

City Attorney Oast said that this is dealing specifically with the Bynum House property. His concern is that from an implementation standpoint. If Council approves the conditional use permit for the entire Master Plan, this is a process that could take 10 years and there may be phases of the project that are not built for another 6-7 years. He wasn't sure whether Council intends to require all the sidewalks be constructed prior to all those phases being built out.

Mr. Shuford suggested asking the GPI transfer the money to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period. Councilman Newman and Councilman Davis agreed to add this as a condition.

Upon inquiry of Vice-Mayor Mumpower, Mr. Green said that the developer will pay the City, prior to any land disturbing activities, $325,000. That figured was arrived at based on $100,000 for traffic calming, $150,000 for sidewalk construction, $10,000 for bicycle facilities and 25% administration costs. He asked for clarification from the City of graduated violation penalties. He felt that compliance with the existing City ordinances and compliance with a construction management plan would be more appropriate.

Councilwoman Jones asked for another friendly amendment that there be no blasting. She was concerned that we have rezoned to Resort in a residential neighborhood with historic homes around.

City Attorney Oast said that since the GPI doesn't know whether there will be blasting or not, he suggested that if the GPI determines that blasting will occur with respect to the Bynum House property or any of the other phases, that that part of the conditional use permit come back to City Council.

City Engineer Ball said that blasting has moved a lot so that you can actually do it safer than you can do some other types of construction. She suggested a condition that in the event

that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. They have come a long way with the ability to blast to the point where you don't see some of the damage that you could with other ways of breaking up rock. Mr. Shuford also requested Council add to that condition, since the Fire Department and other agencies need to be notified for blasting purposes, that the developer also notify the neighborhood in advance. Councilman Newman and Councilman Davis agreed to add this as a condition.

Vice-Mayor Mumpower felt that we have existing ordinances to hold the developer accountable and legally liability for their blasting and for us to create another level of oversight seems too much.

Mr. Butzek reminded Council that one item staff is recommending is to exempt GPI from approximately 6,000 linear feet of sidewalk requirements around their frontage exchange for doing the off-site portion of Macon Avenue, which we feel is much more in the public interest. That portion of Macon Avenue we've estimated accounts for more than half of the total cost of approximately $450,000, if we include the sidewalk, traffic calming, including Kimberly and Edwin that was recommended by the Planning & Zoning Commission, and all the administrative costs. They have to construct the sidewalk along the frontage and we are recommending that they also pay for the construction of the portion down to where the sidewalk ends, near Latrobe. And that is an off-site improvement that we are recommending, in lieu of doing all the other frontages, which provide less public value. He noted that the amount we are exempting the GPI from doing is approximately $240,000.

Councilwoman Bellamy felt it would be appropriate to ask the GPI to pay the $450,000 amount as recommended by City staff.

Mr. Shuford said that City Council has another opportunity to consider a condition in the following conditional use permit request, however, we are going to expect to do adequate traffic calming and make the sidewalk connect. That will cost some figure and whether it will be the number that staff has generated or the number that came from the developer. If the number you choose is low, then the City will have to make up the difference. And, if there is any money left over, it will be returned to the developer. He also suggested Council specify the percent of whatever figure that will go to sidewalk and traffic calming.

Mr. Green said that the major reason for the difference in the figures is that Mr. Butzek recommendation of $450,000 includes traffic calming on Kimberly, Evelyn, Edwin and Grovewood. He said that two of those streets (Kimberly and Evelyn) we feel are completely inappropriate for the GPI to pay for traffic calming. These improvements will result in less than 3% increase in traffic on those streets. We are prepared to do the traffic calming on the streets that are impacted by the improvements. Based on Mr. Moule's calculations and the TIA, Edwin and Grovewood would not need traffic calming based on the improvements proposed under this conditional use permit.

Councilman Davis agreed with Mr. Green in that the developer should not have to pay for traffic calming on streets that are not impacted by the GPI improvements.

Councilman Newman felt that the amount required for traffic calming, sidewalks, bicycle facilities and administration should be in the conditional use permit for the overall Master Plan.

Councilwoman Bellamy called for the question.

Mayor Worley restated Councilman Newman's motion, and Councilman Davis' second as follows: To adopt Ordinance No. 3185 to issue a conditional use permit for property located at 290 Macon Avenue to permit to permit construction of condominium units, subject to the following conditions, plus any other stipulations that City staff and the Planning & Zoning Commission have recommended that are relevant to the Bynum House property:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
   a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project; prior to any construction beginning on the project;
   b. such traffic calming measures shall be fully funded by GPI;
   c. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
   d. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.
6. The GPI transfer an amount to be determined under the conditions of the Master Plan conditional use permit to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period.
7. In the event that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. In addition, the developer is required to notify the neighborhood in advance of any blasting.

The motion re-stated by Mayor Worley which was made by Councilman Newman and seconded by Councilman Davis carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 341

Vice-Mayor Mumpower moved to adopt Ordinance No. 3186 to issue a conditional use permit for the Master Plan, including the Bynum House Property, for property located at 290 Macon Avenue, subject to the following conditions:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:

a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project; prior to any construction beginning on the project;
b. such traffic calming measures shall be fully funded by GPI;
c. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
d. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;

3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.
6. The GPI transfer $325,000 to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period.
7. In the event that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. In addition, the developer is required to notify the neighborhood in advance of any blasting.

This motion was seconded by Councilman Davis and carried unanimously.

Councilwoman Jones felt that exempting the GPI from $200,000 to serve the neighborhood better is good. And, that if any amount exceeds what is necessary, the remaining funds would be returned to the developer. She felt the $50,000 for traffic calming on Kimberly and Edwin is appropriate. Mr. Green said that the GPI would be willing to pay the City $375,000.

Vice-Mayor Mumpower and Councilman Davis agreed to amend their motion to include the following sub-condition under 2 above: "implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project." In addition, they agreed to amend their motion of No. 6 as follows: "6. The GPI transfer $375,000 to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period."

Councilman Dunn was sympathetic with the neighborhood, but stated that traffic is everywhere and no one in the City is not impacted by traffic. He explained how any plan (the 2025 Plan in particular) can change and it fills people with expectations and then they are disappointed when the plan changes.

The amended motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried unanimously.

At 10:25 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY TWO STANDARDS FOR BED AND BREAKFAST INNS

ORDINANCE NO. 3187 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY TWO STANDARDS FOR BED AND BREAKFAST INNS

Mayor Worley opened the public hearing at 10:34 p.m.

Mr. Scott Shuford, Director of Planning & Development Department, said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide clarification of two standards for bed and breakfast homestays and inns. This public hearing was advertised on November 12 and 19, 2004.

In working with the Unified Development Ordinance (UDO) requirements for bed and breakfasts, the Planning & Development staff has found two statements requiring clarification for the intent to be more clearly understood by developers and property owners. Specifically, the question of how to measure square footage is further defined as "gross floor area" (as defined in Section 7-2-5). The other amendment is intended to clarify that existing bed and breakfast homestays and inns that are legal, nonconforming only due to the separation requirements of 500 feet can be further expanded as long as they comply with other applicable development standards.

Pros –

- Requirements for bed and breakfast uses will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –

- It is possible that certain property owners will disagree with the intent to allow existing bed and breakfasts to expand if only nonconforming due to the separation requirements.

The Planning and Zoning Commission unanimously recommended approval of these code amendments on October 6, 2004, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 10:35 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3187. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3176, AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60 UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS)

City Attorney Oast said that this is the second reading of an ordinance adopted on first reading at the November 9, 2004, meeting, granting a conditional use permit for Kenilworth Forest Village Apartments. Because this ordinance failed to pass by a 2/3 vote of Council, law requires a second reading of it.

On November 9, following a public hearing, Council voted 4-3 in favor of adopting an ordinance granting a conditional use permit for the Kenilworth Forest Village Apartments, a 60 unit apartment complex proposed for construction on Springside Park Drive, which is near the Tunnel Road end of White Pine Drive.

City staff has reviewed the testimony and material presented at the public hearing, and has attempted to draft the permit to reflect Council's deliberations.

A copy of the proposed ordinance has been shared it with the applicant and the attorney for the neighborhood for their review. He explained one change to No. 1 in the conditions in the findings and conclusions section as follows: "Obtaining an opinion from an attorney, satisfactory to a North Carolina title insurance company and evidenced by a commitment to insure or other document, that there is legal and adequate access from the Subject Property to Springside Park Drive, and the road must be made public prior to the issuance of a Certificate of Occupancy."

If Council approves of the proposed ordinance, adoption of it on second reading is recommended.

Councilman Newman moved to approve on the second and final reading Ordinance No. 3176, as amended by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE 356

V. NEW BUSINESS:

A. RESOLUTION NO. 04-244 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Alcoholic Beverage Control Board.

The term of Debora Holmes Young expired on November 13, 2003, and the term of Barbara Field expired on November 13, 2004. Both are eligible for reappointment.

At City Council's worksession on October 19, 2004, City Council instructed the City Clerk to arrange interviews for Jim Ellis, Kenneth Kaplan, Fred Slosman, Duane Jarnecke and Lisa-Gaye Hall.

Councilman Dunn said that City Council is always looking for the most qualified people to serve on our boards. He felt that the current board members have been more reactive to issues than proactive to issues. He felt that the current board members have not done a good job. There have been three studies performed – all wanting to restructure the board. He felt that the Chairman does not have the educational background in accounting or business. He was disturbed that City Council had to approach the ABC Board and tell them that a management study was needed for their organization. He expressed concern with their financial statements. He felt that if Council reappoints Ms. Young and Ms Field, we are saying that incompetence is okay. He would vote against reappointment of Ms. Holmes-Young.

Councilwoman Jones said that in terms of a board, there are particular things you look to that are proactive. The firing and hiring of the person in charge are two of those things. It's a rare volunteer has to do both of those things and they are both very difficult. They both require pro-action. During the time they were looking for the best leader, they were in limbo for 18 months and subject to a lot of criticism. Another thing she looks for from a management point of view is when you receive the audit and you read the material weaknesses. You should not see those same weaknesses the next year and you do not seem them here. Those are proactive actions. In a volunteer position, the board also had to deal with a very sensitive personnel issue. That is a hardest job a volunteer has to do, whatever their qualifications. In terms of the documents alluded to, they all point to management issues of the supervisor, which goes back to finding the best possible candidate and that is what they have done. She said that she would be supporting both reappointment of Ms. Holmes-Young and Ms. Field.

Mayor Worley will be supporting the reappointment of Ms. Holmes-Young. He had extensive conversations with her during the course of the problems that the ABC Board encountered. He found her to be extremely competent and doing an outstanding job in dealing with a very difficult situation. As the City Council liaison, she kept him very well informed throughout the course of the situation. She made one mistake in judgment, but that one mistake does not rise to the level to not reappoint her to the Board. She has served as Chair of the board during a very difficult time taking on far more responsibilities than a chair normally would take on, due to the absence of a supervisor.

Vice-Mayor Mumpower said this is not a personal decision and he also pointed out that it's difficult to determine the timing issues of when they came on board, what happened when and how accountable they should be. However, he does believe there is overlap and questions the thoroughness of some of the investigative efforts. He has a specific concern about the former director and the existing Board made the decision to retain him. He would not support the reappointment of Ms. Holmes-Young.

Councilwoman Bellamy believes in fiscal responsibility, accountability and trust are critical when serving as a board member. Over the past 4 years, Council has heard extensively about the ABC Board's operations and board activities – increased revenue, dwindling profits, embezzlement charges and convictions, lack of leadership issues, employee morale problems, inappropriate or questionable hiring practices, people leaving employment seeking re-employment, increase support for local non-profits, hiring leadership, and a host of other items. However, when we heard all that, we need to think about the time period in which it was emphasized. One thing was clear was all the information was not given to Board members during the former director's tenure. If all information wasn't presented to the Board members, it is hard for board members who are new to the job to find out as much information as possible. It's quite possible that some board members might have received some information that might have been helpful, but others were not given that information. It causes problems. That type of undermining has been the culture of that organization. What the current Board members had to deal with is a lot of undermining – not being given all the information. She believes they sought answers and listened to complaints, but when it wasn't to the complainant's satisfaction, it

increased more problems. As volunteer board members, who receive a stipend, they worked hard to try to find the best solutions. They worked to enhance and improve the organization. Since the management report and since the new director has been hired, there have been constant improvements. Now that they have a true team in place and we should give them at least six months to see if the team really works. The Board needs full support of staff and to get the information they need to make responsible decisions. She requested a quarterly report from the ABC Board. She would also support reappointment of Ms. Holmes-Young.

City Attorney Oast said that the terms of the ABC Board members are set by statute and he didn't think Council has the ability to appoint for a partial term.

Councilman Davis was concerned of Ms. Holmes-Young's effectiveness as the Chair of the ABC Board. He felt her effectiveness has been compromised by all the allegations – right or wrong. At this point in time, he would support reappointment and see the accountability with the new team.

Councilman Newman felt Council has struggled with all the issues around the ABC Board. Some issues are difficult to determine whether they are true or not. The management audit identified areas for improvement, but the overall message of the audit was that there were no glaring problems with the agency. The ABC Board did a good job of hiring a new director who has already gone a long way in restoring the confidence in the future of the Board. He would be supporting reappoint of Ms. Holmes-Young.

Vice-Mayor Mumpower noted that Debora Holmes-Young received a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dun voting "no". Therefore, Ms. Holmes-Young was reappointed to serve her remaining three-year term, term to expire November 13, 2006, or until her successor has been appointed.

Ms. Barbara Field received a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no." Therefore. Ms. Field was reappointed to serve an additional three year term, term to expire November 13, 2007, or until her successor has been appointed.

In addition, the N.C. General Assembly adopted legislation to add two additional members to the Alcoholic Beverage Control Board. By Council individual votes, Jim Ellis received 3 votes, Kenneth Kaplan received 7 votes, Fred Slosman received no votes, Duane Jarnecke received 4 votes and Lisa Gaye-Hall received no votes.

Therefore, Duane Jarnecke was appointed to serve an initial one-year term, term to expire November 13, 2005; and Kenneth Kaplan was appointed to serve an initial two-year term, term to expire November 13, 2006. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 426

B. RESOLUTION NO. 04-245 - RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that this is the consideration of appointing an alternate member to the Board of Adjustment.

Bradley Taylor has resigned as an alternate member of the Board of Adjustment, thus leaving an unexpired term until January 21, 2006.

At the City Council worksession on July 20, 2004, City Council instructed the City Clerk to arrange interviews for John Kiser and Ross Dryer. Mr. Dryer was interviewed on July 27, 2004; however, Mr. Kiser was unable to attend.

On October 19, 2004, City Council instructed the City Clerk to arrange interviews for Robert Middlemas, Starr Silvis and Penny Rush. Ms. Rush cancelled due to her pending move out of the area.

Ross Dryer received no votes, Robert Middlemas received 5 votes and Starr Silvis received 2 votes. Therefore, Robert Middlemas was appointed as an Alternate Member to the Board of Adjustment, to serve the unexpired term of Mr. Taylor, term to expire January 21, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 427

C. RESOLUTION NO. 04-246 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Civic Center Commission.

Peter Crosa has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2006. In addition, Denise Goodson has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2005.

At the City Council worksession on October 19, 2004, City Council instructed the City Clerk to arrange an interview for Brian Turner. Mr. Turner was unable to attend the interview, however, was very interested in the position.

In addition, at the City Council's worksession on October 19, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint George Keller, as a member to the Civic Center Commission, to serve the unexpired term of Mr. Crosa, term to expire June 30, 2006, or until his successor has been appointed.

City Council instructed the City Clerk to re-advertise for the unexpired term of Ms. Goodson.

RESOLUTION BOOK NO. 28 – PAGE 428

D. RESOLUTION NO. 04-247 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Film Commission.

The terms of Councilwoman Terry Bellamy, David Schulman, Lee Nesbitt, Andrea Dray, Steven Lutz, Diedra Smith and Leni Sitnick, as members of the Film Commission, expired on November 1, 2004.

At the City Council worksession on October 19, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) appoint Vice-Mayor Mumpower to serve a three year term, or until his term on City Council ends, whichever occurs first; (2) reappoint David Shulman to serve a three year term, or until his successor has been appointed; (3) reappoint Lee Nesbitt to serve an additional three year term or until her successor

has been appointed; (4) reappoint Steven Lutz to serve a three year term or until his successor has been appointed; (5) reappoint Diedra Smith to serve a three year term or until her successor has been appointed; and (6) reappoint Leni Sitnick to serve a three year term or until her successor has been appointed.

Also at the City Council worksession on October 19, 2004, City Council instructed the City Clerk to arrange interviews for Diane Vander Linden, Rudy Rodriquez, Lisa Sarasohn and Melinda Rains. Mr. Rodriquez did not attend the interview.

On October 21, 2004, Leni Sitnick asked not to be reappointed due to personal responsibilities. Ms. Sitnick, as Chair of the Film Commission, recommended City Council interview David Craft. After consultation with City Council, Mr. Craft was added to the interview list.

By individual Council votes, Diane Vander Linden received 5 votes, Rudy Rodriquez received no votes, Lisa Sarasohn received no votes, Melinda Raines received 6 votes, and David Craft received 1 vote. Therefore, Dane Vander Linden and Melinda Raines were appointed to serve three-year terms respectively, terms to expire November 1, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 429

E. RESOLUTION NO. 04-248 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Planning & Zoning Commission.

Nathaniel Cannady has resigned as a City appointment on the Planning & Zoning Commission, thus leaving an unexpired term until August 14, 2005.

On October 19, 2004, City Council instructed the City Clerk to arrange interviews for Joe Minicozzi and Jerome Jones.

By individual Council votes, Joe Minicozzi received 1 vote and Jerome Jones received 6 votes. Therefore, Jerome Jones was appointed as a member to the Planning & Zoning Commission, to serve the unexpired term of Mr. Cannady, term to expire August 14, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 430

F. RESOLUTION NO. 04-249 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Recreation Board.

Ann Babcock has resigned from the Recreation Board, thus leaving an unexpired term until June 30, 2005.

On November 16, 2004, City Council instructed the City Clerk to arrange interviews for Eleanor Campbell and Andrew Gall. Mr. Gall was unable to attend the interview due to an illness.

Eleanor Campbell received 7 votes and Andrew Gall received no votes. Therefore, Eleanor Campbell was appointed as a member to the Recreation Board, to serve the unexpired term of Ms. Babcock, term to expire June 30, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 431

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 29 – November 11, 2004: Betty Salter (Sanitation), Michael L. Spell (Water), Linda Hoover (Water), Evelyn Ashby (Streets) and Kris Spillars (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fisher Caudle, resident in the Pisgah View neighborhood, explained the lack of police enforcement in their area. He felt the area is discriminated against as the neighborhood has to deal with drug thugs, street trash and litter around the Pisgah View Apartments. He urged Council to clean up this public housing project because their individual property rights are being encroached upon.

Ms. Mary Stiger, resident near the Pisgah View Apartment, briefed Council on the terror residents live in around the apartment complex from illegal drug dealers. She urged City Council to find solutions to this devastating problem.

Mr. Joe Smith, Ms. Tiffany Kyle, Mr. Terry Bradley, Mr. D. Jones, and Mr. Peter Dawes all spoke about the need for accountability by the ABC Board and the many unanswered questions, including embezzlement and store proceeds, presented to the Board but no response. They urged City Council to have a full outside investigation of the Board by the State Bureau of Investigation or an accountant.

Mr. Mike Fryar commented about the alleged false statements provided to City Council by City staff in his recent annexation.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:49 p.m.

Ingleen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 7, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Minority Business Program Annual Report

Summary: This is the Minority Business Program Annual Report for Fiscal Year 2003-04.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, December 1999, December 2001, and October 2002, to clarify provisions of the Plan and to reduce the Minority Business Commission from thirteen members to eleven and September 2004 to make administrative changes and update statute information.

The Plan requires the Office of Minority Affairs to present to the City Council and County Commissioners an Annual Report on the effectiveness of implementation of the Plan. The Report shall include, but not be limited to: the number of minority businesses; percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor; percentage of overall reported contracts awarded to minority businesses; percentage of contractors complying with good faith efforts; and percentage of goals achieved and goals waived.

The Annual Report for Fiscal Year 2003-04 has been reviewed by the Minority Business Commission and approved at its meeting on August 12, 2004.

Exchange of Property on Stratford Road

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The City and Verdi Group LLC (Verdi) have negotiated an exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The excess right-of-way property is along the east side of Stratford Road comprising 0.008 ± acre generally across the road from and between its intersections with Parkside Avenue and Pinewood Avenue.

The property owned by Verdi (PIN 9730.12-96-3375) is a 0.969 acre parcel zoned RS-4 Residential Single-Family Medium Density District located on Stratford Road contiguous with the right-of-way. As it is the parcel will only support three (3) houses. With the additional land from the excess right-of-way, the Verdi property will support development of four (4) houses. The right-of-way easement to be exchanged for the excess right-of-way will cover 0.131 acre and will provide a logical and consistent right-of-way boundary along the east side of Stratford Road extending ten (10) feet into the Verdi property for the full length of the street frontage.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will provide a more logical and consistent right-of-way boundary along Stratford Road.
- It will enable maximum infill development consistent with the Strategic Operating Plan.
- The 10-foot easement makes a future sidewalk more constructible.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff and the Traffic Engineer recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

New Street Name – Jan Drive

Summary: The consideration of a resolution accepting the new proposed street name "Jan Drive."

Southern Pride of WNC, owner of lots on Jan Drive off of Bellevue Road, has petitioned the City of Asheville to accept the street name " Jan Drive."
The new street will begin at Bellevue Road and end at the cul-de-sac on Jan Drive.

City staff recommends adoption of the resolution accepting the new proposed street name "Jan Drive."

Application for a Bicycle Planning Grant

Summary: The consideration of a resolution authorizing the City Manager to submit a proposal requesting $24,000 in planning funds for the purpose of developing a $40,000 comprehensive bicycle plan and to commit local match for Fiscal Year 2006 as needed.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, the 2025 City Development Plan, and the 2004 Transportation Demand Management Program Work Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways. (Note that the Reed Creek Greenway, the Hominy Creek Greenway, and the Azalea Park Connector Greenway are all funded through the NCDOT Bicycle Program and that their staff is encouraging a bicycle plan proposal from the City.)
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

This proposal is supported by the Blue Ridge Bike Club and the Asheville Bicycle and Pedestrian Task Force, a volunteer group of citizens whose mission is "to educate the public about bicycle and pedestrian transportation, to advocate for the development and maintenance of safe, convenient and inter-connected facilities, and to promote the benefits of walking and bicycling for individual and community health." The Task Force has assisted in the development of the proposal and is committed to assisting in the planning process.

The positives of this project are that it will:

- Better position the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;
- Provide $24,000 or sixty percent of the total cost toward a $40,000 planning process and enable the City to bring in a bicycle planning specialist;
- Provide a process and opportunity to directly involve the Council, public and interested stakeholders in the development of goals, objectives, and tasks related to improving bicycling in Asheville; and
- Collate, clarify and direct information regarding local bicycle issues and initiatives into one document and series of maps that support the 2025 Plan, Greenways Master Plan, and Strategic Operations Plan.

The negatives of this project are that it will:

- Require time from City staff to manage the contracting process and supervise the consultant; and
- Require a local match of $16,000 beginning July 1, 2005. The Blue Ridge Bike Club has pledged support of $1,000 toward this local match requirement, but the remaining $15,000 will need to be committed for Fiscal Year 2006.

Staff recommends that City Council adopt the resolution authorizing the submittal of a proposal and the commitment of matching funds in the next fiscal year.

Adoption of Fiscal Year 2005-06 Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2005/2006 budget schedule.

The proposed Fiscal Year 2005/2006 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Several administrative steps in the budget process are already underway due to the need to get an early starting as a result of the pending retirement of the City Manager.

Key phases of the budget process, which involve City Council, include the City Council Annual Retreat, presentation of the proposed budget to City Council, a public hearing and formal adoption. This year's schedule includes five scheduled budget worksessions, allowing City Council sufficient time for effective budget deliberations. Adoption of the Fiscal Year 2005/2006 budget is scheduled for June 28, 2005.

City staff recommends City Council to adopt the Fiscal Year 2005/2006 budget schedule.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

10-YEAR PLAN TO END HOMELESSNESS

Mr. Jerome Jones, Chair of the Joint City/County Steering Committee, said that this is the consideration of a resolution approving the Plan "Looking Homeward: The 10-Year Plan to End Homelessness in Asheville and Buncombe County."

In May 2004 City Council and the Buncombe County Board of Commissioners appointed a joint advisory Task Force to prepare a 10-Year Plan to End Homelessness, with initial priority on the chronic homeless population.

The Task Force, has met six times and, with assistance from City and County staff and from Pisgah Legal Services, has produced the a report: "Looking Homeward".

He reviewed the Plan in that approximately 2,000 people experience homelessness in Asheville and Buncombe County at some time during the course of each year. Thousands more live doubled-up in the homes of family and friends, or they are at imminent risk of homelessness, living in substandard or overcrowded housing they cannot afford.

"Looking Homeward" is the culmination of a six-month planning effort by homeless service providers, government administration, housing developers, community leaders, and homeless people themselves. "Looking Homeward" is a long-range, comprehensive plan to help homeless people in our area return to healthy and stable lives in permanent housing. The Task Force's recommendations are evidence-based, and draw from the best practices of innovative programs and initiatives throughout the country.

"Looking Homeward" is intended to end long-term or "chronic" homelessness. This emphasis reflects a growing body of research demonstrating that members of this group are poorly served by existing efforts even though they use a disproportionate share of emergency services and resources. In Asheville and Buncombe County just 37 of approximately 300 chronic homeless people cost the community over $800,000 each year; this figure does not reflect the costs of the other 260+ chronic homeless.

Research also shows that the chronic homeless population is best served by utilizing a Housing First/Housing Plus model. This approach focuses on moving people out of homelessness and into housing as quickly as possible. A participant does not have to be sober or be treated for a mental illness to receive the housing. Supportive services are provided in permanent housing, not in emergency or transitional shelter. An Assertive Community Treatment Team (ACT Team) provides the service in a non-threatening, consumer-driven approach. Housing First/Housing Plus projects across the nation have been phenomenal results. After five years, as many as 90% of participants have remained in permanent housing.

Under the leadership of the United States Interagency Council on Homelessness, a national consensus has emerged that all levels of government must focus on improving efforts to house chronically homeless individuals and families. "Looking Homeward" is consistent with, and complementary to, the federal government's efforts in this area. Likewise, the State of North Carolina, through its Interagency Council on Coordinating Homeless Programs, is creating a plan that will coordinate state efforts with federal and local plans. Federal, state, and local plans must complement each other, because each level of government will play an integral part in implementation.

Other North Carolina and Southeastern localities developing plans include: Durham City/Durham County, Raleigh/Wake County, Winston-Salem, Gastonia, and Henderson/Vance County, North Carolina; Chattanooga and Memphis/Shelby County, Tennessee; Richmond,

Portsmouth, and Norfolk, Virginia; and Atlanta, Albany, Athens/Clark County, and August, Georgia.

The scope of "Looking Forward" is not limited to chronic homelessness alone. When implemented, over the next decade, the policy recommendations will also result in a significant reduction of all types of homelessness, including among families, youth and single adults who experience episodic homelessness. Successful implementation will depend on funding availability at local, state and federal levels. Funding decisions are left to the elected officials who charged the committee with creating this plan.

"Looking Forward" will end chronic homelessness and reduce all types of homelessness over the next decade by investing our resources in a coordinated, sustained effort that addresses the underlying causes of homelessness. This effort will (1) reduce the number of people who become homeless; (2) increase the number of homeless people placed into permanent housing; (3) decrease the length and disruption of homeless episodes; and (4) provide community based service and supports that prevent homelessness before it happens and diminish opportunities for homelessness to recur.

These goals will be accomplished through a five-prong approach:

1. **Leading the Way: Designation of a lead entity** – the Affordable Housing Coalition is recommended as the organization that will oversee implementation of the plan.

2. **Developing the Infrastructure: Homeless Management Information System (HMIS)** – HMIS, will link all services, screen for program eligibility, and gather data needed to monitor progress of implementation.

3. **Closing the Front Door: Prevention** – Better coordination of financial assistance and discharge planning for people leaving public institutions.

4. **Opening the Back Door: Housing First** – Development and implementation of a community-wide Housing First program that will include permanent housing for all homeless.

5. **Keeping it Going: Housing Plus** – A new approach to providing services to ensure that homeless individuals and families placed in permanent housing can remain housed in the long-term.

Addressing the Strategic Operating Plan: This plan directly addresses Housing Opportunities Goal #2 in the City's Strategic Operating Plan: "A community without homelessness – create a coalition to develop and implement the 10-year plan to end chronic homelessness through public and private partnerships."

Advantages:

- Addresses a major goal of the City's Strategic Operating Plan, and also a key recommendation of the Downtown Social Issues Task Force
- Is based on strategies that have proven successful elsewhere and have been subjected to extensive study and peer review;
- Brings together mainstream providers, non-profits, and local government in a concerted effort to focus policy initiatives and resources on homelessness
- If successful, will drastically reduce the human and economic cost of homelessness in our area;

- Builds on initiatives that are already under way (HMIS and development of suitable housing units);
- Is consistent with state and federal initiatives for ending homelessness and will position the City and County to apply for funding for implementation
- Lack of such a plan will eventually threaten continued federal and state funding from programs such as HOME, CDBG, Emergency Shelter Grant, HOPWA, and Supportive Housing Grants.

Disadvantage:

- The Plan does not identify specific costs or sources of funds; staff expects that some new federal funds will become available for housing and supportive services, but local funding may also be needed, including re-prioritization of CDBG and HOME funds.

Staff recommends City Council adopt the resolution approving the Plan "Looking Homeward: The 10-Year Plan to End Homelessness in Asheville and Buncombe County."

Mr. Jones and Ms. Robin Merrell, from Pisgah Legal Services, responded to various questions/comments from Council, some being, but are not limited to: where are the Woodfin apartments; reasoning why funding is not being addressed in the Plan; has the program assessed what kind of issues (social, substance abuse, mental issues, etc.) the chronic homeless have; why is this Plan different when the chronic homeless have not responded to that sort of help over the years; is it true that Asheville seems to attract homeless people; if the chronic homeless are helped, will they be replaced with another network of other predators; are the 37 chronic homeless from Buncombe County or from Western North Carolina; what is the average length of stay for the chronic homeless; do other cities in Western North Carolina have a homeless program; does this Plan work in conjunction with the mental health plan with Buncombe County; what kind of support services will be available; are there any assurances that more ACT Teams will be created; is there a ballpark figure on the cost of the Plan and what type of funding will be sought for this Plan; and what percentage of the housing dollars will be targeted specifically for the 37 chronic.

Vice-Mayor Mumpower expressed several concerns regarding the Plan and said that he would meet with Mr. Jones to discuss his concerns further.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the January 11, 2005, formal City Council agenda. It was also noted that questions that could not be answered would be addressed prior to the meeting on January 11, 2005.

ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2004.

City Council retained an independent audit firm, Dixon Hughes Evans PLLC of Asheville, NC, to perform an audit of the City of Asheville for the fiscal year ended June 30, 2004, as required by North Carolina General Statute 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion, that the financial statements present fairly the financial position of the City, is not modified by reservations or restrictions.)

Advantages:

- Complies with State Statues regarding financial management.
- Increases public confidence in local government through independent review of financial management and reporting and by full and accurate disclosure of the City's financial transactions and fiscal-year-end status.

Disadvantages: None.

This recommendation contributes to the achievement of all of the goals of the City of Asheville Strategic Operating Plan through validation of good stewardship and sound financial management by the City that provides the foundation for progress in each of the Goals.

Ms. Deborah Hawkins, Senior Associate of Dixon Hughes, PLLC, gave Council a brief presentation of their findings. She said their report for the 2004 audit expresses and unqualified opinion (clean) on the fair representation of the basic financial statements in all material respects, in conformity with generally accepted accounting principles generally accepted in the United States of America. She summarized (1) the City's government-wide (primary government only) financial statements for the years ended June 30, 2004; (2) the fund balance in the General Fund; (3) the basic financial statements of property tax collections and collection rates; (4) General Fund revenues; and (5) General Fund expenditures.

Mr. Schaefer answered various questions from Council regarding the financial report.

APPROVAL OF THE SALE OF THE BROTHERTON SITE TO NEIGHBORHOOD HOUSING SERVICES

Community Development Director Charlotte Caplan said that this is the consideration a resolution approving the sale of City-owned property on Virginia and Brotherton Avenues to Neighborhood Housing Services (NHS) for a mixed-income housing development.

The City purchased a 7-acre site at the corner of Virginia and Brotherton Avenues from the Housing Authority in 2000 and contracted with a private developer to develop 32 units of mixed income condominium-type housing on the site, using Community Development Block Grant (CDBG) funds for the site improvements and private financing for the housing construction. The developer completed the site improvements but then withdrew in late 2003, having been unable to get construction financing for the housing development on terms he found acceptable.

In July 2004, staff issued a request for proposals for a new developer. Two responsive proposals were received and reviewed by a panel of outside experts and staff, appointed by the City Manager. This panel has recommended the proposal submitted by Neighborhood Housing Services of Asheville (NHS) in partnership with The Verdi Group. NHS proposes to purchase the improved site for $454,701 ($1,001 over appraised value) and construct 44 units of housing. The proposal combines the design and construction experience of the Verdi Group with NHS's experience in marketing to income-qualified buyers and its ability to obtain construction financing on favorable terms from its national affiliate: Neighborhood Housing Services of America.

The development is consistent with the City's Strategic Operating Plan (Housing Opportunities Goal #4) because it increases the supply of affordable housing through relatively dense infill on a vacant parcel and also provides mixed-income housing

The resolution authorizes the Mayor to enter into a contract for sale with NHS. NHS will then do its due diligence on the site and prepare construction plans. Council will have the opportunity of reviewing the plans in detail early next year, since NHS's proposal to increase the number of units requires modification of the Conditional Use Permit approved in 2003. The sale will not close until any required zoning process is completed.

The sale will be governed by the terms of N. C. Gen. Stat. 160A-279 (private sale of property to entities carrying out a public purpose). This does not require a public hearing or upset bid process.

Advantages:

- Authorizing the sale enables the development of the property to move forward.
- A strong partnership has been formed by NHS to acquire the necessary financing, and design, construct, and market mixed-income housing on the site.
- Council will have final approval of the project when design is complete and before the sale closes.
- The proposal offers 24 units of affordable housing and 20 units of market rate housing with the benefits of good design, energy efficiency, and preservation of open space on the site.

Disadvantage:

- The NHS/Verdi group's plan will require a modification of the Conditional Use Permit, and is therefore not ready to move into construction immediately

Staff recommends approval of the resolution authorizing the Mayor to enter into a contract for sale with NHS.

Discussion surrounded the various questions/comments Ms. Caplan responded to from Council, some being, but are not limited to: are there still water pressure problems in the area; has any taxpayer money been lost from any source on this project; how does the management work with the partnership; was this reviewed by the Housing & Community Development Committee; will sidewalks be required in the project; does NHS feel comfortable with the conditions already placed on them with the conditional use permit; what is a guesstimate of the total amount of money the City has invested on this site; what happened to the prior developer; will any intersection plans affect the site; will all units be affordable; was any other interest shown on this site; will they build energy efficiently; what did we get for our infrastructure improvements; and where in the process do we get confidence that NHS will get a construction loan.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 4:55 p.m., Mayor Worley announced a short break.

HAYWOOD STREET PARKING GARAGE (FORMERLY THE BATTERY PARK PARKING GARAGE

Amendment to Contract with Carl Walker for Design and Development Plans

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc., to include an additional $187,000 for the revisions to the design/development drawings and the construction documents for the Haywood Street Parking Garage (formerly know as the Battery Park Parking Garage.)

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the Haywood Street Parking Garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was $510,000. Since that time several changes have been make in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site; and,
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to $901,113.00. This change was approved by Council in February 2003.

The increase in costs associated with this amendment includes the following:

- Eliminating the lowest level of the parking garage and designing an additional level of parking to increase the height of the deck in order to retain approximately the same number of parking spaces in the deck. This change will reduce the cost of the construction of the parking garage significantly. (Approximately $1.5 Million)
- Redesign the roundabout on Haywood Street to reduce the need for BellSouth to relocate their service lines. This change will result in a cost reduction of $500,000 due to the elimination of the need to relocate BellSouth Utilities in this location.

This request would bring the total contract cost for the design of the project to $1,088,113, which is approximately 9% of the total construction costs. Typical design costs for a project of this nature is 6 to 10% of the total construction costs.

Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations

- The design costs would increase by $187,000.
- The overall construction cost would decrease by $1,700,000.
- The number of parking spaces would remain at approximately 650.

This will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

Staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional $187,000 for the design of the Haywood Street Parking Garage in the Battery Park area.

Contract with Hanscomb, Faithful and Gould for Project Management Services

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Hanscomb, Faithful and Gould, in the amount not to exceed $300,000, for project management services for the Haywood Street Parking Garage (formerly know as the Battery Park Parking Garage.)

In 2003, staff requested proposals from qualified firms to perform project management services for the development of construction documents, costs estimates and construction oversite for the Haywood Street Parking Garage in the Battery Park area. Staff reviewed the proposals and determined that Hanscomb, Faithful and Gould was the most qualified firm.

The role for project management as an independent service is a key element to reducing overall cost while receiving a good quality structure. Hanscomb, Faithful and Gould would work directly for the City of Asheville and represent the best interest of the City. We currently have them on retainer on an nourly basis. They have already played a crucial role in reducing the costs of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations

- The project costs would increase by $300,000.
- This cost could be offset by the savings recommend but the project manager because of their expertise.

This will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

City staff requests that City Council authorize the City Manager to sign a contract with Hanscomb, Faithful and Gould in the amount not to exceed $300,000 for project management services for the Haywood Street Parking Garage.

Budget Amendment for Haywood Street Parking Garage

City Engineer Cathy Ball said that this is the consideration of a budget amendment in the amount of $ 9,000,000 (from $11.9 Million to $20.8 Million) for the Haywood Street Parking Garage (formerly know as the Battery Park Parking Garage.)

In the Capital Improvement Budget for Fiscal Year 1999-2000 $11.9 Million was appropriated for the construction of a parking garage in the Battery Park area. Since that time there have been several changes in the scope of work of the project. During the course of this project, staff has met with Council Members several times to inform them of some of the significant changes in the project. These changes are outlined below:

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#	Description	Increase	Decrease	Total (M)
1.	Location of parking garage changed from Bell-South Lot to behind the Battery Park Apartments – This increase was in construction costs due to the change in shape of the structure (rectangle to L-Shape) (2000)	$500,000		$12.3
2.	Number of parking spaces increased from 400 spaces to 650 spaces. The Citizen-Times originally agreed to participate in the garage. This increase is offset somewhat by the private-development component of the project. (2002)	$3,000,000		$15.3
3.	Building the site below ground due to height restrictions imposed by Battery Park Apartments. (See Item 6) (2003)	$1,500,000		$16.8
4.	Increase in Bell-South Utility costs to relocate major trunk lines. (See Item 6) (2003)	$500,000		$17.3
5.	Increase in design costs to include private development component of the project. (2003)	$391,113		$17.7
6.	Increase in design costs to reduce the cost of constructing the parking garage underground and revising the roundabout. (Decrease in construction costs.) (2004)	$187,000	$2,000,000	$15.9
7.	Contract with Project Manager (2004)	$350,000		$16.3
8.	Increase in construction costs since 1999	$2,600,000		$18.9
9.	Huge increase in the cost of steel. (2004)	$1,800,000		**$20.8**

Some of this cost can be offset by the development of the private development component of the project. This money cannot be specified until the City enters into an agreement for the private development component of the project. Therefore, the City must pay these costs upfront.

Staff recommends that the number of parking spaces remain at 650 to allow for some growth in monthly parking spaces, an increase in hourly parking spaces and the opportunity to provide parking for the private development adjacent to the parking garage.

Considerations

- The project costs would increase by $9,000,000 some of which can be offset by the development of the private development component of the project.
- Eliminating parking spaces from the garage will not proportionally reduce the cost of the garage.

This will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

City staff requests that City Council approve a budget amendment in the amount of $9,000,000 (from $11.9 Million to $20.8 Million) for the Haywood Street Parking Garage (formerly know as the Battery Park Parking Garage.)

Discussion surrounded the various questions/comments from Council that Ms. Ball and Mr. Bill Schaefer, Finance Director, responded to, some being, but are not limited to: what is the dollar figure for each parking space and what was the figure when the project first started; various questions regarding financing of the deck; will the City be able to recoup any costs once the deck is built; what is the debt repayment schedule on the Rankin Avenue and Wall Street decks; what does the Parking Services Enterprise Fund consist of; what did the original $11 Million budget in 2000 consist of; why is there a need in downtown Asheville for this large of a facility; will the money from the sale or lease of the outparcels go back to pay the debt service; how long will it be before the parking deck will be self-financing; what will be the on-going maintenance cost of the deck; if the City defaulted on the loan, what would be lost; what is the average across the county on the increase in steel; what would happen if the $20 Million deck was not built and what type of monetary losses would the City incur; is this the appropriate location for this parking deck; are there ways we can review the engineering study and find ways to modify the plans to reduce the $20 Million; have we tried to pre-sell the outparcels; why can't we build on top of the Rankin Avenue parking deck; how many spaces did we commit as part of the land acquisitions; the City needs to keep in mind that another parking deck (to be built by the Grove Park Inn) is in the future next to the City Hall Building; are there ways we can look at modifying the project to lower the $20 Million cost; what type of cosmetic work will be done on the deck; does the Council have the flexibility of using the funds in the Parking Services Enterprise Fund; will increases to the price we charge for on-street parking and deck parking be reviewed in the near future; how was the 650 parking spaces arrived at; how much surface parking will be lost as a result of the new parking garage; what parking garages will be used for monthly parkers and transient parkers; how many decks and how many parking spaces are in the Civic Center Parking Garage; and have other options to address the parking congestion been looked at.

Vice-Mayor Mumpower and Councilman Newman felt that a parking deck was needed, however, they expressed concern of how we can justify spending $20 Million on it.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

VACATE AND CLOSE THE ENTIRE DWELLING AT 1086 HENDERSONVILLE ROAD

Housing Code Officer Jeff Baker said that this is the consideration of a resolution setting a public hearing on January 11, 2005, for the adoption of an ordinance to vacate and close the remaining dwelling units located in the dwelling at 1086 Hendersonville Road.

The dwelling at 1086 Hendersonville Road is a wooden structure containing nine separate dwelling units. After unsuccessfully attempting to work with the property owners to bring the dwelling into compliance with the Housing Code since December of 1998, City staff's efforts to bring about compliance intensified during the summer of 2004. In August of 2004, the property owners entered into a Memorandum of Understanding but failed to honor their commitment to bring the dwelling units into compliance with the Housing Code. As a final effort to obtain compliance, City staff asked City Council to adopt an ordinance ordering certain of the dwelling units to be vacated and closed, which Council adopted. Despite the ordinance directing the property owners to vacate and close certain of the dwelling units, the property owners continue to offer said dwelling units as well as the remaining dwelling units for rent.

A second hearing was held on October 15, 2004, whereby Elizabeth Tate, one of the property owners, made it clear that she had no intentions of voluntarily vacating and closing the

dwelling. A Findings of Fact and Order was entered ordering the property owners to vacate and close the entire dwelling or otherwise bring the dwelling into compliance with the Housing Code by November 15, 2004. To date, the dwelling has not been brought into compliance with the Housing Code and neither has a housing certificate been issued.

After trying every possible approach to obtain the property owners' compliance with the Housing Code, such has failed. Meantime, the property owners continue to rent and receive rent for each of the unfit dwelling units, which is a violation of the City's Housing Code.

Mr. Baker noted that all the eviction signs have been removed from the units Council has previously authorized to be vacated and the three tenants have been notified that they will be evicted on December 20, 2004. He did note that the City and different housing agencies are working with the three tenants for replacement housing.

Staff recommends City Council adopt a resolution setting a public hearing on January 11, 2005, to consider an ordinance ordering the entire dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 04-250 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

City Manager Westbrook said that this is the consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $5,000. The grant offer must be accepted on or before December 10, 2004, therefore, he asked that Council waive their rules and take formal action at this meeting.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $5,000, is for the terminal roof repair, which was damaged by the recent hurricanes.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 37-0005-E1-2005.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilwoman Bellamy moved to approve Resolution No. 04-250. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 432

FUNDING FOR HOPE VI FEASIBILITY STUDY

Mayor Worley said that Councilwoman Bellamy and himself heard a presentation at the Housing Authority to ask the City for $18,000 plus expenses for a feasibility study to see if Asheville is eligible to obtain a Hope VI grant to do some redevelopment in conjunction with the Housing Authority in public housing projects.

Councilwoman Bellamy explained that other communities, who didn't do the study and research, did not receive a grant and felt that the study is necessary to determine if Asheville is eligible and has a chance to receive some funding.

Mr. Harrison Shannon, President of the Harrison Shannon Group, explained the type of analysis he will provide and what type of information the final report will contain. He then responded to various questions from Council regarding the Hope VI Program and the type of services he will provide for the $18,000.

Vice-Mayor Mumpower was concerned that the future is not clear regarding Hope VI funding and wondered if Asheville really has a realistic chance of taping into the limited pool of money. He felt it would be more appropriate for a focus group discussion with City staff and reserve the City's limited money for another time when funding is more clear.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 7:24 p.m., Councilwoman Bellamy moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Morris Communications, Inc. d/b/a Fairway Outdoor Communications; Lamar OCI - South Corp.; and the City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:08 p.m., Vice-Mayor Mumpower moved go come out of closed session. This motion was made by Councilwoman Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:08 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 14, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

Mayor Worley added the following three items to the Agenda: (1) Recognition of the delegation from San Cristobal, New Mexico; (2) Resolution authorizing the Mayor to execute a Municipal Agreement with the North Carolina Department of Transportation to provide local funding for noise wall enhancements for the I-40 widening project; and (3) Resolution authorizing execution of a joinder to deed of trust for redevelopment financing for part of Pack Place.

I. PROCLAMATIONS:

A. ASHEVILLE SISTER CITY

Mayor Worley recognized the delegation from Asheville's Sister City San Cristobal de las Casas, Mexico, who read a letter of appreciation from their Mayor to the City of Asheville.

B. RESOLUTION NO. 04-251 – RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE WILLIAM L. SCHAEFER JR.

Mayor Worley read the resolution of appreciation to retiring Finance Director William L. Schaefer Jr. On behalf of the City Council, Mayor Worley thanked Mr. Schaefer for his eleven years of service he has devoted to the citizens of Asheville.

Resolution No. 04-251 was adopted by acclamation.

RESOLUTION BOOK NO. 28 – PAGE 433

C. FOR OUR KIDS PROGRAM

Participants from the For Our Kids Program thanked Vice-Mayor Mumpower, Councilwoman Bellamy and the entire Council for their hospitality and support for their after school program and other sub-programs.

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "I" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 23, 2004, AND THE WORKSESSION HELD ON DECEMBER 7, 2004

B. RESOLUTION NO. 04-252 - RESOLUTION ADOPTING THE 2005 SCHEDULED CITY COUNCIL MEETINGS

RESOLUTION BOOK NO. 28 – PAGE 434

C. RESOLUTION NO. 04-253 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON STRATFORD ROAD FOR A RIGHT-OF-WAY EASEMENT ON STRATFORD ROAD

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The City and Verdi Group LLC (Verdi) have negotiated an exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The excess right-of-way property is along the east side of Stratford Road comprising 0.008 ± acre generally across the road from and between its intersections with Parkside Avenue and Pinewood Avenue.

The property owned by Verdi (PIN 9730.12-96-3375) is a 0.969 acre parcel zoned RS-4 Residential Single-Family Medium Density District located on Stratford Road contiguous with the right-of-way. As it is the parcel will only support three (3) houses. With the additional land from the excess right-of-way, the Verdi property will support development of four (4) houses. The right-of-way easement to be exchanged for the excess right-of-way will cover 0.131 acre and will provide a logical and consistent right-of-way boundary along the east side of Stratford Road extending ten (10) feet into the Verdi property for the full length of the street frontage.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will provide a more logical and consistent right-of-way boundary along Stratford Road.
- It will enable maximum infill development consistent with the Strategic Operating Plan.
- The 10-foot easement makes a future sidewalk more constructible.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff and the Traffic Engineer recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

RESOLUTION BOOK NO. 28 – PAGE 435

D. RESOLUTION NO. 04-254 - RESOLUTION ACCEPTING THE NEW STREET NAME "JAN DRIVE

Summary: The consideration of a resolution accepting the new proposed street name "Jan Drive."

Southern Pride of WNC, owner of lots on Jan Drive off of Bellevue Road, has petitioned the City of Asheville to accept the street name " Jan Drive."
The new street will begin at Bellevue Road and end at the cul-de-sac on Jan Drive.

City staff recommends adoption of the resolution accepting the new proposed street name "Jan Drive."

RESOLUTION BOOK NO. 28 – PAGE 436

E. RESOLUTION NO. 04-255 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A BICYCLE PLANNING GRANT FROM THE N.C. DEPT. OF TRANSPORTATION

Summary: The consideration of a resolution authorizing the City Manager to submit a proposal requesting $24,000 in planning funds for the purpose of developing a $40,000 comprehensive bicycle plan and to commit local match for Fiscal Year 2006 as needed.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, the 2025 City Development Plan, and the 2004 Transportation Demand Management Program Work Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways. (Note that the Reed Creek Greenway, the Hominy Creek Greenway, and the Azalea Park Connector Greenway are all funded through the NCDOT Bicycle Program and that their staff is encouraging a bicycle plan proposal from the City.)
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

This proposal is supported by the Blue Ridge Bike Club and the Asheville Bicycle and Pedestrian Task Force, a volunteer group of citizens whose mission is "to educate the public about bicycle and pedestrian transportation, to advocate for the development and maintenance of safe, convenient and inter-connected facilities, and to promote the benefits of walking and bicycling for individual and community health." The Task Force has assisted in the development of the proposal and is committed to assisting in the planning process.

The positives of this project are that it will:

- Better position the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;

- Provide $24,000 or sixty percent of the total cost toward a $40,000 planning process and enable the City to bring in a bicycle planning specialist;
- Provide a process and opportunity to directly involve the Council, public and interested stakeholders in the development of goals, objectives, and tasks related to improving bicycling in Asheville; and
- Collate, clarify and direct information regarding local bicycle issues and initiatives into one document and series of maps that support the 2025 Plan, Greenways Master Plan, and Strategic Operations Plan.

The negatives of this project are that it will:

- Require time from City staff to manage the contracting process and supervise the consultant; and
- Require a local match of $16,000 beginning July 1, 2005. The Blue Ridge Bike Club has pledged support of $1,000 toward this local match requirement, but the remaining $15,000 will need to be committed for Fiscal Year 2006.

Staff recommends that City Council adopt the resolution authorizing the submittal of a proposal and the commitment of matching funds in the next fiscal year.

RESOLUTION BOOK NO. 28 – PAGE 437

F. MOTION ADOPTING THE FISCAL YEAR 2005-06 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2005/2006 budget schedule.

The proposed Fiscal Year 2005/2006 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Several administrative steps in the budget process are already underway due to the need to get an early starting as a result of the pending retirement of the City Manager.

Key phases of the budget process, which involve City Council, include the City Council Annual Retreat, presentation of the proposed budget to City Council, a public hearing and formal adoption. This year's schedule includes five scheduled budget worksessions, allowing City Council sufficient time for effective budget deliberations. Adoption of the Fiscal Year 2005/2006 budget is scheduled for June 28, 2005.

City staff recommends City Council to adopt the Fiscal Year 2005/2006 budget schedule.

G. RESOLUTION NO. 04-256 - RESOLUTION AUTHORIZING THE SALE OF CITY-OWNED PROPERTY ON VIRGINIA AND BROTHERTON AVENUES TO NEIGHBORHOOD HOUSING SERVICES FOR A MIXED-INCOME HOUSING DEVELOPMENT

Summary: This is the consideration a resolution approving the sale of City-owned property on Virginia and Brotherton Avenues to Neighborhood Housing Services (NHS) for a mixed-income housing development.

The City purchased a 7-acre site at the corner of Virginia and Brotherton Avenues from the Housing Authority in 2000 and contracted with a private developer to develop 32 units of mixed income condominium-type housing on the site, using Community Development Block

Grant (CDBG) funds for the site improvements and private financing for the housing construction. The developer completed the site improvements but then withdrew in late 2003, having been unable to get construction financing for the housing development on terms he found acceptable.

In July 2004, staff issued a request for proposals for a new developer. Two responsive proposals were received and reviewed by a panel of outside experts and staff, appointed by the City Manager. This panel has recommended the proposal submitted by Neighborhood Housing Services of Asheville (NHS) in partnership with The Verdi Group. NHS proposes to purchase the improved site for $454,701 ($1,001 over appraised value) and construct 44 units of housing. The proposal combines the design and construction experience of the Verdi Group with NHS's experience in marketing to income-qualified buyers and its ability to obtain construction financing on favorable terms from its national affiliate: Neighborhood Housing Services of America.

The development is consistent with the City's Strategic Operating Plan (Housing Opportunities Goal #4) because it increases the supply of affordable housing through relatively dense infill on a vacant parcel and also provides mixed-income housing

The draft resolution authorizes the Mayor to enter into a contract for sale with NHS. NHS will then do its due diligence on the site and prepare construction plans. Council will have the opportunity of reviewing the plans in detail early next year, since NHS's proposal to increase the number of units requires modification of the Conditional Use Permit approved in 2003. The sale will not close until any required zoning process is completed.

The sale will be governed by the terms of N. C. Gen. Stat. 160A-279 (private sale of property to entities carrying out a public purpose). This does not require a public hearing or upset bid process.

Advantages:

- Authorizing the sale enables the development of the property to move forward.
- A strong partnership has been formed by NHS to acquire the necessary financing, and design, construct, and market mixed-income housing on the site.
- Council will have final approval of the project when design is complete and before the sale closes.
- The proposal offers 24 units of affordable housing and 20 units of market rate housing with the benefits of good design, energy efficiency, and preservation of open space on the site.

Disadvantage:

- The NHS/Verdi group's plan will require a modification of the Conditional Use Permit, and is therefore not ready to move into construction immediately

Staff recommends approval of the resolution authorizing the Mayor to enter into a contract for sale with NHS.

RESOLUTION BOOK NO. 28 – PAGE 438

H. RESOLUTION NO. 04-257 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 11, 2005, TO VACATE AND CLOSE THE ENTIRE DWELLING AT 1086 HENDERSONVILLE ROAD

Summary: The consideration of a resolution setting a public hearing on January 11, 2005, for the adoption of an ordinance to vacate and close the remaining dwelling units located in the dwelling at 1086 Hendersonville Road.

The dwelling at 1086 Hendersonville Road is a wooden structure containing nine separate dwelling units. After unsuccessfully attempting to work with the property owners to bring the dwelling into compliance with the Housing Code since December of 1998, City staff's efforts to bring about compliance intensified during the summer of 2004. In August of 2004, the property owners entered into a Memorandum of Understanding but failed to honor their commitment to bring the dwelling units into compliance with the Housing Code. As a final effort to obtain compliance, City staff asked City Council to adopt an ordinance ordering certain of the dwelling units to be vacated and closed, which Council adopted. Despite the ordinance directing the property owners to vacate and close certain of the dwelling units, the property owners continue to offer said dwelling units as well as the remaining dwelling units for rent.

A second hearing was held on October 15, 2004, whereby Elizabeth Tate, one of the property owners, made it clear that she had no intentions of voluntarily vacating and closing the dwelling. A Findings of Fact and Order was entered ordering the property owners to vacate and close the entire dwelling or otherwise bring the dwelling into compliance with the Housing Code by November 15, 2004. To date, the dwelling has not been brought into compliance with the Housing Code and neither has a housing certificate been issued.

After trying every possible approach to obtain the property owners' compliance with the Housing Code, such has failed. Meantime, the property owners continue to rent and receive rent for each of the unfit dwelling units, which is a violation of the City's Housing Code.

Staff recommends City Council adopt a resolution setting a public hearing on January 11, 2005, to consider an ordinance ordering the entire dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

RESOLUTION BOOK NO. 28 – PAGE 439

I. RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR THE REMOVAL OF CERTAIN SIGNS

This item was removed from the Consent Agenda for individual discussion.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 04-258 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR THE REMOVAL OF CERTAIN SIGNS

City Attorney Oast said that this is the consideration of an agreement for the removal of billboards.

For the last several years, the City has been involved in disputes with some of the businesses that own and operate billboards within the City. The disputes have centered primarily on whether certain billboards comply with the City's 1990 Sign Ordinance. These disputes have included numerous enforcement proceedings before the Board of Adjustment and Superior Court, and at least two appeals to the North Carolina Court of Appeals. Some of these cases are still pending before the Board of Adjustment. These matters were in addition to other litigation over the 1997 Ordinance that went to the Supreme Court.

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In connection with resolving these issues, we have been discussing with the sign companies the possibility of a "cap and replace" ordinance, that would essentially cap the total number of billboards in the City, but allow them to be relocated or replaced within certain zones, subject to certain limitations. While this has been done in other jurisdictions, the legal authority to enter into such agreements in North Carolina was unclear.

This past summer, the N. C. General Assembly adopted N.C.G.S. 160A-199, which essentially took away a city's ability to amortize billboards over time by requiring payment of the fair market value of any sign whose removal was required. Even this method can result in delayed removal because the sign can remain in place while value is determined, and until the value determined is paid, which can take up to three years. Included in this law, however, were provisions authorizing a city and a billboard company to enter into removal and relocation agreements – essentially "cap and replace" by agreement.

In September, the Council adopted an ordinance providing for such agreements pursuant to the new law. Against this legal and factual background, the first such agreement has been proposed in an effort to resolve some outstanding enforcement issues. The sign companies involved are Fairway and Lamar, which own and operate most of the billboards in town.

The essential features of the proposed agreement are that the billboard companies will immediately remove 10 billboards, some of them in prominent "gateway" locations, and some of them having multiple faces, at their expense. The locations of these billboards are as follows: (1) Charlotte Street south of College Street; (2) Biltmore and Hilliard; (3) McDowell Street northbound exiting tunnel; (4) Patton Avenue and Coxe on a building; (5) Haywood Road and State Street; (6) Haywood Road and Virginia Avenue; (7) Haywood Road and Michigan Avenue; (8) 339 Lyman Street; (9) Riverside Drive at Amboy Road; and (10) Biltmore Village (8 faces). In consideration for their removal of these signs, the City agrees that, if an ordinance requiring amortization of billboards is adopted within the 10 year term of the agreement, the City will pay for the removed signs on a straight-line depreciation basis. The value assigned to these signs for depreciation purposes is computed based on annual income for the sign, which is one of the methods specified by the new law for determining value.

In addition to the 10 signs listed above, which will not be replaced, the agreement provides for the immediate removal of the sign at the entrance to Haw Creek, but that sign can be replaced pursuant to the ordinance adopted in September.

Pursuant to the agreement, Fairway will convey to the City the property on which the South Charlotte Street billboard is located. Also, the billboard companies agree to remove signs within the Urban Riverfront Plan area properties within those areas are developed in accordance with the Plan.

Considerations:

- Cities' ability to require removal of billboards is now severely limited, and what ability they do have has financial consequences, and possibly significant time delays.
- This is an offer – essentially free – by the sign companies to do something that we may not be able to require them to do without significant cost and delay.
- This will terminate contentious and lengthy administrative and judicial proceedings, and should limit future actions.
- All other billboards are still subject to the registration requirements of the new ordinance.

- There will be a net decrease in the number of billboards in Asheville
- This sets a good precedent for future removals.

If Council approves of the agreement, adoption of a resolution authorizing the Mayor to enter into it on behalf of the City is recommended.

City Attorney Oast responded to various questions from Council regarding other outdoor advertising companies that are not part of this agreement and clarified the certain zones and certain limitations when/if the signs are replaced.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-258. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 441

III. PUBLIC HEARINGS:

A. PUBLIC HEARINGS TO CONSIDER THE ANNEXATION OF THE RIDGEFIELD BUSINESS PARK AREA, THE ASCOT POINT VILLAGE AREA, THE LONG SHOALS ROAD AREA AND THE AIRPORT ROAD AREA

Planning & Development Director Scott Shuford said that due to recent requests for voluntary annexation of two parcels and the possibility of adding additional properties to the annexation areas, staff recommends that Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas. Staff will re-initiate the process in the near future, enabling the effective date of annexation to remain the same as previously proposed for three of the four annexation areas.

Proposed effective date of annexations – June 30, 2005 (Ridgefield Business Park)
December 31, 2005 (Ascot Point Village, Long Shoals Road, Airport Road)

City staff recommends City Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas.

B. PUBLIC HEARING TO CONSIDER THE REZONING OF THREE LOTS LOCATED ON NEW LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT (WITH A MANUFACTURED HOUSING OVERLAY AND A MANUFACTURED HOUSING COMMUNITY OVERLAY) AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3188 - ORDINANCE REZONING THREE LOTS LOCATED ON NEW LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT (WITH A MANUFACTURED HOUSING OVERLAY AND A MANUFACTURED HOUSING COMMUNITY OVERLAY) AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 5:30 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone three lots on New Leicester Highway from RM-8 Residential Multi-Family Low Density District

(with a Manufactured Housing Overlay and a Manufactured Housing Community Overlay) and RS-8 Residential Single-Family High Density District to Community Business II District. This public hearing was advertised on November 12 and 19, 2004.

The subject property is located within the City limits on New Leicester Highway, just south of its intersection with Eliada Home Road. Surrounding zoning is varied. Zoning on the west side of New Leicester Highway is CBII. The eastern side, where the subject property is located, is a mix of residential (RM-6 and RS-8) and commercial (HB) zoning. The Eliada Home property immediately to the west of the subject property is zoned Institutional.

Land uses in the area are likewise varied. Along New Leicester Highway the predominant land use in this area is commercial although there are single family homes located in the CBII District directly across New Leicester Highway from the subject property. Institutional uses (Eliada Home and Erwin Hills Baptist Church) lie to the south and east of the subject property. Recent developments in the area have predominately been of a commercial nature.

The subject property includes two vacant wooded parcels. The largest property contains a manufactured home community consisting of approximately 30 units.

The CBII District is designed to provide areas for medium to high density business and service uses serving multiple residential neighborhoods along minor and major thoroughfare streets. This district allows for residential uses, however, manufactured homes are not allowed.

Pros:

- CBII, while providing commercial opportunities, limits the size and impacts of such commercial development on the surrounding area.
- New Leicester Highway is a major thoroughfare more conducive to commercial or office development than residential development.
- Rezoning is in keeping with the character and recent developments in the area.

Cons:

- Loss of the manufactured housing overlay on the largest parcel in this rezoning with potential loss of the manufactured housing community (and affordable housing) that will become nonconforming. These losses are reduced by the impact the widening of New Leicester Highway has already had on this community.
- Allows for the potential continued commercial strip development of New Leicester Highway.

Staff recommended approval of the rezoning request to the Planning and Zoning Commission. The commission considered the matter at its meeting on November 3, 2004, and unanimously (5-0) recommended approval.

Mayor Worley closed the public hearing at 5:34 p.m.

Councilwoman Bellamy expressed concern that the mobile home park can't expand and that special care and ample time be given to the tenants if they need to find suitable housing.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3188. This motion was seconded by Councilman Davis and carried unanimously.

C. **PUBLIC HEARING TO CONSIDER REZONING THREE LOTS AT 2 GRANDVIEW PLACE FROM HIGHWAY BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

ORDINANCE NO. 3189 - ORDINANCE TO REZONE THREE LOTS AT 2 GRANDVIEW PLACE FROM HIGHWAY BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:36 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone three lots at 2 Grandview Place from Highway Business District and RS-8 Residential Single-Family High Density District to Community Business I District. This public hearing was advertised on November 12 and 19, 2004.

The subject properties are located within the City limits in the Oteen area, covering both corners of the junction between Grandview Place and Tunnel Road. The three separate parcels currently include a split-zoned (RS-8 Residential Single-Family High Density District/Highway Business) lot located on the southwestern corner of the T-intersection while across Grandview Place, on the opposite corner, is the commercially zoned Highway Business (HB) lot fronting Tunnel Road with a RS-8 Residential Single-Family High Density District (RS-8) zoned parcel directly behind.

The applicant (Nicholas Papanastasiou) has requested a rezoning from Highway Business/RS-8 Residential Single-Family High Density District to Community Business I District to allow for (1) the redevelopment and/or expansion of an existing non-residential use for a community based business, and (2) to render a non-conforming ancillary parking area to be conforming.

- The Community Business-I zoning district is established to provide areas for medium density business and service uses which may serve as a workplace for residents and should be sensitive to a significant pedestrian population. These business areas should be located primarily on streets that serve multiple residential neighborhoods.

- The RS-8 zoning district is designed to establish and promote a suitable and high density single-family district where public infrastructure is sufficient to support such development.

- The Highway Business district is established to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare.

The subject properties total approximately .95 acres and currently support one restaurant and its ancillary parking area in addition to the old American Legion Hall building and the vacant single family home behind it. Rezoning the lots would allow for the redevelopment and/or expansion of community oriented commercial, office, or residential uses consistent with the CB-I development standards. A community oriented business in this location would primarily serve the Oteen neighborhood but could potentially extend to other neighborhoods such as, Parkway Forest, Beverly Hills, Haw Creek as well as any future development around the Veterans Administration Hospital.

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Pros

- Corrects a non-conforming use.
- Allows for the expansion or redevelopment of a community-based business that is more pedestrian oriented.
- Removes the existing split-zoning.

Cons

- Access to the rear of the split-zoned lot would be off of a residential road (Grandview Place).
- Without a Conditional Use Permit (CUP) there is no way to ensure the preservation of the existing structure(s).

At their November 3, 2004, meeting, the Planning and Zoning Commission reviewed the rezoning proposal and made a positive recommendation that the project be forwarded to the Asheville City Council. City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change (3 lots) from RS-8 and HB to CB-I.

Mayor Worley closed the public hearing at 5:42 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3189. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 418

D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED A 59 TAMPA AVENUE FOR A PROPOSED DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3190 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 59 TAMPA AVENUE FOR A PROPOSED DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:43 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for property located 59 Tampa Avenue for a proposed duplex in an RS-8 Residential Single-Family High Density District.

The Asheville City Development Plan 2025 (ACDP 2025) discusses typical reasons why properties within the City limits remain vacant or underdeveloped. Of the problems listed, a very applicable challenge to this project is the high development costs involved for a relatively small return. The ACDP 2025 proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant property. One way to accomplish this goal is to apply existing zoning tools to encourage compatible, higher density residential infill development. Currently, the Unified Development Ordinance has several tools that can be exercised to allow duplexes in single family residential districts. The most appropriate tool in this case allows duplexes as "Conditional Uses" in the RS-8 zoning district and can be considered with respect to the conditions outlined in the Unified Development Ordinance and other conditions associated with the Conditional Use Permit. Staff's review of this project indicates that the proposed development does meet the technical standards described in Sec. 7-16-2(d)(5).

The applicant is requesting a Conditional Use Permit for a .54 acre lot to allow the new construction of a 2,480 s.f. duplex in a RS-8 (Residential Single Family, High Density) zoning district in the Lucerne Park neighborhood in west Asheville (Attachment to City Exhibit 3 – Location Map). The lot is an existing flag lot created in 2001 when subdivision standards allowed more than one flag lot to be created side by side off of an existing right-of-way. The duplex would occupy the last of the three lot subdivision where the other two lots are currently occupied by single family homes. The second lot, directly adjacent on the south side, is also included in this application because it was a more practical location for the required turn-a-round due to topography. Because of changes in the subdivision standards, the two subject lots are currently non-conforming by access. As a condition of final approval, the applicant would have to complete a lot recombination that would eliminate the flag lots and provide a right-of-way with a private drive to access the lots. All three structures would share the common driveway but provide parking separately.

The subject property is currently zoned RS-8 and is surrounded on all sides by other RS-8 zoned properties supporting single family and other non-residential uses including vacant properties, a church, recreation fields, and rail road right-of-way (Attachment to City Exhibit 3 – Aerial Map). The proposed structure will be oriented to capitalize on the open space view out towards existing ball fields and wooded area, with parking located to the rear of the units (Attachments to City Exhibit 3 – Revised Site Plan; Site Photos).

Currently, there are several tools for allowing duplexes in a single family zoning district. The particular circumstances of any proposal help determine the most appropriate tool to be applied. In respect to the unique conditions of this site, a Conditional Use Permit application was determined to be the most practical and flexible tool to be utilized. As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2(d)(5) of the Unified Development Ordinance:

b. Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district.
The property is located over 300 feet from all other multifamily uses.

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c. Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district
The existing lot is .54 acres, well above the minimum .14 acres required for a duplex in an RS-8 district.

d. Parking shall be located in the rear and screened with vegetation from adjacent single family uses.
Two 3-bedroom units will require a minimum of 4 parking spaces (maximum of 6) located in the rear where existing vegetation and topography will screen the parking from the properties fronting Ivanhoe Avenue, while additional vegetation will be planted to screen the proposed parking area from the newer adjacent single family home.

e. The structure shall have a single front entrance and other entrances as required (Attachment to City Exhibit 3 – Building Elevations).
The proposed duplex has a single front entrance with a secondary entrance at the rear.

f. Requirements of the N.C. State Building Code shall be met.
The proposed duplex will be new construction and will be built to meet building code requirements.

The Technical Review Committee (TRC) reviewed this project at their November 15, 2004, meeting where it was unanimously agreed that the project be forwarded to the City Council with a recommendation of approval with conditions. Many of the TRC conditions have been met in a revised site plan and, if approved, will have to be reviewed again for final approval. Review by the Planning and Zoning Commission is not required for this use.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Site preparation for the earlier 3 lot subdivision created a clear, buildable terrace for the proposed duplex. The applicant is proposing to place the structure in a way to minimize any additional site disturbance and preserve the existing vegetation remaining on site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The subject properties were created from a remnant parcel that is tucked back behind the older homes of the Lucerne Park neighborhood. All three lots are located down below the backs of the homes fronting Ivanhoe Avenue where only the first lot containing a single family home is visible from the dead-end of Tampa Avenue. The other two lots are separated from the rest of the neighborhood, not only by access but also by topography and existing vegetation, serving to buffer the proposed development from the older neighborhood. In addition, the proposed duplex will be in character with the new construction located on the adjacent lot and is not expected to negatively impact the property values of the adjacent single family home or the older homes in the neighborhood.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

As discussed in standard #3, the proposed duplex is separated somewhat from the majority of the Lucerne Park neighborhood. Nevertheless, the coverage of the 1240 square foot footprint is comparable to most homes in the neighborhood; while the two story bulk is in scale with many of the older homes in addition to the single family home directly adjacent to it. Density is also fairly typical of the larger neighborhood due to the size of the lot; and lastly, the character of the new construction will be in harmony with the character of the other two homes sharing the private drive.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville City Development Plan 2025 (ACDP 2025) discusses typical reasons why properties within the City limits remain vacant or underdeveloped. Of the problems listed, a very applicable challenge to this project is the high development costs involved for a relatively small return. The ACDP 2025 proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant property. One way to accomplish this goal is to apply existing zoning tools to encourage compatible, higher density residential infill development. Currently, the Unified Development Ordinance has several tools that can be exercised to allow duplexes in single family residential districts. The most appropriate tool in this case allows duplexes as "Conditional Uses" in the RS-8 zoning district and can be considered with respect to the conditions outlined in the Unified Development Ordinance and other conditions associated with the Conditional Use Permit. Staff's review of this project indicates that the proposed development does meet the technical standards described in Sec. 7-16-2(d)(5).

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development is located near major thoroughfares and transportation facilities with the Route 1 bus line running down Patton Ave. and Haywood Rd. Preliminary review by utility providers has not revealed any problems with serving the development and, as a condition of approval, emergency access to the property will be improved.

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7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The amount of traffic generated by a duplex is nominally greater than that generated by a single family home. The proposed development will accommodate off-street parking and is not expected to cause undue traffic congestion or hazards.

Pros

- Promotes infill development
- Provides additional housing in an established residential neighborhood
- Corrects a non-conformity

Cons

- Strict architectural compatibility with older neighborhood is not required

Staff concurs with the Technical Review recommendation of approval with the conditions outlined in the TRC report.

After rebuttal, Mayor Worley closed the public hearing at 5:52 p.m.

In order for the duplex to build in as much as possible, Councilwoman Bellamy asked to add two conditions: (1) that a porch be constructed over the rear entrance to reflect the character of the adjacent single-family home; and (2) that the developer add shutters to the windows where practical.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3190, granting a conditional use permit for property located at 59 Tampa Avenue for a proposed duplex in an RS-8 Residential Single-Family High Density District, subject to (1) the conditions outlined by the Technical Review Committee; (2) that a porch be constructed over the rear entrance to reflect the character of the adjacent single-family home; and (3) that shutters be installed to the windows where appropriate. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE LEVEL III REVIEW OF INDUSTRIAL USES

ORDINANCE NO. 3191 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE LEVEL III REVIEW OF INDUSTRIAL USES

Mayor Worley opened the public hearing at 5:56 p.m.

Planning & Development Director Scott Shuford said that this is the consideration to amend the Unified Development Ordinance to eliminate Level III review of industrial uses. This public hearing was advertised on November 12 and 19, 2004.

This code amendment deletes the requirement for industrial developments to receive Level III review, thereby allowing them to be approved without public hearing by the Planning and Zoning Commission and City Council. The intent is to expedite the review and permitting of industrial developments consistent with Goal 2/Economic Development of the Strategic Operating

Plan which states: Reform the permitting process to make it more conducive to do business in Asheville.

Large projects would still be heard by the Technical Review Committee (TRC); all existing buffering, landscaping and other site design requirements would apply to the projects. In addition, the change would apply only to properties already zoned for industrial uses; any needed zoning changes (for example, a change from Highway Business to Industrial) would still require Planning and Zoning Commission and City Council consideration.

Pros:

- Provides a tool to make Asheville more competitive in economic development
- Streamlines the development review process consistent with general Council direction

Con:

- Removes opportunities for the public to be heard on site design issues (although these projects will still receive TRC review)

On November 3, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Using a map, Mr. Shuford showed the amount of residential areas around industrial properties.

Mayor Worley closed the public hearing at 5:59 p.m.

Mr. Shuford responded to Councilwoman Jones about how the City finds out about various violations and what steps are taken to correct the violations.

Councilman Newman questioned what would happen if the proposed development triggered a lot of traffic. Mr. Shuford said that the standards do not change. If a Traffic Impact Analysis (TIA) is required, the developer will have to perform that TIA, turn it in and it will be subject to review by City staff. He noted that City staff cannot require more than what our codes require, however, regarding a TIA, if there are alternative ways of accomplishing the traffic mitigation that is required under the TIA, City staff does have the ability to select those alternatives. If the development did not meet City standards, City staff would be forced to deny the project. However, there is an appeal mechanism to the Planning & Zoning Commission and then ultimately to City Council. In addition, if the project is a desirable prospect and they can't meet the standards from an infrastructure standpoint, there would be the potential for an economic development incentive package and that would go through City Council for consideration.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that there are avenues for individuals to give input/concerns to City staff. For example, a neighbor might call and state that after looking at the site plan a dumpster will be too close to their home. City staff can then bring that concern to the attention of the developer and suggest they look for an alternate location for that dumpster.

Upon inquiry of Councilman Davis, Mr. Shuford said that he was only aware of only one Level III review of this type in the past couple of years. Chances are City Council will be aware of any development of this type from an economic development incentive package.

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In response to Vice-Mayor Mumpower, Mr. Shuford said that roughly two months is saved by eliminating the Planning & Zoning Commission and City Council review of these types of projects.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3191. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 426

F. PUBLIC HEARING TO CONSIDER AN ORDINANCE ESTABLISHING A STORMWATER SERVICES ENTERPRISE FUND AS A MECHANISM FOR FUNDING A COMPREHENSIVE STORMWATER PROGRAM

ORDINANCE NO. 3192 - ORDINANCE ESTABLISHING A STORMWATER SERVICES ENTERPRISE FUND AS A MECHANISM FOR FUNDING A COMPREHENSIVE STORMWATER PROGRAM

Mayor Worley opened the public hearing at 6:20 p.m.

City Engineer Cathy Ball said that this is the consideration of an ordinance to establish a Stormwater Services Utility and Enterprise Fund as a mechanism for funding a comprehensive stormwater program for the City of Asheville. The public hearing was advertised on December 3 and 10, 2004.

Ms. Ball said that the methodology of the enterprise fund would be based on the amount of impervious surface that a parcel has. Staff is not asking that City Council adopt a budget at this time or a fee structure in association with this program. That will be done as part of the Fiscal Year 2006 budget process. She also pointed out that of the six communities in North Carolina that were a part of the EPA Phase I Program, all six of these communities have established an enterprise fund as a mechanism for obtaining revenue to pay for the program, in addition to three major cities in North Carolina that were part of the Phase II regulations. In the event that the enterprise fund is not approved, City staff will need to come back to City Council as part of the budget process with approximately $1.3-1.5 Million request to pay for an unfunded mandate from the Environmental Protection Agency.

In November 2003 City Council authorized City staff to complete a study, to include establishment of a stakeholders group, to determine if a Stormwater Enterprise Fund is a feasible method for funding stormwater quantity and quality needs of the City.

The City must comply with Phase II of the Federal Clean Water Act, known as the Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) Permitting and Stormwater. In March 2003, City Council approved a plan to comply with the "Six Minimum Measures" of the regulations which are: (1) Public Education and Outreach; (2) Public Participation and Involvement in Implementing the Plan; (3) Detection and Elimination of Illicit Discharges; (4) Construction site Run-off Control; (5) Post-Construction Run-off Control, and (6) Pollution Prevention and Good Housekeeping by the Municipality.

The stakeholders group known as the Stormwater Advisory Committee (SAC) has served as an advisor to the City Manager since June 2004. McGill Associates has provided engineering expertise and served as a facilitator to the SAC.

Pros:
- A dedicated funding source to address stormwater needs.
- Equitable fees based upon impervious service.
- Bigger users to pay the majority of the cost of the program.

Cons:
- A new fee to the community.
- Staff time to educate the public.

This recommendation meets the City's Strategic Goal in the focus area of Natural and Built Environment, Goal #1 - A high quality of air and water – Enhance and preserve air and water quality through comprehensive efforts. Objective D - Improve water quality by complying with EPQA Federal NPDES – Phase II Stormwater Rules. Task #2 - Adopt and implement a stormwater fee.

Again, the fees and expenditures for the program will be established during the budget process. A public meeting will be held as part of the budget process to obtain input at that time.

City staff recommends City Council adopt an ordinance establishing a Stormwater Services Utility Enterprise Fund as a mechanism for funding a comprehensive stormwater program for the City of Asheville.

Mr. Joel Storrow, McGill Associates President, explained the federal and state mandate: (1) under EPA's Phase II Rules, Asheville must develop, implement and enforce a stormwater management program; (2) the program must reduce the discharge of pollutants to the "maximum extent practicable" to protect water quality; (3) the program must address 6 minimum control measures: (a) public education and outreach; (b) public participation/involvement; (c) illicit discharge detection and elimination; (d) construction site runoff control; (e) post-construction runoff control; and (f) pollution prevention/good housekeeping; (4) Asheville must select "Best Management Practices" (BMP) and measurable goals for each minimum measure; and (5) This program must be approved by the State.

He explained that the Stormwater Advisory Committee (SAC) was established to advise the City Manager on matters related to the Phase II stormwater requirements. The SAC comprised of 19 local citizens serving as a broad cross section of stakeholders. The established objective of the SAC is to: "Assist the City in implementation of a compliant stormwater program that serves the best interests of the community."

He said that key elements of the proposed stormwater program consist of the Engineering Department being responsible for (1) public education about stormwater; (2) program administration and planning; and (3) regulation of stormwater releases. The Public Works Department would be responsible for (1) system operation and maintenance; and (2) rehabilitation of infrastructure.

Regarding allocation of future program costs, (1) the annual stormwater program costs would increase to $2.5 Million from the current $800,000 budget; ((2) the projected costs are considered minimum for (1) compliance with the federal and state mandate; (2) public education; (3) capital planning; (4) maintenance of the current system; and (5) development of new infrastructure and major repairs to existing facilities. The SAC recommends establishing an Enterprise Fund to pay for the Stormwater Program.

Their decision is not whether there will be a stormwater program, but what will the scope of the program be and how to pay for it. There are two options for funding the program: The General Fund and an Enterprise Fund.

Regarding the Enterprise Fund, the fundamental concept is that the properties that contribute pay in proportion to their contribution. This is accomplished by calculating the magnitude of impervious surface for each contributor. This system recognizes the contribution of contributors such as UNC-Asheville, hospitals, state government, federal institutions and others that pay no property taxes. This eases the burden on residences and businesses. There is a direct relationship between stormwater contributions and payments.

Mr. Storrow reviewed with Council the SAC's recommendations: (1) They recommend that the existing stormwater program be expanded to meet the regulatory mandate to protect and preserve water quality and educate the public; (2) They recommend that the stormwater program be expanded to provide capital necessary to operate and maintain the system and provide for future needs; (3) They recommend funding the stormwater program with a newly created self-sustaining Enterprise Fund; (4) They suggest tiering residential billing categories to promote affordability; and (5) They recommend developing a credited system that encourages users to improve water quality.

Ms. Ball explained the difference between SAC's recommended $2.5 Million budget to staff's $1.3 Million budget. She explained that staff developed a chart for a five-year program of the costs to implement the Phase II regulations, resulting in the $1.3 Million budget. She said the City must address the six minimum measures (a) public education and outreach; (b) public participation/involvement; (c) illicit discharge detection and elimination; (d) construction site runoff control; (e) post-construction runoff control; and (f) pollution prevention/good housekeeping. One of the most expensive measures is the illicit discharge detection and elimination. We must have a system set up to find any illegal connections to the storm drain system. We have to have a mapping system set up that will enable us to find out if we have an illegal connection and who is contributing that illegal discharge. We have to have a system set up with ordinances and fines to get people to alter their systems and their plumbing so that they go into the correct places. That requires staff, maintaining a mapping system, and having an ordinance in place fining people who do not comply. The proposed ordinance that we have in place meets all the requirements of Phase II. The post-construction runoff control, which is probably the heaviest on development, but it requires a whole new development review on our part. All development that disturbs any land size of an acre or greater has to put in measures that reduce water quality damages into the streams or off of their property. She showed a 5-year chart showing that the majority of funding comes in the third measure of illicit discharge detection and elimination. What staff had hoped to do was to be able to bring forth a fee during the review that wouldn't have to be changed every year. This is a bare minimum program that in the fifth year is about $1.3 Million. The $1.3 Million is what we have to do to comply with this mandate.

When staff presented the $1.3 Million budget to the SAC, there were members who felt strongly that the City needed to have a stronger program, to address the needs that the City has, than just the minimum amount of the $1.3 Million. At the last SAC meeting, there was a unanimous decision by the SAC, to recommend putting in an addition $300,000 into the educational component of this Program.

Again, staff is asking for Council to approve an ordinance that would allow for an enterprise fund to be established, fees to be charged based on the amount of impervious surface of a piece of property; and to also allow for a crediting mechanism, a tiering program for single-family residential units, and an appeal process.

Mr. Fred English was concerned that City Council is allowing large developments and the City taxpayers will have to pay for their stormwater runoff. Councilman Newman explained that everyone will pay based on the amount of impervious surface that a parcel has, including non-profits that don't pay any property taxes.

Mr. Bill Fishburne felt that if we put this user fee on non-profits and churches, the City may be forcing small churches out of business.

Mayor Worley closed the public hearing at 6:35 p.m.

Upon inquiry of Councilman Dunn, Ms. Ball said that the majority of sidewalks are located within the City's right-of-way and the property owners will not be responsible for paying for the sidewalks impervious surface.

Even though at this stage Council is not discussing a fee structure, Vice-Mayor Mumpower asked what the guesstimate would be for an average residence in Asheville. Ms. Ball said that with a $2.5 Million annual budget, a residential fee is approximated to be $2.50 per month. She noted that if Council wishes to a lesser annual budget, then staff is willing to move forward to prepare a budget that reflects what Council wants.

Vice-Mayor Mumpower said that a personal concern is that we should step in unchartered waters slowly and accelerate as we get a sense of the depth of what we are getting into. Everyone will have to step up to the plate because the federal government said we must do this. We will be adding another fee to people who have a lot of other bills to contend with. He felt it makes more sense to go slowly and then after people have had a chance to get a sense of what this is all about and the impact on their lives and their budgets, then to increase a bit if the community will is there and it's the appropriate thing to do He hoped that staff starts at the minimum and then possibly we can work our way up as the community sees best.

Throughout the discussion, Ms. Ball responded to various questions and comments from Council, some being, but are not limited to: is it anticipated that the regulations will become stricter after the 5-year permit expires; what does the SAC want to educate the public about and how; how do the current stormwater problems impact the street network structure; and what kind of charges will the developer incur to renew their credit applications.

Councilman Newman was looking forward to being presented with different options and what we will get at different levels for different amounts. He was also interested in learning more about the ideas envisioned by SAC of the educational component. He noted that if the development community is the key group we are trying to reach, then perhaps we can do a more targeted education program designed to just reach that group.

Upon inquiry of Councilman Newman, Ms. Ball said that regarding the educational component, we are working with the Land-of-Sky Regional Council, as well as NC State Extension Agency, to try to develop a regional program that just doesn't reach Asheville, but reaches the region as a whole.

In response to Councilman Davis about the credit component, Ms. Ball said that companies/properties can apply for a stormwater utility fee credit for actions that go above and beyond the minimum requirements. The credit must be renewed every year to make sure their system is being maintained. Mayor Worley suggested a sentence in the "credit" section in the ordinance be amended to read "Credits expire at the end of one year from the date of award and may be renewed by the submittal of a renewal application."

Vice-Mayor Mumpower asked if there are any other incentives for the properties to either comply or go beyond the minimum requirements. Using a chart, Ms. Ball responded that some cities have elected to go higher than the 50% credit of the stormwater utility fee, however, she felt that to go any higher would put the burden of paying the fee back on the residential customers. She explained how she felt that 50% is reasonable and attainable. After a brief discussion, Ms.

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Ball was not opposed to Council raising the credit to 60% for those properties who go beyond the minimum requirements.

Mayor Worley felt that this utility will allow us to collect a fee from anyone who generates stormwater runoff and lessens the impact on our property taxpayers. In terms of what kind of a fee we ultimately come up with, he would support the minimum fee as we work our way into this program.

Councilman Newman felt it was fair for everyone who creates impervious surfaces to contribute to the solution for cleaning up our water. He felt that SAC's recommendations will make a positive influence on water quality in Asheville.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3192, with the following sentence amendments to Section (e) (2): "Credits expire at the end of one year from the date of award and may be renewed by the submittal of a renewal application. In no case shall credits exceed sixty percent (60%) of the stormwater utility fee." This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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At 7:22 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ANNEXATIONS:

RESOLUTION NO. 04-259 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE RIDGEFIELD BUSINESS PARK AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA

RESOLUTION NO. 04-260 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE ASCOT POINT VILLAGE AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA

RESOLUTION NO. 04-261 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE LONG SHOALS ROAD AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA

RESOLUTION NO. 04-262 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE AIRPORT ROAD AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA

Planning & Development Director Scott Shuford said that due to recent requests for voluntary annexation of two parcels and the possibility of adding additional properties to the annexation areas, staff recommends that Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas. Staff will re-initiate the process in the near future, enabling the effective date of annexation to remain the same as previously proposed for three of the four annexation areas.

Proposed effective date of annexations – June 30, 2005 (Ridgefield Business Park)
December 31, 2005 (Ascot Point Village, Long Shoals Road, Airport Road)

City staff recommends City Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-259. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 443

Councilwoman Bellamy moved for the adoption of Resolution No. 04-260. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 444

Councilwoman Jones moved for the adoption of Resolution No. 04-261. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 445

Councilwoman Bellamy moved for the adoption of Resolution No. 04-262. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 446

B. HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA

RESOLUTION NO. 04-263 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT WITH CARL WALKER FOR DESIGN OF THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA

RESOLUTION NO. 04-264 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HANSCOMB, FAITHFUL AND GOULD FOR PROJECT MANAGEMENT SERVICES FOR THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA

ORDINANCE NO. 3193 - BUDGET AMENDMENT FOR THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA

City Engineer Cathy Ball said that this is the consideration of (1) a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc., to include an additional $187,000 for the revisions to the design/development drawings and the construction documents for the Haywood Street Parking Garage; (2) a resolution authorizing the City Manager to sign a contract with Hanscomb, Faithful and Gould, in the amount not to exceed $300,000, for project management services for the Haywood Street Parking Garage; and (3) a budget amendment in the amount of $9,000,000 (from $11.9 Million to $20.8 Million) for the Haywood Street Parking Garage.

Contract Amendment for Design and Development Plans:

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the Haywood Street Parking Garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was $510,000. Since that time several changes have been make in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site; and,
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to $901,113.00. This change was approved by Council in February 2003.

The increase in costs associated with this amendment includes the following:

- Eliminating the lowest level of the parking garage and designing an additional level of parking to increase the height of the deck in order to retain approximately the same number of parking spaces in the deck. This change will reduce the cost of the construction of the parking garage significantly. (Approximately $1.5 Million)
- Redesign the roundabout on Haywood Street to reduce the need for BellSouth to relocate their service lines. This change will result in a cost reduction of $500,000 due to the elimination of the need to relocate BellSouth Utilities in this location.

This request would bring the total contract cost for the design of the project to $1,088,113, which is approximately 9% of the total construction costs. Typical design costs for a project of this nature is 6 to 10% of the total construction costs.

Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations:

- The design costs would increase by $187,000.
- The overall construction cost would decrease by $1,700,000.
- The number of parking spaces would remain at approximately 650.

Contract for Project Management:

In 2003, staff requested proposals from qualified firms to perform project management services for the development of construction documents, costs estimates and construction oversite for the Haywood Street Parking Garage in the Battery Park area. Staff reviewed the proposals and determined that Hanscomb, Faithful and Gould was the most qualified firm.

The role for project management as an independent service is a key element to reducing overall cost while receiving a good quality structure. Hanscomb, Faithful and Gould would work directly for the City of Asheville and represent the best interest of the City. We currently have them on retainer on an hourly basis. They have already played a crucial role in reducing the costs of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations:

a. The project costs would increase by $300,000.
b. This cost could be offset by the savings recommend but the project manager because of their expertise.

Budget Amendment:

In the Capital Improvement Budget for Fiscal Year 1999-2000 $11.9 Million was appropriated for the construction of a parking garage in the Battery Park area. Since that time there have been several changes in the scope of work of the project. During the course of this project, staff has met with Council Members several times to inform them of some of the significant changes in the project. These changes are outlined below:

#	Description	Increase	Decrease	Total (M)
1.	Location of parking garage changed from Bell-South Lot to behind the Battery Park Apartments -- This increase was in construction costs due to the change in shape of the structure (rectangle to L-Shape) (2000)	$500,000		$12.3
2.	Number of parking spaces increased from 400 spaces to 650 spaces. The Citizen-Times originally agreed to participate in the garage. This increase is offset somewhat by the private-development component of the project. (2002)	$3,000,000		$15.3
3.	Building the site below ground due to height restrictions imposed by Battery Park Apartments. (See Item 6) (2003)	$1,500,000		$16.8
4.	Increase in Bell-South Utility costs to relocate major trunk lines. (See Item 6) (2003)	$500,000		$17.3
5.	Increase in design costs to include private development component of the project. (2003)	$391,113		$17.7
6.	Increase in design costs to reduce the cost of constructing the parking garage underground and revising the roundabout. (Decrease in construction costs.) (2004)	$187,000	$2,000,000	$15.9
7.	Contract with Project Manager (2004)	$350,000		$16.3
8.	Increase in construction costs since 1999	$2,600,000		$18.9
9.	Huge increase in the cost of steel. (2004)	$1,800,000		$20.8

Some of this cost can be offset by the development of the private development component of the project. This money cannot be specified until the City enters into an agreement for the private development component of the project. Therefore, the City must pay these costs upfront.

Staff recommends that the number of parking spaces remain at 650 to allow for some growth in monthly parking spaces, an increase in hourly parking spaces and the opportunity to provide parking for the private development adjacent to the parking garage.

Considerations:

- The project costs would increase by $9,000,000 some of which can be offset by the development of the private development component of the project.
- Eliminating parking spaces from the garage will not proportionally reduce the cost of the garage.

These actions will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

City staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional $187,000 for the design of the Haywood Street Parking Garage in the Battery Park area; and, to sign a contract with Hanscomb, Faithful and Gould, in the amount not to exceed $300,000, for project management services for the Haywood Street Parking Garage. City staff also requests City Council approve a budget amendment in the amount of $9,000,000 for the Haywood Street Parking Garage.

Using a spreadsheet, Finance Director Bill Schaefer reviewed with Council the funding strategy on how the new parking deck would be funded. He assumed the amount to be financed will be $16.3 Million ($20 Million project total less $3.7 Million already paid for). He also assumed that half the amount will be tax exempt (at 5% for 20 years) and the other half taxable (at 8% for 20 years). He included projected revenues from the new deck beginning in the second year at $250,000 (slightly more than only half what the Civic Center deck produces today) and has increased the revenue in years three and beyond to $350,000 per year. In summary, there will be a deficit of $79,500 in the first year; a surplus of $170,500 in the second year (after revenues from the deck kick in) that will be needed to reduce the deficit in the third year; and a surplus of $360,093 beginning in year four and continuing annually through year 20. An additional source of revenue for Council's consideration in making up the slight deficits in years one and three would be an increase of $10.00 per month for all three existing decks. That would bring in an additional $78,000 per year, which would almost exactly match the anticipated deficits.

Vice-Mayor Mumpower noted that the spreadsheet used by Mr. Schaefer showed a total project budget of $20 Million, not $20.8 Million (resulting in the interest on the $800,000 being roughly $52,000 a year). Mr. Schaefer apologized for the error and still felt that the $800,000 would not be a problem at all because it would be made up over 20 years. He also explained a different formula to where the $800,000 would not be a problem.

Upon inquiry of Councilman Newman, Mr. Schaefer explained that the parking enterprise fund generates about $920,000 a year profit (from on-street parking, citations, fines, decks and surface lots), after all personnel costs, maintenance costs, debt service, depreciation, etc., is taken out. As soon as the other decks get paid off, in year four and beyond, that money becomes available for debt service or whatever Council chooses to us it for. Looking at operations similar to what we have today, the system will generate more than it needs to sustain its operations, and still be good stewards of the properties we are responsible for.

All of the additional costs for the contract amendment will be recovered with bond proceeds. Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations:

a. The project costs would increase by $300,000.
b. This cost could be offset by the savings recommend but the project manager because of their expertise.

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Staff recommends that the number of parking spaces remain at 650 to allow for some growth in monthly parking spaces, an increase in hourly parking spaces and the opportunity to provide parking for the private development adjacent to the parking garage.

Considerations:

- The project costs would increase by $9,000,000 some of which can be offset by the development of the private development component of the project.
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These actions will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

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Upon inquiry of Councilman Newman, Mr. Schaefer explained that the parking enterprise fund generates about $920,000 a year profit (from on-street parking, citations, fines, decks and surface lots), after all personnel costs, maintenance costs, debt service, depreciation, etc., is taken out. As soon as the other decks get paid off, in year four and beyond, that money becomes available for debt service or whatever Council chooses to us it for. Looking at operations similar to what we have today, the system will generate more than it needs to sustain its operations, and still be good stewards of the properties we are responsible for.

Councilman Newman understands that the existing policy of the City of Asheville is to put all of the money from street parking and parking tickets into construction of additional parking garages. However, he questioned the wisdom of continuing that policy indefinitely into the future. He felt that Council should revisit the policy for the parking enterprise fund and use some percentage of the excess revenue (which would require a General Fund subsidy until year four), for other purposes, e.g., streets, sidewalks, greenways, additional police officers or community transit.

Vice-Mayor felt that the figures Mr. Schaefer presented puts the burden of paying for the parking garage on the customers and businesses downtown, unlike in the past where the average taxpayer had to subsidize the parking garages.

Mr. Schaefer noted that he didn't even include in his spreadsheet figures the sale of the outparcels, which may be as much as $4-5 Million.

Upon inquiry of Councilwoman Jones, Ms. Ball said that out of the already expended $3.7 Million, approximately $2.5 Million was for land. The rest was for design costs, real estate fees, miscellaneous fees, etc.

The following individuals spoke in support of the construction of the Haywood Street Parking Deck for various reasons, some being, but are not limited to: parking is crucial to the Grove Arcade merchants and all the merchants in that area; there is no more monthly parking available in the existing three parking decks and there is a 300+ waiting list; an agreement that the Grove Arcade entered into with the City in 1997 says that if the parking study recommends that construction of a deck in this area is needed that the City will agree to undertake the construction of this facility; financially the City will be able to construct the deck; any area in the City has redevelopment costs and that should be remembered when talking about the cost per parking space; the inflation factor will help pay for the parking deck; Asheville has a good bond rating; need to act now and not let interest rates continue to rise; merchants in the Grove Arcade are counting on the additional traffic resulting from the parking garage; Grove Arcade merchants employ 150-200 employees which need parking; survey of Grove Arcade merchants shows that their need is 351 parking spaces, however, they encourage the garage contain 650 parking spaces for the future growth; special events at the Civic Center will require additional parking; one reason why Progress Energy invested in the Grove Arcade in 1999 was based on the City's commitment to build a parking deck; building the 650 parking space garage will let downtown Asheville grow; need to educate local people that there is parking available; tourists do not want to have to park at metered spaces because they constantly worry about getting a parking ticket and therefore do not browse downtown Asheville and spend dollars; location of deck is good because it is right off of I-240; additional signage is necessary for existing parking garages; in addition to parking deck there is a need for alternative means of transportation – loop bus system around the City, especially where the clubs are located; significant events will be happening in Asheville that will support the additional parking garage, one being the new Chamber of Commerce Building; this land resource needs to be utilized for it's best use for the next 100 years; and the parking deck will be regional resource:

Mr. W. Louis Bissette, Jr., former Mayor of Asheville, Chairman of the Grove Arcade Public Market Foundation
Mr. Russell Martin, former Mayor of Asheville, Vice-Chairman of the Grove Arcade Public Market Foundation
Mr. C. Jerome Jones, incoming Chairman of the Grove Arcade Public Market Foundation
Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation
Ms. Nancy Thompson, representing Progress Energy, Board Member of the Grove Arcade Public Market Foundation
Mr. George Morosani, Board Member of the Grove Arcade Public Market Foundation

Owner of Anthony's Caribbean Café in the Grove Arcade, Board Member of the Grove Arcade Public Market Foundation, President of the Grove Arcade Merchant's Association, Bele Chere Board Member
Mr. Chuck Riley, immediate past Chairman of the Grove Arcade Public Market Foundation
Ms. Donna Eagle, merchant at the Grove Arcade (Warren Wilson store)
Ms. Claudia Nix, representing Liberty Bicycles, facilitator for the Bike Pedestrian Task Force, former member of the Asheville Transit Commission
Owner of Kamm's Frozen Custard in the Grove Arcade
Ms. Laura Copeland, incoming Board Member of the Grove Arcade Public Market Foundation, staff member of the Asheville Area Chamber of Commerce
Mr. Ron Ainspan, Board Member of the Grove Arcade Public Market Foundation
Mr. Michael Ford, merchant at the Grove Arcade
Mr. Chuck Tessier

The following individuals spoke in opposition of the City constructing the Haywood Street Parking Deck for various reasons, some being, but are not limited to: parking is only one tool for transportation and funds should be spent for other transportation modes that support students and low-income families; money should be used to improve Asheville as a whole creatively; $20.8 Million is too big of an investment; public transit system should be improved; if a new deck is built, improved transit services will fall through the cracks; existing bus service should have a higher frequency and later hours; there has been no public oversight of this parking garage project; need for a Parking Commission; parking is needed, however, not at such a large $21 Million facility; if the large deck is built, and it will take up less space for building businesses and housing:

Mr. Yuri Koslen
Ms. Karen Austin, member of the Western North Carolina Alliance, member of the Asheville Transit Commission
Mr. Andrew Goldberg, member of the Asheville Transit Commission
Mr. Bryan Freeborn, member of the Asheville Transit Commission, (not speaking on behalf of the Commission)

Ms. Sarah Uminski, Executive Director of the Affordable Housing Coalition, urged Council to require the inclusion of an affordable housing component in any residential development at the Haywood Street/Battery Park area.

Discussion surrounded as Ms. Ball and Mr. Schaefer responded to various questions, many financial, from Council, some being, but are not limited to: why is only half of the amount going to be tax exempt; when was the last time any General Fund money went into the parking enterprise fund; is it true to say that one parking deck lays the groundwork financially for another parking deck to be built without using General Fund monies; if we defaulted on the loan, would the worse case scenario be that we lose the parking facility itself; how many existing private parking decks are there in downtown Asheville and can they expand; what is the currently monthly parking rates in the existing three parking garages; has the St. Lawrence Basilica church reviewed the façade of the parking deck; what is the cost of a parking space in the new deck; is the cost of the façade included in the cost per space; will there be any financial partnership with the downtown businesses or property owners; what percentage of days in the last couple of years have the existing parking garages been full; approximately how long will it take for the new parking deck to be full; if we require a developer to incorporate an affordable housing aspect on the outparcel, should we require it in our own developments; are the St. Lawrence Basilica church or the Battery Park Apartments concerned with the scale of the project; what are some cost reduction items, e.g., removing one story of the parking garage; what would be the cost of the project if one story of the parking were removed or a retail component in the garage were constructed on the Haywood Street side; what is the estimate of locals vs. tourists using the

existing parking garages; and do we know the percentage of residents who commute downtown to work.

Councilman Newman supported a parking facility on this site; however, he expressed concerns regarding the total cost, the scale and how it will affect the area around it, especially since when the parking study was performed, one of the things it anticipated was the renovation of the Civic Center (which has not happened yet).

Councilman Newman asked about the development agreement that the City has with the Grove Park Inn on Site B (next to the City Hall Building) for a 200 space parking garage. If that development goes forward, then in the near future the City will be looking at the need to also finance those additional parking spaces, as part of that development. Ms. Ball said that it's her understanding that the City owns the land for Site B and in exchange for the land, the City expects to get 200 parking spaces. There has been an appraisal of the land and it equals the amount of parking spaces the City will need. City Attorney Oast noted that the details have not been worked out yet.

Councilman Newman requested additional information about the role the Grove Arcade Public Market Foundation (GAPMF) is to pay regarding financing the parking garage on this site. City Attorney Oast said that the agreement states: "If the City determines within five years from the date of the agreement to undertake construction of a parking facility within the area shown on the map attached" (which includes the area we are talking about), " GAPMF will pay 50% of any operating deficit of said facility, including debt service on any bond issue; provided, that GAPMF's obligation to pay said 50% shall be limited to the fraction of such costs that is derived by dividing 300 by the total number of spaces in the new parking facility." It is not a binding obligation for the City to build the deck, but a promise by the Grove Arcade Public Market Foundation to assist us financially if we do build the deck. Mr. Schaefer noted that there is no obligation to help at all with the financing of the building of the deck – it's only if there is a very significant deficit in the operation of the deck and he doesn't anticipate that. The Grove Arcade will not be pitching in for construction and he would not expect ever to see them pitching in for operation either.

Councilman Newman felt the City should revisit the different policies regarding the parking fund enterprise. Not long ago we were concerned about getting people to park in the garages instead of on the street and we started the first hour free parking in the decks. That has been a real success. Now that our decks are starting to fill up, we haven't modified our policies that were put in place to address the under-utilization problem. Transit Services Director Bruce Black said that if we construct the parking garage we may need to leave the one hour free parking in place for a period of time. He said that the fee structure has to be based against the metered times. When the metered times becomes less expensive than our deck time, then you start getting the opposite flow and there is no incentive to park in the decks.

Mr. Black responded to various questions surrounding Councilman Newman's statement that most of our buses are underutilized at the time. Councilman Newman felt that we need to create incentives so that more people use transit as a commuter tool.

Planning & Development Director Scott Shuford responded to Councilman Newman when he expressed concern that the Haywood Street side of the parking garage will create dead space.

Councilman Newman expressed concern that the present design of the project and the site constraints doesn't leave a lot of property in the outparcels for an affordable housing portion. Mr. Shuford replied that if Council goes with a different scale element and perhaps a taller structure, we might have the opportunity for some mixed income housing in the project.

Upon inquiry of Vice-Mayor Mumpower, the City acquired the outparcels primarily to (1) maintain an infrastructure to move vehicles around – relocating Page Avenue; and (2) the need for a staging and storage area.

In response to Vice-Mayor Mumpower regarding the outparcels, Ms. Ball said that if we put a Request for Proposals out and we include the elements that Council feels are very important we will have people who will want to respond to that. In a lot of cities, the city may donate the land, discount the land, or do different things in order to get the type development they want. The value of the outparcels as appraised, because it will be site-ready plus adjacent parking, makes it extremely valuable. She estimated the land would be about $1.5-2 Million and the rest of the $4-5 Million would be in parking spaces.

In response to Vice-Mayor Mumpower, City Attorney Oast said that there has been no violation of the Open Meetings Law regarding the City's purchase of the land.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and ordinance and they would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-263. This motion was seconded by Councilman Davis.

Councilman Dunn felt that if we want economic development and want people to live, work and shop downtown, then we need parking. Other areas, for example the Asheville Mall, have ample parking and the downtown should have adequate parking as well. He felt other modes of transit are important, but cars are our main source of transportation.

Councilman Davis felt that the City has too much committed to not build a parking garage and Mr. Schaefer has provided the figures to show that it can happen.

Councilman Newman again realized the need for an additional parking facility in this area and the need to more forward. However, he asked Council take a little more time to get this project the way that the community would like to see it. He felt we can get more good out of the project than we have with the current design. He suggested asking staff to sit down with the engineers for a short, reasonable period of time and look at the current design to see if there are some ways to modify the engineering plans already developed, in a way that will reduce the price tag of the total project and hopefully to include some additional opportunities for private sector development, including some moderately priced residential development. He felt we should also not continue our policy of investing 100% of our parking fund enterprise dollars into building more parking garages. That does not reflect the priorities of our community. In addition, he asked staff to work in the coming months to bring Council some ideas on how to make transit more an effective tool for people who want to work downtown. Our current fee structure needs to be modified so that people who use the facility should pay a little more to build the facility.

Vice-Mayor Mumpower said that parking is an economic engine that creates other revenue that can be filtered out to other transportation improvements. He does have concerns on the cost and size of the garage; however, he feels the City should uphold its commitment in the agreement it signed with the Grove Arcade Public Market Foundation.

Councilwoman Jones would support the two contracts, but was concerned about the $9 Million budget amendment increase. She is hopeful that staff will express Council's concerns to Carl Walker and to Hanscomb, Faithful and Gould, especially in terms of affordable housing. She feels the parking garage is the other part of the Grove Arcade's future. She was glad that the numbers work, however $9 Million is a lot to finance. She felt we could have a smaller parking lot by reducing one level and make it more reasonable to finance. She felt it was important to note

that the City has already made an investment in the Grove Arcade. We have invested $2.5 Million in the public market and $200,000 for streets and sidewalks. We want to continue being supportive of the Grove Arcade and other people involved in tourism need to come to the table as well.

Councilwoman Bellamy felt there are some policies Council needs to discuss on the issues of transit and where we want to go, including affordable housing on city property. We do need to look at these issues holistically. We need to be making policy decisions from a long-term standpoint. If we had the entire budget before us, we could see how it would impact us in the future.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that she is looking to Council to tell her what they want to see happen with the project. She said that she is open to go back and talk with the design engineers about west side and the north side. She did think the project needed to more forward, but if there is a change as a result of the discussions, then City staff would like to come back to Council.

Mayor Worley said that Council has been given updates over time and the costs will continue to escalate. He noted that in year 4, there will be a $360,000 in surplus of funds that are available for other uses, which can be used for transit, if we choose. He would love to see a circulator system downtown.

The motion made by Councilman Dunn and seconded by Councilman Newman to approve Resolution No. 04-263 carried on a 6-1 vote, with Councilman Newman voting "no."

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Councilman Dunn moved for the adoption of Resolution No. 04-264. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 448

Councilman Dunn moved for the adoption of Ordinance No. 3193. This motion was seconded by Councilwoman Bellamy.

Councilwoman Bellamy asked that staff continue talking with the design engineering firm to find cost-cutting methods that can be implemented.

City Manager Westbrook said that those discussions will take place. He said that if Council wants four floors instead of five, staff will need to know that now. However, if five floors is decided on and Council wants it built in the most cost effective manner, we will continue to seek, right up to the date that we start construction. The contract with Hanscomb, Faithful and Gould will be looking for those additional savings. We will only borrow what we need when we have a firm number.

Councilman Newman said that if we approve the money to build this design, he didn't think that we are sending a clear signal to staff or the engineers that we really want to take a hard look at this design and see if there are some ways to change the design (not just to find cost savings in building this design) to adjust the scale of the parking proposed and get more residential development. He felt we should hold off on the budget amendment for some reasonable time and let those conversations happen.

Vice-Mayor Mumpower didn't believe this is an ideal setting for affordable housing. It will address other needs, however, the project is surrounded by other affordable housing.

Councilman Davis felt the affordable housing component conversation might be more appropriate when we come into the outparcel discussion.

Councilwoman Jones felt that if we don't allow staff to consider the scale issues, she would not be able to support the budget amendment.

The motion made by Councilman Dunn and seconded by Councilwoman Bellamy to approve Ordinance No. 3193 (with staff being directed to continue talking with the design engineering firm to find cost-cutting methods that can be implemented -- not including the scale of the project) carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

ORDINANCE BOON NO. 21 - PAGE 433

C. RESOLUTION NO. 04-265 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE HARRISON SHANNON GROUP FOR THE HOPE VI FEASIBILITY STUDY AND A MOTION TO ALLOCATE $18,000 OF THE HOUSING INFRASTRUCTURE FUNDS FOR THAT STUDY

Mayor Worley said that Councilwoman Bellamy and himself heard a presentation at the Housing Authority to ask the City for $18,000 plus expenses for a feasibility study to see if Asheville is eligible to obtain a Hope VI grant to do some redevelopment in conjunction with the Housing Authority in public housing projects.

Vice-Mayor Mumpower applauded the effort, however, he felt that the Hope VI monies are very limited and will likely go lower and didn't feel that to spend $18,000 at this time was good.

Councilman Newman felt that even though federal resources are being reduced, there are a lot of opportunities for private sector redevelopment. Even if there are not Hope VI federal funds, there may very well be good opportunities to cultivate more economically integrated neighborhoods through local, public and private partnerships for redevelopment in those areas and it's important to explore those possibilities.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-265. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote with Vice-Mayor Mumpower voting "no".

RESOLUTION BOOK NO. 28 – PAGE 449

VI. OTHER BUSINESS:

RESOLUTION NO. 04-266 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PROVIDE LOCAL FUNDING FOR NOISE WALL ENHANCEMENTS FOR THE I-40 WIDENING PROJECT

Planning & Development Director Scott Shuford said that this is the consideration of a resolution authorizing the Mayor to execute an agreement with the N.C. Dept. of Transportation (NCDOT) to provide local funding for noise wall enhancements for the I-40 widening project.

At the request of City Council and the Metropolitan Planning Organization (MPO), the NCDOT allowed the establishment of an I-26 Connector Aesthetics Advisory Committee (AAC) to develop ideas about improving the appearance of the I-26 Connector. The AAC has been meeting regularly and was recently offered the opportunity by NCDOT to offer suggestions for aesthetics considerations for a roughly one mile long section of I-40 that is scheduled to be widened to six lanes over the next two to three years.

This section of I-40 runs from just west of Exit 44 to just west of the I-40/I-26 intersection and will be constructed under a fast-track, design-build contract. Since the project is to be constructed within the existing right-of-way, there are limited options to provide landscaping and median treatments. The AAC recognized these limitations and concentrated its discussion in two areas: The new overpass at Exit 44 and the noise wall that will be constructed along the south side of the highway. Because of its scale, the noise wall offers the greatest opportunity for aesthetic impact -- it will run for over 4,000 feet, two-thirds of which will be quite close to the southern edge of pavement. There will be some segments of the wall that will be setback; these areas will receive landscape treatments.

The AAC researched what other communities were doing with noise wall aesthetics and found numerous examples from Western states. These ranged from elaborate examples of individualized public art to simpler treatments involving the use of concrete form liners that imprint a pattern on noise wall panels. Because of concerns about costs and the fact that NCDOT needed quick decisions on this project due to its timeline and the design-build contract, the AAC focused on form liners. The use of this technique enables replication of patterns and has the potential to be re-used for the I-26 project as well.

The AAC researched this concept extensively and has developed a proposal that is very cost-effective while having strong aesthetic impact. Typically, about one percent of an interstate highway project's budget is reserved for landscaping and other aesthetic treatments; in this case, the project is estimated to cost roughly $30 million, leaving around $300,000 available for aesthetics. The noise wall treatment proposed by the AAC will cost approximately $100,000 and have the potential to be carried over to the I-26 project. Given Council's Strategic Operating Plan goals for improving City gateway appearance, this seems to be an outstanding project.

We learned on Friday, December 10, that despite the efforts of Division Engineer Jay Swain to have a portion of the $300,000 be applied to the noise wall, NCDOT has a standing policy of requiring local funding for any noise wall enhancements. This news means that the City must act quickly to agree to execute a Municipal Agreement with the NCDOT committing to fund the noise wall improvements if they are to be accommodated in the project.

The AAC and City staff feel the attention to detail offered by this project will reflect well on the City of Asheville and open the door for greater community acceptance of highway projects. Interstate projects in particular are necessarily invasive and aesthetic enhancements can help heal the physical scars the projects cause to the local landscape. In a tourist and "sense of place" economy like ours, such treatments are especially important. This is why the Chamber of Commerce executive board recently passed a resolution supporting the work of the AAC and requesting that NCDOT fund the noise wall improvements.

Executing the Municipal Agreement will commit the City to providing the funds, but the NCDOT will not require payment until the project is complete. This will allow time for the City to seek grants (such as from federal TEA funds or from the Tourism Development Authority enhancement grants) and other funding sources for the enhancements. While there is a high likelihood of full or at least partial grant funding for these improvements, the City will be ultimately obligated to fund the enhancements.

Pros:

- Cost-effective, high-impact aesthetic enhancement
- Able to be re-used on the I-26 project
- Supports work of AAC
- Supported by Chamber of Commerce
- High likelihood of grant funding for all or part of the project

Con:

- Potential $100,000 price tag

City staff recommends City Council authorize the Mayor to execute a Municipal Agreement with NCDOT to provide local funding for noise wall enhancements for the I-40 widening project.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

After a short discussion, Councilwoman Jones moved for the adoption of Resolution No. 04-266. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Councilwoman Bellamy, Councilman Davis and Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 450

RESOLUTION NO. 04-267 – RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE JOINDER TO DEED OF TRUST FOR REDEVELOPMENT REFINANCING FOR PART OF PACK PLACE

City Attorney Oast said that this is the consideration of a resolution authorizing execution of a joinder to deed of trust for redevelopment financing for part of Pack Place.

Last week, as you may have heard, PLB Investments, LLC sold its interest in the Pack Place development to Pack Square Investors, LLC, and two individuals from Charleston, SC. The assets transferred consisted of an ownership interest in the parking facility and associated retail spaces on Biltmore Avenue and Eagle Street, together with the leasehold interest in the underlying land. This does not involve the Pack Place Arts, Education and Science Center. This development comes out of the City's redevelopment efforts in this area in the 1980's, and the City is the owner of the land on which these improvements are built. The City leased the land to the developer pursuant to a 1987 Ground Lease for a term of 99 years. In addition to nominal rent, the developer/Lessee agreed to make the improvements (parking deck and retail/office space) that currently occupy the land.

The 1987 Ground Lease includes a provision for the City, as Lessor, to join in any instruments required for the Lessee to obtain mortgage financing for the development. The Lessee must make certain certifications as to the sufficiency of the loan amount and the qualifications of the lender, and any joinder is subject to the condition that the City, as Lessor, is not personally liable. The City joined in such documents in connection with the initial financing in 1987.

As a result of the transaction last week, the new owners of the improvements also became the new Lessees under the 1987 Ground Lease. They wish to refinance the debt on the improvements and have requested the City, as Lessor under the 1987 Ground Lease, to join in the deed of trust that will secure the loan. The 1987 Ground Lease contains essentially the same provisions for refinancing as it does for initial financing, and the Lessees have, or will, provide the required certifications. Upon Lessees' providing these certifications, the City may approve the

joinder, or make a written objection within 10 days. In the absence of an affirmative approval or written objection, the approval is deemed given.

Last week, we received a document, "Joinder to Deed of Trust," which would be the City's joinder for the refinancing as contemplated by the Ground Lease. The document we received requires some revision to meet the intent of the 1987 Ground Lease, in my opinion, but I do not think that making these revisions will present a problem for the Lender or the Lessee. Accordingly, I believe that the "Joinder to Deed of Trust" or a similar document can be executed on behalf of the City once the revisions are made.

Adoption of the resolution, which authorizes the Mayor to execute the "Joinder to Deed of Trust," subject to approval of the City Attorney, is recommended.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

After a brief discussion, Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-267. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 451

BOARD AND COMMISSION ANNOUNCEMENTS

Vice-Mayor Mumpower announced the various upcoming board and commission vacancies. He encouraged interested people to contact City Clerk Burleson.

SCOTTY RHODARMER

Councilman Dunn announced the retirement of WWNC Radio Announcer Scotty Rhodarmer who will be retiring after 50 years of service.

INTERLACE PROGRAM - TRANSITION HOUSING PROGRAM FOR WOMEN AND CHILDREN

Councilwoman Jones said that Interlace, a program of the Affordable Housing Coalition, is a transitional housing program for women and children who are homeless due to domestic violence. This year Interlace has organized another successful Shop for Change event in the downtown area. Over 90 downtown retail businesses and restaurants participated in the 8th annual event. Carolers from WomanSong and Enka Middle School sang on downtown streets throughout the day. There are dozens of businesses that consistently contribute to this event each year to help raise funds and awareness. EnviroDepot, on Haywood Road, is always particularly enthusiastic about helping out with the important cause. Ms. Alissa Gill and Ms. Susan Diehn, Interlace volunteers, were essential to the team effort of putting together an event of this size. She thanked all of the participating businesses, shoppers and volunteers for helping to end abuse in our community.

CLAIMS

The following claims were received by the City of Asheville during the period of November 12 – December 2, 2004: BellSouth (Water), George Artom (Water), Jeffrey H. Hatmaker (Water), Rose Beck (Transit Services), Emma Jarvis (Sanitation), Demos Real Estate (Water), Alvin Smith (Police) and Firestone (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton, founder of Asheville Citizens for Quality Government, said that policies and standards, as well as plans and procedures are needed to assure the quality of education received by every student in the Asheville public school system. He asked Council to establish the policies, standards and requirements to achieve this vital objective.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:19 a.m.

Magdalen Burleson
CITY CLERK

Charles L. Worley
MAYOR

Tuesday – January 11, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (left meeting at 7:58 p.m.); Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Newman led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

Councilman Davis, liaison to the WNC Regional Air Quality Agency, said that the Air Quality Agency has just awarded the City of Asheville (through the efforts of Mr. Larry Bopp, the City's Information Services Director) the 2004 Energy Star Million Monitor Drive Contributor Award. It was presented by the United States Environmental Protection Agency in recognition of activating the power management functions on computer, monitors across your entire organization to save energy, money, and the environment.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 14, 2004

B. RESOLUTION NO. 05-1 - RESOLUTION AUTHORIZING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON STRATFORD ROAD FOR A RIGHT-OF-WAY EASEMENT ON STRATFORD ROAD

Summary: The consideration of a resolution authorizing the Mayor to convey excess right of way on Stratford Road in exchange for a right of way easement over a portion of real property located on Stratford Road.

The City and Verdi Group LLC (Verdi) have negotiated an exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The excess right-of-way property is along the east side of Stratford Road comprising 0.008 ± acre generally across the road from and between its intersections with Parkside Drive and Pinewood Avenue.

The property owned by Verdi (PIN No. 9730.12-96-3375) is a 0.969 acre parcel zoned RS-4 located on Stratford Road contiguous with the right-of-way. As it is, the parcel will only support three (3) houses. With the additional land from the excess right-of-way, the Verdi property will support development of four (4) houses. The right-of-way easement to be exchanged for the excess right-of-way will cover 0.131 acre and will provide a logical and consistent right-of-way boundary along the east side of Stratford Road extending ten (10) feet into the Verdi property for the full length of the street frontage.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will provide a more logical and consistent right-of-way boundary along Stratford Road.
- It will enable maximum infill development consistent with the Strategic Operating Plan.
- The 10-foot easement makes a future sidewalk more constructible.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on December 17, 2005.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey excess right of way on Stratford Road in exchange for a right of way easement over a portion of real property located on Stratford Road.

RESOLUTION BOOK NO. 28 – PAGE 452

C. RESOLUTION NO. 05-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH JOHN W. ABBOTT CONSTRUCTION CO. INC. TO CONSTRUCT SUBSTANTIAL SITE IMPROVEMENTS FOR THE SOCCER COMPLEX AT AZALEA PARK

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with John W. Abbott Construction Company, Inc. to construct substantial site improvements for the soccer complex in Azalea Park.

The City of Asheville Parks and Recreation Department is in the process of implementing the first phase of development of the Azalea Park Master Plan. This phase of significant public park improvements includes the realization of a soccer complex of artificial turf, concession/restroom facility, picnic shelters, a community built playground, parking areas, walkways and trails, a memorial garden and landscape. The construction under consideration by City Council via this staff report will address the concession/restroom facility, portions of the parking areas, extensive retaining walls, signage, plazas and walkways. The project was bid out according to City standards that include the Minority Business Plan.

This action complies with the City of Asheville Strategic Operating Plan greenway/open space goals under the Natural and Built Environment Focus Area, as the project provides the framework for additional greenway benefits.

Pros

- The construction of this portion of the project is an integral supporting aspect of the artificial turf fields that are already under construction.
- The park will provide greatly needed recreation facilities for recreation users, especially the soccer players in the area.
- The soccer complex will be a local and regional attraction that will foster economic development.

Cons

- The work is extensive and costly to implement this high quality park development.

- The facility will require increased staffing and materials to maintain it via the operating budget.

The Parks and Recreation Department staff recommends City Council authorize the City Manager to enter into a contract with John W. Abbott in the amount of $1,074,788 to construct substantial site improvements for the soccer complex in Azalea Park.

RESOLUTION BOOK NO. 28 – PAGE 453

D. ORDINANCE NO. 3194 - BUDGET AMENDMENT FOR THE AZALEA PARK CONSTRUCTION

Summary: The consideration of a budget amendment for Azalea Park, in the amount of $647,170, from a $472,170 contribution from the WNC Soccer Foundation, and $175,000 through an agreement with the Asheville-Buncombe Youth Soccer Association (ABYSA).

The City of Asheville is in partnership with both the WNC Soccer Foundation and ABYSA to raise funds for the construction of the John B. Lewis Soccer Complex at Azalea Park. These funds are the most recent payments to the City of Asheville via the fundraising campaign from the Soccer Foundation and ABYSA.

This complies with the City of Asheville Strategic Operating Plan, Council Focus Area: Natural and Built Environment, Goal 2: Increased greenway benefits equitably throughout Asheville – Continue to implement and develop greenways that enhance quality of life for Asheville. The Swannanoa River Greenway Corridor will pass through Azalea Park plus include an extensive trail system within the park linking to the greenway.

Pros

- Complies with City procedures to expend funds.
- Continues work on project to meet construction timeline.
- Complies with agreements with WNC Soccer Foundation and ABYSA.

Cons: None noted.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $647,170 to increase the budget for development of Azalea Park.

ORDINANCE BOOK NO. 28 – PAGE 435

E. ORDINANCE NO. 3195 - BUDGET AMENDMENT FOR THE PURCHASE OF A MINI-BUS FOR THE HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $23,653, for the purchase of a mini-bus for the Harvest House and Senior Opportunity Center.

The City has received an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used to purchase a 25-30-passenger mini-bus for Harvest House and Senior Opportunity Center. The vehicle will be used to support and enhance current and new senior programs at both centers, to expand the senior travel program, and to provide transportation for senior citizen special events.

This action complies with City of Asheville Strategic Operating Plan, City Council Vision: Livability: Where ideas and energy are devoted to creating a city where citizens and visitors experience essential services that are efficient, affordable and user friendly.

Pros:

- The mini-bus will enhance the Parks and Recreation Department's ability to provide essential services to senior citizens, which is not currently being fulfilled with the existing vans that support recreation services.
- Fulfill funding need to purchase a much-needed mini-bus for senior programs.
- Expand the senior travel program to offer more trips, reach more customers and increase revenues in the travel program.

Cons: None noted.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $23,653 to establish a budget to purchase the mini-bus.

ORDINANCE BOOK NO. 28 - PAGE 437

F. RESOLUTION NO. 05-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA CORNERSTONE CONSTRUCTION INC. FOR THE MALVERN HILLS POOL PUMP

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carolina Cornerstone Construction, Inc. to construct a pool pump house for Malvern Hills Park.

The City of Asheville Parks and Recreation Department has been improving the facilities within Malvern Hills Park incrementally. The most recent improvement required for this facility is the construction of a new pool pump house. This facility will meet the mandatory guidelines established by North Carolina's Department of Environment and Natural Resources. The building will accommodate the new pump and necessary pool chemical storage. This pump house will reflect the character of the existing historic character of the existing Malvern Hills facility that contains changing rooms, concessions and a pavilion. The project was bid out according to city standards that include the Minority Business Plan.

This action coincides with the City of Asheville's Strategic Operating Plan water quality goal under the Natural and Built Environment Focus Area.

Pros

- The construction of this building will enable the pool to operate within state regulations.
- The pool clients will swim in a healthier environment with increased circulation of the pool water.
- The environment of the nearby stream will be improved by draining the pool water into the sanitary sewer.
- The pool will be easier to maintain for staff.

Cons

- The expense of constructing the pool pump house.

The Parks and Recreation Department staff recommends City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, Inc. in the amount of $71,500 to construct the pool pump house for Malvern Hills Park.

RESOLUTION BOOK NO. 28 – PAGE 454

G. ORDINANCE NO. 3196 - BUDGET AMENDMENT FOR THE PURCHASE OF A CRAWLER DOZER FOR THE PARKS AND RECREATION DEPARTMENT

Summary; The consideration of a budget amendment, in the amount of $85,000, to purchase a new Crawler Dozer for the Park Maintenance Division.

The Parks and Recreation Department has been developing numerous parks including the most recent, Azalea Park. A considerable amount of construction is being done by Park Maintenance staff with outdated equipment. One piece of equipment is a 1979 model Crawler Dozer. Recently, this piece of equipment caught fire and is inoperable. With the current construction of the Azalea Park, Carrier Park, greenway development and future construction at Richmond Hill, it is necessary for the Department to replace this piece of equipment. The Department is currently renting a Crawler Dozer at the cost of approximately $4,000 per week in order to keep the project on schedule. It is more cost efficient to purchase a replacement for this piece of equipment than it would be to continue renting one. The level of funding of the Park Maintenance Division cannot cover the estimated replacement cost of $85,000.

Pros

- The purchase of this piece of equipment will allow the Parks and Recreation Department to develop more projects in-house in a more cost efficient manner than having to rent or contract with an outside company.
- This piece of equipment will pay for itself by saving the weekly rental fee over the next few months in the Azalea Park development.
- By not purchasing this piece of equipment, the cost of park and greenway development will increase due to having to contract with an outside company for all project development or rent the necessary equipment on a weekly basis, which is very expensive.

Cons: None noted.

This purchase of equipment will assist in addressing one of the goals of City Council, that of greenway development. Greenway projects could be completed in a timely manner and multiple projects could be worked on simultaneously.

The Parks and Recreation Department recommends that funds in the amount of $85,000 be appropriated from the Fund Balance to be used to purchase a Crawler Dozer.

Parks & Recreation Director Irby Brinson responded to Vice-Mayor Mumpower's inquiry about the money being appropriated out of Fund Balance.

Councilman Dunn hoped that in the future staff could try to anticipate these big ticket items and they could be included in the regular budgeting process.

ORDINANCE BOOK NO. 21 – PAGE 439

H. RESOLUTION NO. 05-4 - RESOLUTION APPOINTING MARK COMBS TO THE BUNCOMBE SCHOOL CAPITAL FUND COMMISSION

Summary: The consideration of a resolution appointing a member to the Buncombe School Capital Fund Commission.

The County Manager asked that the City appoint a member of the Buncombe School Capital Fund Commission. The Commission consists of five members: one appointed by City Council; one appointed by the Asheville City Board of Education; one appointed by the Buncombe County Board of Education; one appointed by the Buncombe County Board of Commissioners; and one appointed by the other four appointees. Under General Statute 105-472, one-half of any State Sales and Use Tax revenue distributed to the County is paid to the Commission whose duty is to provide for the distribution of the revenue to support school capital projects. The County Manager said it would be helpful if the City could appoint someone who is familiar with capital budget programs, revenues and expenditures.

Should Council want to appoint a City staff member (the County felt a City staff member would be appropriate), City Manager Westbrook recommended Public Works Director Mark Combs as a City appointee. Mr. Combs is familiar with capital budgeting, expenditures and finance. He also has an appreciation for large building projects, the infrastructure required to support them, as well as the large lead time for design, construction and completion of such projects.

City Manager Westbrook recommends that City Council appoint Mark Combs as the City's representative to the Buncombe School Capital Fund Commission.

RESOLUTION BOOK NO. 28 – PAGE 455

I. RESOLUTION NO. 05-5 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 25, 2005, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO NAVIGATIONAL SCIENCES INCORPORATED

Summary: The consideration of a resolution setting a public hearing on January 25, 2005, to consider an economic development incentive grant to Navigational Sciences, Incorporated.

City Council has previously considered Navigational Sciences for an economic development incentive grant on March 18, 2003. The initial grant was for $25,000 payable in equal installments over three years. In December 2004, Navigational Sciences advised that a portion of the prior understanding would need to be changed. Based on new information, the current economic development incentive grant is based on the following: the project will entail a capital investment of $2 million and the creation of 12 new jobs with an average annual salary of $50,000. The prior commitment was for a $4 million investment.

Based on the new information with a capital investment of $2 million and the addition of 12 new jobs at an average annual salary of $50,000, staff feels the economic development incentive of $25,000 paid in three equal installments over a three year period promotes economic development within the City, supports small businesses in the downtown area, and adds additional employment of highway jobs to the local economy.

Strategic Plan:

- Grant supports expansion of local small business. Key Area – Economic Development Goal 1, Objective A.
- Navigational Sciences, Incorporated continues to invest in the downtown area.

Staff recommends City Council approve the resolution setting a public hearing on January 25, 2005, to consider an economic development incentive grant to Navigational Sciences, Incorporated.

RESOLUTION BOOK NO. 28 – PAGE 456

J. **RESOLUTION NO. 05-6 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH JONES & FRANK CORPORATION TO INSTALL A FAST-FILL COMPRESSED NATURAL GAS FUEL STATION AT THE CITY'S FUEL STATION**

Summary: The consideration of a resolution awarding the bid to construct a fast-fill compressed natural gas (CNG) fuel station at the City's fueling station and authorizing the City Manager to enter into an agreement with Jones & Frank Corporation, the lowest responsive bidder.

In November 2000, City Council authorized City staff to apply for a grant to construct a CNG station. In June 2003 the City received a second notice to award the City $400,000 to construct the facility. The City agreed to provide in-kind and matching funds totaling $55,000.

In March 2004 City Council authorized the City Manager to enter into an agreement with the N.C. Department of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a compressed natural gas (CNG) fueling station. Subsequently, staff sent out bids for the construction of the station and is prepared to award a bid to the lowest responsible bidder to begin construction.

The State of North Carolina is committed to constructing a series of rapid-fire compressed natural gas fueling station along the I-40 corridor. Asheville is the key link between Hickory, North Carolina, and Knoxville, Tennessee.

Staff sent out bids for the construction of the facility. The lowest responsible bidder, Jones & Frank Corporation of Charlotte, NC, has agreed to construct the facility for $434,491, excluding sales tax. This amount is within the budgeted $455,000 amount.

Pros:

- Construction of a CNG station will fulfill a contractual agreement with the NCDENR for construction of such a station
- A public-access CNG station will allow vehicles to travel along the I-40 corridor from coast to coast
- High-pressure fuel delivery systems will become ubiquitous as hydrogen and fuel cell technology evolve
- The City and its partners are taking a leadership role in promoting clean air initiatives

Cons:

- CNG vehicles cost approximately 20% more than conventional vehicles
- Staff must be trained to work on high-pressure fuel systems
- Public access (credit/debit card) system must be installed
- CNG as an alternative fuel may be eclipsed by emerging technology

This action meets City Council's Strategic Plan in the Focus Area: Natural and built environment, Goal #1: A high quality of air and water, Task #2, "Explore options to provide incentives to City residents to purchase AFV."

City staff recommends City Council awarding the bid to construct a fast-fill compressed natural gas (CNG) fuel station at the City's fueling station and authorizing the City Manager to enter into an agreement with Jones & Frank Corporation, the lowest responsive bidder.

Mayor Worley responded to questions raised by Mr. Fred English about the cost effectiveness of this program.

RESOLUTION BOOK NO. 28 – PAGE 457

K. RESOLUTION NO. 05-7 - RESOLUTION AMENDING THE TERMS OF THE MEMBERS OF THE URTV INC. BOARD OF DIRECTORS

RESOLUTION BOOK NO. 28 – PAGE 458

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

ORDINANCE NO. 3197 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:08 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for the Mountain Housing office addition located at 64 Clingman Avenue for a proposed expansion of their office space.

Although the Asheville City Development Plan 2025 does not specifically address the need to provide office opportunities, it does describe a need to apply new zoning tools to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods and community development patterns. The MHO office expansion is being sought in order to allow for the non-profit organization to expand their current range of services and programs. MHO has existed in harmony with the existing Merritt Park residents and larger WECAN neighborhood and it is their desire to continue this mutually beneficial co-existence. The ACDP 2025 also discusses the need to promote Smart Growth principles including mixed use developments, higher density residential and commercial infill development, traditional neighborhood development patterns, and downtown neighborhood revitalization through housing rehabilitation, all of which can be found in the Merritt Park project.

This property was conditionally rezoned in September of 2000 from RM-8 to CBD. There was an additional rezoning further down Clingman Avenue from RM-8 to RM-16 for the Prospect Terrace Project.

The applicant, Mountain Housing Opportunities (MHO), is requesting an amendment to the Conditional Use Permit associated with the Conditional Use Rezoning from RM-8 to CBD for the Merritt Park Condominium Project. The rezoning and site plan approval for the 3-story, 16-unit condominium project was approved by City Council in September of 2000. There was a subsequent amendment approved in June of 2001 to allow Mountain Housing Opportunities to occupy approximately 3,100 square feet of community space located on the first floor and turn it into an office condominium.

MHO is now requesting an additional amendment to allow the expansion of their office and operations to occupy one of the 16 existing remaining condominium units located on the second floor (Attachments to City Exhibit 3 – Aerial Map and Location Map). This will add approximately 1,100 s.f. of additional space for a total of 4,200 s.f. Former amendment approval did not allow for more than the 3,100 square feet of non-residential space on the first floor to be occupied as office. Because of the increase in square footage, occupation of the second floor, and change of use from residential to office, a new amendment was required. Similarly, any future changes of this nature would also have to return to City Council for consideration.

The current MHO offices are located on the first level of the Merritt Park Condominiums, just south of the intersection of Hilliard Avenue and Clingman Avenue. Surrounding land uses and zoning have not changed since the original application and include, single-family residential and vacant properties zoned RM-8 along with CB-I zoned property housing the current City of Asheville Maintenance Facility. Access and parking for the site will remain unchanged.

At their September 20, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Permit request and made a positive recommendation that the project be forwarded to City Council stipulating only that a 'Change of Use' application will need to be filed with Building Permits and that architectural plans to convert the residential unit to office space will need to be submitted for review. In addition, Planning staff asked for the remaining Owner Affidavits, not included with the application, be provided. This request was made with the understanding that, as a requirement by the Merritt Park Condominium

Association, unanimous approval by all the current owners of any change of use or operation was needed. The last remaining three affidavits were provided prior to the completion of this report.

Also subsequent to TRC was an investigation into the details of the Community Development Block Grant (CDBG) and HOME funding for the original project as well as re-examination of the contract terms between MHO and the City of Asheville. Because the office addition would result in the loss of an affordable unit and change the ratio of affordable to market rate units, there was concern that contract terms would prohibit the office expansion. The Community Development Director, Dept. of Housing and Urban Development (HUD), and the City Attorney all reviewed the request and ultimately determined that, although there was concern over the loss of an affordable unit, it was generally felt that the benefits outweighed the concerns. Despite general support, the expansion cannot take place under current contract terms and an amendment to the funding agreement between the City of Asheville and MHO will be required before final approval. The appropriate proportion of the original HOME investment in Merritt Park plus additional funds realized through an equity-sharing arrangement will be re-used for another HOME-eligible activity.

This condition was not included in the TRC report because the contract issues came to light after the technical hearing. Staff felt it was necessary to gain confirmation from HUD and waiting for a response from HUD was the primary reason the project was delayed from moving forward to City Council.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety. A separate 'change of use' review will be required by Building Safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The request will not result in any changes to the site design.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   A change of use will not result in significant changes to the unit and will not generally alter the residential appearance. Operations will be restricted to daytime hours and are expected to be sensitive to the residential nature of the community and is not expected to adversely impact the value of adjacent properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

Scale, bulk, coverage, and density will not be altered as a result of the proposed office expansion. The current MHO offices have harmoniously existed as a member of the WECAN neighborhood and community and wishes to remain in their current location, maintaining their position within the community. Similarly, there is a desire on the residents' part to retain MHO at Merritt Park, which is exemplified through the Owners' Affidavits that were provided stating that the residents were in favor of the MHO office expansion and change of use.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   Although the Asheville City Development Plan 2025, does not specifically address the need to provide office opportunities, it does describe a need to apply new zoning tools to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods and community development patterns. The MHO office expansion is being sought in order to allow for the non-profit organization to expand their current range of services and programs. MHO has existed in harmony with the existing Merritt Park residents and larger WECAN neighborhood and it is their desire to continue this mutually beneficial co-existence. The ACDP 2025 also discusses the need to promote Smart Growth principles including mixed use developments, higher density residential and commercial infill development, traditional neighborhood development patterns, and downtown neighborhood revitalization through housing rehabilitation, all of which can be found in the Merritt Park project.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The project area is located within walking distance of downtown, near major road facilities, interstate connections and in close proximity to transportation facilities with the Route 9 and Route 1 bus lines running directly by the covered shelter in front of the Merritt Park condominiums every half hour. Preliminary review by other utility providers has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   With MHO employees parking off-site, the proposed expansion will not require any changes to the existing off-street parking. In addition, due to the loss of the residential unit, the traffic engineer has found the expansion to result in a very nominal increase in the number of trips generated from the site.

Pros

1. Allows for the expansion of affordable housing offices, staff, and programs.
2. Allows for the maintenance of a co-operative mixed-use development.
3. The original HOME investment plus a share in the increased equity will be recaptured and applied to the creation of additional affordable housing.

Cons

1. Results in the loss of a residential unit. *(The unit was originally an affordable unit, but the increase in its market value would have made it difficult to find another income-qualified buyer, and the seller was under no obligation to do so.)*

Staff recommends approval of the Conditional Use Permit amendment to allow the expansion of the existing 3200 square feet of MHO offices into an existing, 1100 square feet second story residential condominium.

Mr. Scot Dedman, Executive Director of MHO, briefed Council on the history of MHO stating that as they expand their work, they continue their commitment to the revitalization of the West End/Clingman Avenue neighborhood. He believed that their requested increase of approximately 1,100 square feet of available office space will provide them an additional 5 to 10 years, or more, of operating in the current location. When one of the condominiums came on the market last year, they decided that this was an opportunity to be able to expand their operations in the future without leaving the current office location. Their condominium documents require that they have unanimous approval and support from all 16 condo owners at Merritt Park and they do have this unanimous support. They informed the West End/Clingman Avenue Neighborhood Association of their interest in this change at their meetings several months ago and there has been no opposition. They will not expand the size of the building, nor change the exterior appearance of the building – it will keep its residential appearance. He thanked Council for their support of their growing work in Asheville and Buncombe County and for their affordable housing efforts throughout the community (Applicant Exhibit 1).

After rebuttal, Mayor Worley closed the public hearing at 5:17 p.m.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that appropriate proportion (approximately $37,000) of the original HOME investment in Merritt Park will be earmarked for another HOME eligible program, which details are still being worked out.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3197, granting a conditional use permit allowing Mountain Housing Opportunities to expend their existing offices located at 64 Clingman Avenue into an existing, 1100 square feet second story residential condominium subject to the condition that all TRC conditions are met. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 441

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED VARIETY OF COMMERCIAL USES

ORDINANCE NO. 3198 - ORDINANCE REZONING PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3199 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FOR A PROPOSED VARIETY OF COMMERCIAL USES

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the

public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:18 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at 940 West Chapel Road from RS-8 Residential Single-Family High Density District to Neighborhood Business District/Conditional Use, and a request to issue a conditional use permit for a proposed variety of commercial uses.

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. These policies encourage compatible and sustainable commercial infill development in addition to promoting traditional neighborhood development patterns. The existing commercial building, originally built in 1948, once housed a small neighborhood grocery that served the residents of Shiloh. The former grocery was well positioned to take advantage of vehicular and pedestrian traffic and reflects the traditional neighborhood development pattern that new construction often strives to replicate. Rezoning of the vacant property would enable the old grocery to be adaptively re-used for a variety of neighborhood friendly businesses and provide opportunity for compatible infill development.

The subject properties are located in south Asheville on the corner of West Chapel Road and London Road in the Shiloh community (Attachments to City Exhibit 3 – Location Map and Aerial Map). Both parcels total .46 acres and are currently zoned RS-8 and are surrounded by other RS-8 zoned properties supporting single family uses. A 2,200 square foot commercial building once used as a neighborhood grocery store remains on the corner lot but has been vacated for approximately 6 years, requiring the site to be brought into full compliance per Sec. 7-11-2(b)1 for renovation and re-occupation. Access for the proposed neighborhood businesses is to be located off of London Road and W. Chapel Road through the use of existing drives. A minimum of 10 and a maximum of 14 spaces are required as well as a 20' Type 'B' landscape buffer (or equivalent), buffering from the street, street trees, and parking lot landscaping. In addition, sidewalk, where practical, will be required as a condition of the permit (Attachments to City Exhibit 3 – Site Plan, Photos).

At their December 1, 2004, meeting, the Planning and Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and made a positive recommendation that

the project be forwarded to the Asheville City Council, stipulating that the applicant meet all outstanding Technical Review Committee (TRC) conditions before final zoning approval. In addition, as part of staff's report, a condition that would prohibit the sale of alcohol was recommended and later removed at the request of the City Attorney. Mr Oast further explained that in the State of North Carolina, zoning cannot be used as a tool to prohibit the sale of alcohol and recommended that a private deed restriction be arranged between private property owners that would restrict the sale of alcohol. Concern over the logistics and effectiveness of such an arrangement, staff arranged a meeting with the Asheville Police Department (APD) in an effort to work out a more enforceable alternative. The APD, together with the applicant and City staff, worked out an option where, in the event that more than 30 calls per year involving violent behavior and/or drug or alcohol related offenses were made in reference to the subject property that the Conditional Use Permit allowing the commercial uses must return to City Council for re-examination. The applicant did not have any objection to the condition and the APD was pleased for the opportunity to work cooperatively to control problems currently existing on adjacent properties. The City Attorney did not have issue with the specifics of the alternative but still expressed concern over the difficulty of removing alcohol sales once (if ever) established.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed project will be adaptively re-using an existing building and former parking area and will require minimal site disturbance in order to update access, off-street parking, sidewalk, and required landscaping.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The commercial building predates more than half of the adjacent homes and has historically been occupied concurrent with the older homes without negative impact on their property values. In addition, there is a significant amount of research that supports the position that if buildings are permitted to stand vacant and dilapidated that they will contribute to the decline of the neighborhood, negatively affecting adjacent property values. Lastly, building code and the UDO will both require improvements that will result in a more accessible and valuable neighborhood addition.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The existing commercial building is not uncharacteristically out of scale for a traditional neighborhood business. Although the adjacent homes are modest in size, the existing building is similarly modest in bulk and coverage as a one-story, 2200 square foot building.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. These policies encourage compatible and sustainable commercial infill development in addition to promoting traditional neighborhood development patterns. The existing commercial building, originally built in 1948, once housed a small neighborhood grocery that served the residents of Shiloh. The former grocery was well positioned to take advantage of vehicular and pedestrian traffic and reflects the traditional neighborhood development pattern that new construction often strives to replicate. Rezoning of the vacant property would enable the old grocery to be adaptively re-used for a variety of neighborhood friendly businesses and provide opportunity for compatible infill development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The project area is located near major road facilities and interstate connections and is well located in respect to transportation facilities with the Route 6 bus line operating down Hendersonville Rd. and the Route 8 bus line running through the Shiloh neighborhood (with a stop located adjacent to the project area). In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed site plan indicates the utilization of existing entrances for access off of London and W. Chapel roads, in addition to showing adequate off-street parking and new sidewalk that will be constructed where pedestrian access is most needed. Lastly, the 4-way intersection and adjacent area is being examined for additional traffic improvements through City programs.

Pros

- Encourages the adaptive reuse of a vacant commercial building
- Provides an opportunity for infill development
- Promotes sustainable economic development
- Removes the negative impact of vacant property
- Provides convenient services to residents

Cons

- Loss of the potential for single family development (primarily on second lot where off-street parking is proposed)
- Cannot control the sale of alcohol through zoning

Staff recommends approval of the rezoning request from RS-8 to NB with approval of the associated Conditional Use Permit and detailed site plan.

Ms. Sherry Perry, owner of 827 Fairview Street, expressed concern over the drug and crack house located at 935 W. Chapel Road. She feels that if the property is rezoned, the commitment they have made to improve the neighborhood and surrounding community will be lost.

Ms. Jane Lyndon, property owner at 826 Fairview Street, also expressed concern over the drug activity at 935 W. Chapel Road. She felt that to rezone this property will allow another place for idle congregation.

Ms. Norma Baynes, member of the Shiloh Community Association, supported the rezoning request. She said the building has been vacant for a long time and this will be a good use in the neighborhood. She also hoped to find a way to eradicate the drug problems associated with 935 W. Chapel Road.

Mr. Derrick Martin, agent for 940 W. Chapel Road, assured Council that they have no association with the drug community or the house located at 935 W. Chapel Road. The building is currently an eyesore and the land is not maintained. He feels that their revitalizing of the area will be a benefit to the community because no one is there now. He felt that with the businesses there, there will be no loitering. He said he intents to have a carry-out only restaurant, a gift shop and a beauty parlor located in the building. He stressed that they have no plans in serving liquor out of any of the businesses in the building. Also, he has no problem in any of the conditions which staff has suggested.

After hearing no rebuttal, Mayor Worley closed the public hearing at 5:34 p.m.

Discussion occurred, initiated by Councilman Dunn, regarding the condition that in the event that more than 30 calls per year involving violent behavior and/or drug or alcohol related offenses were made in reference to the subject property that the Conditional Use Permit allowing the commercial uses must return to City Council for re-examination.

Councilman Dunn felt the City was imposing an unfair requirement on this owner. He felt that it is discriminatory to have this business meet that condition when the real problem is the lack of policing in the area.

Mr. Martin did not have a problem with the condition as long as the City can decipher that all 30 calls are not made by the same one or two people. He said that if it makes the neighborhood comfortable, he would have no problem with it.

Councilwoman Bellamy agreed that this was a discriminatory condition. The City seems to be associated this owner with the owners at 935 W. Chapel Road and that is not fair.

In response to Councilman Newman, City Attorney Oast explained what a re-examination of the conditional use permit would be.

Vice-Mayor Mumpower felt that our enforcement is so weak that we are punishing the owner when we should be rewarding them.

Councilman Newman moved to adopt Ordinance No. 3198 to approve the conditional use rezoning for property located at 940 West Chapel Road from RS-8 Residential Single-Family High Density District to Neighborhood Business District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 446

Councilman Dunn moved to adopt Ordinance No. 3199 to issue a conditional use permit for property located at 940 West Chapel Road for a proposed variety of commercial uses, subject to the following condition that all outstanding TRC conditions are met. This motion was seconded by Councilwoman Bellamy.

Upon inquiry of Councilwoman Jones, Ms. Baynes said that the Shiloh Neighborhood Association was concerned with the sale of alcohol, but the owner has assured them that there would be no alcohol sales in those businesses. They would have no problem in deleting the condition regarding 30 calls per year.

Discussion occurred, initiated by Councilman Davis, regarding the owner's ability to change uses in the building (City Exhibit 4).

Out of the discussion surfaced an amendment to the motion, which was agreed to by Councilman Dunn and Councilwoman Bellamy, to add a condition "that the uses permitted on this property be limited to those listed permitted uses under the Neighborhood Business zoning classification and that changes in uses may be approved provided they do not significantly increase the impact of any of the uses on the property."

The amended motion carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 448

C. PUBLIC HEARING TO CONSIDER REZONING 9 CURRY COURT FROM COMMUNITY BUSINESS II DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3200 - ORDINANCE TO REZONE 9 CURRY COURT FROM COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 6:00 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone 9 Curry Court from Community Business II District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on December 31, 2004, and January 7, 2005.

There has been a recent rezoning action in 2004 of a conditional use rezoning at 407 Liberty Road (NW corner of Liberty and Ridge Street intersection) from RM-8 to Office/Conditional Use Zoning for the purpose of locating an attorney's office on the property.

The subject property is located in the City of Asheville's extraterritorial jurisdiction, at the corner of Liberty Road and Ridge Street, just north of the intersection of Liberty Road with Smoky Park Highway. This rezoning was initiated by the Planning and Zoning Commission following the Commission's examination of a conditional use rezoning in the area in the summer of 2004. The property is owned by Larue W. Bolick and Mary A. Greene. The Commission felt, in its initial

review of the area, that Community Business II zoning extending so deeply up Liberty Road appeared to be an inappropriate incursion of such zoning into the neighborhood. The Commission's original rezoning proposal was more extensive but was scaled back by the Commission in December of 2004.

The zoning surrounding the site is varied. Zoning to the west is RM-8; to the south CBII; to the east RM-16; and to the north RM-8 and Office/Conditional Use Zoning. The Manufactured Home Overlay is found on most properties located to the north and west of the subject parcel.

Land use to the south, along Liberty Road and the Smoky Park Highway, is commercial. Except for the attorney's office immediately to the north, the remainder of the surrounding property is a mix of manufactured and stick-built single-family homes.

9 Curry Court presently contains a manufactured home community with four (4) units on site. The property is metered and numbered for five (5) homes.

The CBII District and RM-16 District both allow a residential density of sixteen (16) units per acre. Neither allow for manufactured home parks.

Sanitary sewer and water are not currently extended to these properties.

The property owners affected by this rezoning were sent personal letters regarding this matter in advance of the Planning and Zoning Commission.

Pros

1. The current CBII zoning intruding so deeply into the residential community off Liberty Road would allow a potentially incompatible commercial development to occur at an intersection that is residential in nature.
2. RM-16 zoning, which is also found to the east across Liberty Road from the subject properties, provides a nice transition between the commercial uses on the corner of Smoky Park and Liberty and the remainder of the area that is residential in character.
3. The orientation of this lot, both topographically and access-wise is toward the residential neighborhood and not to the commercial developments along Smoky Park Highway.

Cons

1. Surrounding area (except to the south) is predominantly single-family in nature.
2. Manufactured home park on the property will remain nonconforming with this rezoning.

Staff recommended approval of this rezoning request to the Planning and Zoning Commission. The Commission considered the matter in the context of a larger rezoning proposal at its meeting on December 1, 2004, and unanimously (6-0) recommended approval of the rezoning of this parcel.

Mr. Billy Woody, area property owner on Liberty Road, said that Liberty Road is already a highly travelled road and didn't want any more development on that property that would increase traffic.

Mayor Worley closed the public hearing at 6:06 p.m.

When Vice-Mayor Mumpower expressed concern of a City-initiated zoning with no input from the property owners, Ms. Cogburn said that she has sent one personal letter and two notifications to the property owners in Sylvia by first class mail and has received no response from them.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved to rezone 9 Curry Court from CBII to RM-16. This motion was seconded by Councilwoman Bellamy.

Discussion surrounded whether the property owners actually received notice and whether certified mail should be used to notify property owners when there is a City-initiated zoning. Mayor Worley researched the address and noted that the property owners have paid their 2004 property taxes and he felt sure that they received the letters.

Councilman Davis felt this action to downzone was arbitrary and would not support the motion.

After further discussion, Vice-Mayor Mumpower withdrew his motion to rezone from Community Business II District to RM-16 Residential Multi-Family High Density District

Councilman Dunn felt that the City is overstepping their authority when they rezone someone's property and would not support the rezoning request.

Planning & Development Director Scott Shuford said that this was the initial zoning when the area was taken into the extraterritorial jurisdiction area. He explained that the Planning & Zoning Commission reviewed a zoning change by a nearby property owner in that general area and after visiting the site they saw that the zoning of this property was out of character. That was their basis for requesting Planning staff to pursue this particular rezoning.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that we can accomplish a better notification procedure through written procedures when the Planning & Zoning Commission initiates a rezoning request.

Mr. Jerome Jones, Planning & Zoning Commission member, said that the Commission felt the property needed to be rezoned because it is oriented toward residential and it would be an ideal location for some infill multi-family housing.

Councilwoman Jones moved to rezone 9 Curry Court from Community Business II to RM-16 Residential Multi-Family High Density District.

Discussion then occurred whether RM-16 was the appropriate use of the property.

Councilman Newman felt that perhaps we have not exhausted the list of possible zoning districts that would be appropriate in this particular location.

Mr. Shuford suggested City Council might wish to continue this matter in order to give Planning staff the opportunity to try to reach the owners by a more forceful type of postal notice. Also, if Council is interested in a more intense zoning, then it would have to be reconsidered by the Planning & Zoning Commission again.

Councilwoman Jones withdrew her motion to rezone from Community Business II to RM-16 Residential Multi-Family High Density District. She pointed out that this seems like an appropriate way to rebuild the stock for multi-family since we do rezone residential multi-family to different classifications. She felt this would have been a good move for potential development of

affordable housing. A different zoning classification, however, may give the property owner a little more flexibility.

Councilman Newman would like for there to be more of a potential for mixed use activities on this site as a use by right, other than RM-16 allows. He also didn't wish to downzone the property to less than 16 units per acre. If there is a zoning classification that would allow 16 units per acre, but provide some protection for the area of incompatible development, then he would be supportive of that. Mr. Shuford responded that the Community Business I District would accommodate Councilman Newman's request,

Councilman Davis would support the Community Business I District because it is more compatible with what is already on that street and it allows the residential component to remain. Therefore, he moved to rezone 9 Curry Court from Community Business II District to Community Business I District. This motion was seconded by Councilman Newman.

Upon inquiry of Councilwoman Jones, Ms. Cogburn said that the difference between Community Business II District and Community Business I District is primarily the size of the structures allowed.

The motion made by Councilman Davis and seconded by Councilman Newman to rezone 9 Curry Court from Community Business II District to Community Business I District carried on a 4-3 vote, with Mayor Worley, Councilman Davis, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

City Attorney Oast said that due to the vote, this ordinance will be brought back at Council's next formal meeting for a second and final reading. Mayor Worley noted that there will be no additional public comment taken at that time.

ORDINANCE BOOK NO. 21 – PAGE 454

D. PUBLIC HEARING TO VACATE AND CLOSE THE ENTIRE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

ORDINANCE NO. 3201 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO VACATE AND CLOSE THE ENTIRE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Code Enforcement Officer Jeff Baker said that this is the consideration of an ordinance directing the Director of Building Safety to vacate and close the entire dwelling located at 1086 Hendersonville Road. This public hearing was advertised on December 31, 2004, and January 7, 2005.

Mayor Worley opened the public hearing at 6:42 p.m.

Mr. Baker said that the dwelling at 1086 Hendersonville Road is a wooden structure containing nine separate dwelling units. After unsuccessfully attempting to work with the property owners to bring the dwelling into compliance with the Housing Code since December of 1998, City staff's efforts to bring about compliance intensified during the summer of 2004. In August of 2004, the property owners entered into a Memorandum of Understanding but failed to honor their commitment to bring the dwelling units into compliance with the Housing Code. As a final effort to obtain compliance, City staff asked City Council to adopt an ordinance ordering certain of the

dwelling units to be vacated and closed, which Council adopted. Despite the ordinance directing the property owners to vacate and close certain of the dwelling units, the property owners continue to offer said dwelling units as well as the remaining dwelling units for rent.

A second hearing was held on October 15, 2004, whereby Elizabeth Tate, one of the property owners, made it clear that she had no intentions of voluntarily vacating and closing the dwelling. A Findings of Fact and Order was entered ordering the property owners to vacate and close the entire dwelling or otherwise bring the dwelling into compliance with the Housing Code by November 15, 2004. To date, the dwelling has not been brought into compliance with the Housing Code and neither has a housing certificate been issued.

After trying every possible approach to obtain the property owners' compliance with the Housing Code, such has failed. Meantime, the property owners continue to rent and receive rent for each of the unfit dwelling units, which is a violation of the City's Housing Code.

Staff recommends City Council adopt an ordinance ordering the entire dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

In response to Mayor Worley, Mr. Baker said that the current owner has told him that she has sold the property many times over the past 1.5 years. He said that when a new owner comes into the office and shows him that they now own the property, the City will work with that person. The City would enter into a Memorandum of Understanding and give the new owner a certain amount of time to bring the units into compliance.

Upon inquiry of Vice-Mayor Mumpower, Mr. Baker said that the fines are the responsibility of the present owner.

In response to Councilman Dunn, Mr. Baker said that no City taxpayer money has been used to relocate the current tenants.

Mr. Fred English felt this property should have been vacated long ago.

Ms. Robin Merrell, on behalf of Pisgah Legal Services, said they have a strong interest in seeing the Minimum Housing Code enforced and support this action. In addition, they support the use of Community Development Block Grant funds to help relocate the current tenants.

Mr. Walter Plaue felt that City Council needs to proceed quickly to get these people out of living in these unhealthy and unsanitary conditions.

Mayor Worley closed the public hearing at 6:53 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3201. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 456

E. PUBLIC HEARING TO AMEND AND ADOPT THE RULES OF PROCEDURE FOR THE CIVIL SERVICE BOARD

RESOLUTION NO. 05-8 - RESOLUTION AMENDING AND ADOPTING RULES OF PROCEDURE FOR THE CIVIL SERVICE BOARD

Mayor Worley opened the public hearing at 6:52 p.m.

Human Resources Director Belinda Odom said that this is the consideration of a resolution amending and adopting the Rules of Procedure for the Civil Service Board to promote efficiency in the classified services. This public hearing was advertised on December 31, 2004, and January 7, 2005.

The Civil Service law has undergone various changes since it's inception in the early 1930's, the most recent of which occurred in 1999. Despite the many changes in the law, the Board's rules and regulations have not kept pace.

The proposed recommended Rules of Procedure provide current procedures to guide the Board in conducting meetings and hearings. This is a summary of former documents used to guide the Board.

The Conflict of Interest section specifically was a technical change to the document.

The Rules are intended to repeal all other previously adopted rules and regulations of the Board, which have not kept pace with the changes in the law.

The proposed rules were adopted by the Civil Service Board members after numerous meetings with City staff and the Board's attorney. Following distribution of the proposed rules to employees, no objection was raised to moving forward with the adoption of the rules by City Council.

Advantages:

- Assist the Board during meetings
- Specifies the duties and responsibilities of the Board
- Provides clear guidance to complainants and attorneys

Disadvantages: None known

The Human Resources Department's staff recommends that City Council adopt the amended Rules of Procedure.

Mayor Worley closed the public hearing at 6:53 p.m.

Upon inquiry of Vice-Mayor Mumpower, Ms. Odom explained the major changes in the conflict of interest section and also the section dealing with witnesses.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-8. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 459

At 6:59 p.m., Mayor Worley announced a short recess.

IV. UNFINISHED BUSINESS:

A. COLLEGE STREET ROADWAY IMPROVEMENTS

Traffic Engineer Anthony Butzek said that the original presentation on the College Street Gateway Boulevard Project was given to Council on April 20, 2004. Since that time they have had a public meeting in August of 2004. He said that construction is currently planned to begin almost immediately on this project.

He said that College Street, which once served as US 70, is a main east-west artery. When I-240 was constructed, it absorbed much of the traffic that was on College Street. Traffic counts taken in year 2004 were just over half of the traffic counts taken in 1954. There has been a significant decrease of traffic. The daily traffic on College Street is about 13,000 vehicles per day. It is our widest city-maintained street at about 76' wide. There is a resurfacing plan for the street.

He showed Council a proposed design outlining the specifics, which included: design speed is 20 miles per hour; two-lane median-divided; parallel parking on north, angle parking on south; striped bicycle lanes; safe pedestrian crossings; roundabout at Valley/Oak Streets; and all lanes maintained at College and Charlotte.

Mr. Butzek then explained a traffic comparison, which analyzed traffic, travel times and speed for the existing conditions in 2004, a 2-lane road with a roundabout in 2014 and a 2-lane road with no roundabout in 2014.

He explained the design allows for future expansion as follows: extends eastbound left-turn lane at Charlotte Street from 160 feet to 210 feet; allows future addition of 2nd eastbound left-turn lane at Charlotte Street; and effectively increases capacity of the corridor by 25% by easing constraint (College Street and Charlotte Street).

Some project amenities include: better traffic flow; increase street network capacity; speed limit compliance through design; improved pedestrian safety; and relief for Buncombe County Sheriff's Department acting as crossing guards. He then showed Council a traffic simulation of the area.

The design is consistent with the Pack Square Renaissance Plan, the Greenway Master Plan and the Asheville City 2025 Plan.

Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees, said that they support the project as it relates to the section of the improvements that are adjacent to their Park Renaissance Project. She stressed that timing is real important in that the diagonal parking spaces along the Park need to be in place before they start tearing up the ground, which is scheduled to be in July of 2005. She also explained that this project has been part of their design presentations, so it is an expectation of our donors that we are moving forward with the entire design, which includes College Street.

Ms. King responded to various questions from Council, some being, but are not limited to: how many parking spaces will be removed in the first phase; is the Pack Square Conservancy confident that their construction will begin in July of 2005; and how much money have they raised in their fundraising efforts.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the total cost of the project is $185,000. Of that, $75,000 is for the resurfacing that would have occurred anyway, and approximately $10,000 is for markings that would have had to be spent anyway. The incremental

cost is about $100,000. He said that the timeline for construction is to begin in January and is expected to be completed in mid-summer.

Mr. Butzek then responded to various questions/comments from Council, some being, but are not limited to: has Buncombe County been a part of the discussions; has anyone living in close proximity to this project raised concerns and what measures will be taken to get people to drive 20 mph.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that roundabouts are generally considered very safe for pedestrians. One of the things a roundabout doesn't do well as far as pedestrians are concerned is that cars are yielding to pedestrians, as opposed to stopping as they would at a red light. Pedestrians are forced to look at traffic and observe that the cars are stopping before proceeding. Whereas, at a signal they naturally assume that cars are stopping because they have a red light. The positive of that is that it forces the pedestrian to be more involved in abiding their own safety. At a signalized intersection and a car runs the red light and hits the pedestrian, the pedestrian would be seriously injured and possibly killed because of the speed. At a roundabout, to his knowledge, there has never been a pedestrian fatality. The reason is that operating speeds in the roundabout are very low. He is confident that this roundabout will be a very safe and very efficient roundabout.

Vice-Mayor Mumpower considered this a bold experiment for the City that has the potential for a nice thing, but also has the potential to be something else. We are constricting lanes. He said that we have restricted traffic in other neighborhoods and personally he thinks we are doing a poor job of enforcing our traffic laws and deferring to passive traffic calming efforts that are marginally effective. Research tends to show that over time they don't work as effectively as we might hope they would. He is inclined to support this bold experiment because this offers an opportunity to make things better, however, he has apprehensions about the pattern of constraining and creating obstacles.

Mr. Butzek said that apprehension is natural anytime you have a significant change to the street network. There was certain apprehension on a number of other projects that were successful. While each project may not be perfect, each one is a large improvement. For example, the W.T. Weaver Boulevard is similar in that there was a roundabout involved. Roundabouts tend to generate a lot of controversy anytime they are proposed. The W.T. Weaver Boulevard roundabout has worked extremely well and to his knowledge there has been no reported crashes. It has improved the safety of that intersection. There are fairly standard measures here on College Street, in that we are keeping straight lines, other than the roundabout.

Councilman Newman said that College Street is an important street in the core of our City. He felt it is appropriate to invest money to make this happen because it is such an important part of the downtown community.

Mayor Worley felt the roundabout will allow traffic to flow smoothly and much more efficiently.

Councilman Dunn was concerned about the way staff presented this to Council and the way it was being pushed through. He felt $185,000 is a lot of money and we just got through approving a $20 Million parking deck, and maybe infrastructure costs with the Pack Square Conservancy Project. Regarding the one lane traffic in each direction, he expressed concern about traffic congestion when they are trying to parallel park or to back out of the angled parking spaces.

City Manager Westbrook responded to Councilman Dunn about why this money is not in the traffic calming budget,

Mr. Butzek explained there are costs of doing nothing: (1) continued use of Buncombe County Sheriff's Department as crossing guards; (2) $10,000 traffic signal upgrades; (3) $4-5,000 annual signal maintenance; and (4) the opportunity cost is tremendous.

Mr. Butzek then showed City Council a traffic signal simulation of the flow of traffic on College Street.

Councilman Dunn asked if we really needed parallel parking on College Street with the new parking decks. Mr. Butzek responded that we always have requests for new parking and this area is a high demand parking area, especially given the lack of parking decks near it now. Whether we can reduce some of that parking in the future once the parking decks are in place will certainly be an option. They will be adding approximately 12 new parking spaces on College Street.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that there will be about 25-30 angled parking spaces that will have to back out to enter the traffic pattern and there is some additional hazard associated with that.

Vice-Mayor Mumpower said it was hard to imagine backing out of an angled parking space into the current traffic on College Street. Mr. Butzek responded that there will also be a 6-foot wide bicycle lane and one benefit that provides is that the cars backing out will have that 6-foot buffer before they get into traffic.

Councilwoman Jones liked the plan in that it seems to really include a lot of different needs – a little more parking, helps with pedestrian safety, good looking project, and it will overall slow down traffic.

Mayor Worley said that no further action is required by City Council in that Council had given staff consensus to move forward in April of 2004.

At 7:58, Councilwoman Bellamy left the meeting.

V. NEW BUSINESS:

A. RESOLUTION NO. 05-9 - RESOLUTION APPROVING THE PLAN "LOOKING HOMEWARD: THE 10-YEAR PLAN TO END HOMELESSNESS IN ASHEVILLE AND BUNCOMBE COUNTY"

Mr. Jerome Jones, Chair of the Joint City/County Steering Committee, said that this is the consideration of a resolution approving the Plan "Looking Homeward: The 10-Year Plan to End Homelessness in Asheville and Buncombe County."

In May 2004 City Council and the Buncombe County Board of Commissioners appointed a joint advisory Task Force to prepare a 10-Year Plan to End Homelessness, with initial priority on the chronic homeless population.

The Task Force, made up of business, non-profit, and government leaders, met six times and, with assistance from City and County staff and from Pisgah Legal Services, has produced the a report: "Looking Homeward".

He reviewed the goals of the plan: (1) reduce the number of people who become homeless; (2) increase the number of homeless people placed into permanent housing; (3) decrease the length and disruption of homeless episodes; and (4) provide community based service and supports that prevent homelessness before it happens and diminish opportunities for homelessness to recur.

He said there are 2,000 a year homeless - 700 in a given night (300 of those are chronic homeless). He defined chronic homeless as "an unaccompanied adult with a disabling condition who is homeless a year or longer or has 4 episodes of homelessness in 3 years."

He reviewed the success of Housing First: (1) Pathways to Housing: New York – After 5 years, 88% of those who entered the program remained in permanent housing; (2) Beyond Shelter: Los Angeles – After 5 years, 80% working, only 2.3% had relapsed into substance abuse; (3) Minneapolis Chemical Dependency Program – After one year (a) 56.6% living independently remained sober; (b) 56.6% living in a halfway house remained sober; and (c) 90.0% living in supportive housing (Housing First) remained sober; (4) Philadelphia – Reduced number of chronic homeless from 850 in 1998 to 130 in 2004; and (5) Asheville Shelter Plus Care – 80% remained housed after 5 years.

The report's primary recommendations fall under the following headings:

1. **Leading the Way: Designation of a lead entity** – The Affordable Housing Coalition is recommended as the organization that will oversee implementation of the plan. However, the Task Force suggested City Council do a Request for Proposals (RFP) because there are any number of non-profit agencies in Asheville.

2. **Developing the Infrastructure: HMIS** – A Homeless Management Information System, or HMIS, will link all services, screen for program eligibility, and gather data needed to monitor progress of implementation.

3. **Closing the Front Door: Prevention** – Better coordination of financial assistance and discharge planning for people leaving public institutions.

4. **Opening the Back Door: Housing First** – Development and implementation of a community-wide Housing First program that will include permanent housing for all homeless.

5. **Keeping it Going: Housing Plus** – A new approach to providing services to ensure that homeless individuals and families placed in permanent housing can remain housed in the long-term.

Regarding current costs, Mr. Jones said the City of Asheville currently spends approximately $500,000 on services to prevent homeless and build supportive housing. Buncombe County spends approximately $425,000 per year in supporting the maintenance and development of affordable housing. Buncombe County Department of Social Services spends $935,500 per year in emergency cash assistance to prevent homelessness.

Regarding costs of the plan, Mr. Jones said, (1) Lead Entity: approximately $45,000 per year if lead entity is a non-profit; (2) HMIS: $20-25 in the first year; less in subsequent years; and (3) majority of service costs will be covered by Medicaid and other health sources; housing will need to be subsidized for the chronic homeless population at a rate of approximately $4,200 per year per person.

The next steps in this process would be for City Council and the Board of County Commissioners to adopt a joint resolution. In addition, the City and County staff need to work together to issue an RFP for the lead entity and prioritize steps to implementation of the Plan.

Ms. Leslee Kulba felt that the plan has a lot of good, however, she pointed out several concerns and felt that the cost was too much.

Mr. Tom Burkhart, Buncombe County resident, presented and familiarized City Council with information on an organization called The Healing Place. The Healing Place is a 501 (c) (3) non-profit organization, which is supported by gifts from individuals, corporations and foundations. The Wake County program is a rescue, recovery, and rehabilitation facility for homeless men with alcohol and drug addiction. He then responded to questions from Council about The Healing Place, some being, but are not limited to: what percentage of people who come to The Healing Place are either chronically or temporarily homeless; can the model of The Healing Place work in tandem with Asheville's 10-Year Plan; what is the operating budget in Wake County and in Louisville, Kentucky; and what amount is spent for medication.

Ms. Beth Maczka encouraged City Council to support and invest in this plan.

Ms. Christy Carter, representing the Hospitality House of Asheville, spoke that the plan is encouraging and the prevention piece is often overlooked. She encouraged Council to support the plan and, as a service provider she is willing to change the way they do things in order to see the plan come to fruition.

Upon inquiry of Councilman Davis, Mr. Jones said that there is no conflict with The Healing Place and this plan. He said that the Police Department sent two officers to review that plan in Wake County. He said that it is a separate issue whether City Council wants to spend the funds to set up that type of program, but certainly anything that helps the homeless population rid themselves of their addiction is a positive thing.

Ms. Robin Merrell, representing Pisgah Legal Services, said that this plan is a long-term solution and it could be 2-3 years before we really begin to see the effects of it. A social setting detox, or something akin to The Healing Place, could help us see results sooner but also help alleviate the problems that the Police Department is having with the homeless people inebriated downtown.

Councilman Newman noted that if we endorse the Housing First model, we are not in any way precluding specific concepts out there, like The Healing Place concept.

Mr. Jones said that there is an expectation that some service provides who deal with temporary care of the homeless may disappear. One of the things that impressed him about the Task Force was that there were people on the Task Force whose organizations are going to be out of business if this works and yet they were supportive of that.

Councilman Newman thanked the people who worked on the Task Force. He felt this plan holds a real promise for change. This will affect the lives of the people who are in homeless situations and better their lives.

Mr. Jones said that this action is scheduled to go before the Buncombe County Commissioners on Tuesday, January 18, 2005, for their consideration of adoption.

Councilman Dunn would not be able to support this plan because it has no funding source. He would prefer to move forward after more information is received. He was also supportive of a smaller plan.

Mayor Worley supported the plan because it adopts methods that have been proven across the nation that will best treat and support the homeless population and stands the best chance to get that population off of our streets. He thinks it is the fiscally responsible thing to do. This plan demonstrates what the hidden costs are of treating homeless. It's a paradigm shift for the agencies that are currently providing services to the homeless. The agencies will shift the way they use the funding they receive and use them in conjunction with the plan. Also, the resolution supports the plan and it does not contain a commitment for funding of any specific nature. He feels adoption of the plan opens the door to go out and start seeking revenue sources and to start talking with the current providers to shift the way that their revenues are utilized in conjunction with treating the homeless.

Councilwoman Jones said that we have a strong non-profit and private sector coming together and endorsing a plan. We have the base plan and when you go to funders, a little bit of government money goes a long way in that federal competition. If we are serious about helping the deserving poor, this makes a lot of sense.

Vice-Mayor Mumpower felt this is a good effort to address a real problem that affects us all. However, he does have concerns about the plan. He felt the plan is too complex and is reaching much further than prudent or realistic. With his background in social work, he understands there is a real tendency for good people who want to make a difference to reach for hope over realism. He felt you can't throw money and hope at this – it takes something more substantial. He's heard that this plan is different in that we are not going to require people be sober to get into our program. But the fact is that most of the people that deal with chronic substance abuse do it that way not because they want to but because they know that is the only way it works. The chronic abusers are controlled by their addiction. He felt that the research and statistics cited is somehow or another being idealized. It runs too contradictory to too large a body of information on chronic substance abusers. We have a long standing history in this country of coming up with statistics that justify a program and later determine that there was something missing. He has apprehensions that we might be doing that now. The argument is that we will be using current money to do this. But, when you look at the numbers of people that you will be able to realistically intervene with, we are not going to be able to do away with the money that we are spending right now. Realistically we will have to create new dollars on top of our old dollars. It is not realistic to say that we will achieve great savings from this. There is no way that housing is the key to the chronic homeless as they are so immersed in their addition. He doesn't think it is realistic that the City of Asheville should intervene at a social services level. We have a tremendous hard drug problem, which is a dramatic City charge, and we don't have the money to hire the officers to fight the hard drug problems. We have budgetary limitations. We have too many people in this City who struggle to make a living and he doesn't think we should degrade those people by stepping into programs that we cannot realistically achieve. He doesn't believe we are realistically addressing human nature with this program. He feels we are being hopeful and have good intentions, but he doesn't see the realism.

Councilman Davis said that he has worked in close proximity with the homeless and sees it firsthand. He feels that we have to do something because what we have done is not really working. He said this is a good plan, but he's not so certain that we can make it function for that chronic group. He felt the five-prong approach is good and he can see programs like The Healing Place dovetailing in. He has some problems with the ambiguity of funding. If we adopt the plan we will be expected to put some funds into the plan and he doesn't know where we will get the funds to make this happen. He doesn't want this plan to be used as a tool for people to say "you said you would do it and we expect funding for it". It makes sense to take one step at a time to go forward starting with an RFP. But he doesn't feel good about representing the people who are barely making ends meet to pledge millions of dollars of their tax money for a very small increment of people. We could maybe work with The Healing Place at a set amount and it might be overall successful than what we are doing here. He thinks the plan is too open-ended right

now. He respects what has been done and he would like to endorse this as a way to accomplish it, but by no means to open the pocketbook and say this is the way to go. There is a lot to be known about the plan, but it is a step.

Councilman Newman felt that the City has adopted other plans in the past and have not implemented them, so he felt that adoption of this plan would not be used to brow-beat us for funding. He felt the plan has concepts that are important. The Task Force has identified some things that are working and he felt the concepts are important enough that we want to say yes to the concepts. It is a vision. We are not at the point yet for the Task Force to bring us a first-year budget. Even if we agree to the concepts and the plan, that is not an indication of how it competes with all of the other important priorities that our community faces in terms of funding.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 05-9. This motion was seconded by Councilwoman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no".

RESOLUTION BOOK NO. 28 – PAGE 469

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 3-16, 2004: Andy Piatek (Water), Regan Sheeley (Water), Phil Nesbitt (Streets), Robert Kuntz (Police), David L. Brown (Water) and Russell T. McCrary (Police).

The following claims were received by the City during the period of December 17-30, 2004: Robert E. Jones (Streets), Abdoulaye Tounkara (Streets), Teresa O'Connor (Police), Rita Dale Early (Streets), Dewanna Tucker (Sanitation), Linda M. Bryant (Sanitation), Lauren O'Leary (Sanitation) and George Whiteside (Sanitation).

The following claims were received by the City during the period of December 31, 2004 – January 7, 2005: Rebecca Ann Joyce (Water), Moses Simuel (Transit Services), Marika Von Viczay (Water), Rosemary Franklin (Water) and Robert Troy (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, presented City Council with a statement which asked Council to consider the following priority objectives for 2005: (1) improving the quality of education received by every student in Asheville; (2) increasing the minimum wage through a just and living wage ordinance to $8.50 per hour, with annual incremental increases each year to $10.00 per hour in 2008; (3) improving the quality of public transportation for all citizens of Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:17 p.m.

Magdalen Bourleson
CITY CLERK

Claudia R. Worley
MAYOR

Tuesday – January 18, 2005 - 3:00 p.m.

Present: Vice-Mayor R. Carl Mumpower, Presiding; Councilwoman Terry M. Bellamy (excused from meeting at 5:50 p.m.); Councilman Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley and Councilman Joseph C. Dunn

CONSENT AGENDA:

Grant Applications for Montford Complex and Aston Park

Summary: The consideration of two resolutions authorizing the Mayor to apply for a grant and enter into an agreement with the N.C. Dept. of Environment and Natural Resources to assist with the renovations of the Montford Complex and Aston Park.

Funds are available through the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund (PARTF) to assist with the development of parks and greenways.

The renovation of Aston Park has been identified as a priority by the community at large and by the tennis community. For many years, the Dick Covington Foundation raised money to help build a new tennis center at the park. The City of Asheville now holds $260,000 from the Covington Foundation to help build the tennis center. In anticipation of the park transfer as part of the Water Agreement, Parks and Recreation wishes to pursue grant funds to renovate the park including construction of a new the tennis center, and renovation of the playground, trails and basketball court.

The Montford Complex is in the heart of the Montford neighborhood and the most heavily used park featuring the Montford Center and the surrounding park. The center and features in the park are in need of renovation and in some cases complete replacement in order to meet safety and handicap accessibility requirements. The Parks and Recreation Department wishes to pursue grant funds to renovate the park including improvements to the center, new amphitheater, playground, ball field lights, ropes course and basketball courts.

The Parks and Recreation Department is requesting $260,000 in grant funds for renovation of Aston Park, and $150,000 for renovation for the Montford Complex from the N.C. Parks and Recreation Trust Fund. Each grant application requires a dollar for dollar cash match. The cash match for renovation of Aston Park is available in the Parks and Recreation Department's existing Capital Improvement Project budget via the Dick Covington Foundation. The cash match for the Montford Complex renovation is in the proposed Parks and Recreation Department's Fiscal Year 2005-06 Capital Improvement Project budget.

The Reid Center renovation, a top Capital Improvement Project priority, is not being considered for the 2005 PARTF funding cycle, but will be a PARTF application in January 2006. The PARTF awards up to $500,000 requiring a dollar for dollar cash match. The Reid Center fundraising team wishes to apply for the full amount but at this time the cash match is not available. By 2006, the first year of fundraising will be complete and matching funds will be in place to apply for the full amount.

This action complies with City of Asheville Strategic Operating Plan, Council Focus Area: Natural and Built Environment, Goal 2: Increased greenway benefits equitably throughout

Asheville – Continue to implement and develop greenways that enhance quality of life for Asheville.

Pros:

- The trail in the Aston Park renovation will link densely populated neighborhoods near downtown Asheville to the Clingman Forest Greenway Corridor, which will connect to the French Broad River Greenway Corridor.
- Continue to make progress on the Parks and Recreation Department's strategic plan to renovate and improve Montford Complex.
- Respond to public demand to improve Aston Park.
- Be ready to manage Aston Park upon transfer from Buncombe County.
- Raise outside funds to support facility renovations and reduce reliability on City funds to support Capital Improvement Project cost.

Cons: None noted

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund for $260,000 for renovation of Aston Park, and for $150,000 for renovation of the Montford Complex.

Parks & Recreation Director Irby Brinson responded to several questions/comments from Councilwoman Bellamy, some being, but are not limited to: how did we chose which centers would be renovated with this grant; when is the Reid Center scheduled for renovation; how is the staff structuring in the Reid Center progressing; and what is the update with the church property.

Exchange of Property at Beaverdam Reservoir

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of an easement on real property located on Black Oak Drive for an easement on real property located on Pinecroft Road.

The City and Mr. & Mrs. Fulton H. Beville have negotiated an exchange of a driveway easement over the Beaverdam Reservoir property (PIN No. 9751.17-10-7654) on Black Oak Drive for a slope/fill easement across real property located on Pinecroft Road (PIN No. 9751.17-10-9594).

At the time that the Beaverdam Reservoir was built a substantial amount of fill was placed on the Beville's property thereby allowing a cost savings to the City and providing lateral support to the reservoir site maximizing the use of the property. The Beville's were not compensated for the use of their property, but instead understood that the use of the reservoir access road would be available to them to access a portion of their property not easily accessible from Pinecroft Road because of topography.

A formal arrangement has not been in place heretofore, but it is advisable to formalize the arrangement through an exchange of easements which will satisfy the City's need to keep the fill in place as well as the Beville's need to access their property.

The driveway easement would be 12' wide and about 350' long comprising an area of 4,200 square feet. Based on the tax value of the land per square foot (.92), at a 50% easement value, the driveway easement would have a value of $1,932. Water Resources staff estimates that the benefit to the City of having the fill in place would equal or exceed the value of the driveway easement.

The use of the driveway by the Bevilles will not impair the function nor security of the reservoir, but could improve security to the extent that the Bevilles would be able to observe the reservoir site.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will establish record title in the City of the right to have the fill area remain on the Beville's property.
- It will establish a clear description of the size and location of the driveway easement.
- It will formalize the arrangement thereby reducing the likelihood of future misunderstandings.

The negative aspects are:

- The driveway easement will limit the use of the reservoir property within the easement area.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff and Water Resources staff recommend adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of an easement on real property located on Black Oak Drive for an easement on real property located on Pinecroft Road.

New Street Name of "Owen Bells Lane"

Summary: The consideration of a resolution accepting the new proposed street name "Owens Bell Lane."

Mountain Housing Opportunities, Inc., owner of lots on Owens Bell Lane off of Clingman Avenue has petitioned the City of Asheville to accept the street name " Owens Bell Lane." The new street will begin at Clingman Avenue and end at Rector Street.

City staff recommends adoption of the resolution accepting the new street name of "Owens Bell Lane."

Governor's Crime Commission Grant for 800 MHz Radios

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Crime Control and Public Safety for funds through the Governor's Crime Commission to assist with the purchase of 800 MHz VIPER-compliant radios for Asheville Fire Rescue and Asheville Police Departments.

Public safety agencies in WNC experienced a serious need for interoperability in their communications systems when mutual aid services were provided during the historic flooding of 2004. In response to this need, several public safety agencies from Asheville and Buncombe County are collaborating to establish an interoperable communication system, which will ensure a better communication link among all agencies. In addition to promoting efficient disaster response, an interoperable system will be an important component of terrorism prevention.

To support this system, Asheville Fire Rescue and Asheville Police Departments are partnering with other agencies (Buncombe County Rescue, Buncombe County Sheriff, Buncombe

County Emergency Services, Enka Fire, Haw Creek Fire, Reynolds Fire, Riceville Fire, Skyland Fire, Swannanoa Fire, and West Buncombe Fire) to apply for a $492,800 grant from the Governor's Crime Commission to purchase a total of 127 radios to be distributed among the participants. Asheville will assume lead responsibility in applying for the grant and purchasing all radios, including radios for our partner agencies. The grant requires a 25% match of the total cost ($492,800), or $123,200. The cost of the match will be shared by all participating agencies based on the number of radios each receives. The City's net cost is expected to be $61,300; it will come from the City's fund balance.

This action coincides with the City of Asheville's Strategic Operating Plan under the focus area of Partnerships To Improve Critical Services & Infrastructure, goal #3: Explore ways for the City and County to work together to share in regional infrastructure investment needs.

Pros

- This project will help develop in WNC the statewide voice interoperable network including 800 MHz radios, in collaboration with the Voice Interoperability Plan for Emergency Responders (VIPER) that has been established by the state of NC.
- The public safety agencies listed are committed to interoperability and have agreed to participate in the project and to match 25% of the cost of the radios.
- The project will improve public safety in Asheville and Buncombe County by enabling WNC emergency responders to communicate with each other and with others across the state.

Cons

- The cost of the match.

The Fire Rescue and Police Departments recommends the City of Asheville apply for and enter into an agreement for grant funds to assist with the purchase of the radios.

Vice-Mayor Mumpower asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

IMPLEMENTATION PLAN OF DEVELOPMENT TASK FORCE'S RECOMMENDATION

Vice-Mayor Mumpower said that Councilman Dunn has requested that this item be postponed until the February 15, 2005, worksession in his absence.

Upon inquiry of Councilwoman Bellamy, Mr. Summey said that the blue items are recommendations that will require additional input and decisions by City Council. Those recommendations will also require additional citizen and industry input to finalize any changes to the ordinances or the processes. The items in green and white are items that City staff has already implemented.

Councilman Newman felt that the recommendations, in particular the ones regarding land use policies in the community, need to have a broader public input prior to City Council input and recommendation.

Vice-Mayor Mumpower felt it would be useful to have a representative from the Task Force at the worksession for a resource.

Building Safety Director Terry Summey thought it was appropriate to review the recommendations with City Council first for guidance in case City Council is not interested in pursuing a recommendation or may wish to change a recommendation. He said that the recommendations requiring Council consideration will include other public input sessions, e.g., (1)

any Unified Development Ordinance amendments will require a public hearing before the Planning & Zoning Commission and a public hearing before City Council; and (2) any amendment to the Standard Specifications and Details Manual is reviewed by a citizens group, prior to it being considered by City Council.

Discussion then followed on the process to be followed either prior to the worksession or after the worksession regarding public comment.

Council expressed their concern that they are reaching into areas that they didn't originally intend for the Task Force to reach into (land use planning vs. operational issues) and it has created complications on how to proceed. Therefore, it was the consensus of City Council to (1) instruct City staff to hold a public input session on the entire recommendations prior to the worksession; (2) invite members of the Task Force to the worksession as a resource; and (3) instruct the City Manager to report back to Council, after meeting with Mayor Worley, about how to proceed.

Councilwoman Bellamy moved to continue this item to the February 15, 2005, worksession. This motion was seconded by Councilwoman Jones and carried unanimously.

STAFF PRESENTATION ON UPDATE OF CAMPUS CREST

City Attorney Oast said that there has been a lot of observations about what is going on the Campus Crest site. The purpose of Planning & Development Director Scott Shuford's report is to assimilate those comments and respond to those in a structured fashion to Council. He pointed out that vested rights, under this conditional use permit have attached, and any action that Council takes that could lead to a reduction, modification or revocation of them could only occur following notice and opportunity to be heard by the developer. Depending on the nature of the action, it might require a quasi-judicial hearing.

Mr. Shuford said that this is a report to City Council addressing the buffer issue along Montford Avenue regarding the Campus Crest development.

After approval of the conditional use permit for the Campus Crest development in the Montford neighborhood, construction of the project began under a grading permit. As part of this construction, grading occurred near the Montford Avenue frontage of the project.

This area of the site was specifically covered under a condition of the conditional use permit that reads: *A landscape buffer containing the equivalent landscape material as a Type-A buffer should be provided along the Montford Avenue frontage; in addition, on-site tree retention shall be in accordance with the master plan provided by the developer.*

Concern has been expressed that the grading is inconsistent with either (or both) the permit condition or the statement made by the developer early in the conditional use permit hearing that indicated that an 80-foot strip of undisturbed vegetation would be retained.

Staff relies on the wording of the conditional use permit to ascertain compliance with the permit, not statements made in public hearings. The developer has disseminated the attached press release that describes site conditions that warranted tree removal in excess of his comments at the Council meeting. How Council might choose to address this is a separate issue.

Much of the discussion to date centers on whether the "buffer" requirement has been met. A Type A buffer is 15 feet in width and, along a frontage the length of the subject property, would contain 34 evergreen trees, 12 large-maturing deciduous trees, 12 small-maturing deciduous trees and 46 shrubs (75% which must be evergreen species). Staff will require the

installation of these plants prior to the issuance of a certificate of occupancy for any building on the site. These plantings are in addition to the 27 evergreen trees that have already been planted at developer initiative based on Tree Commission comments from the Technical Review Committee meeting that followed Council action.

The site plan in City Council's packet at time of conditional use permit consideration illustrates that existing vegetation would be retained in an area comprising roughly one-half of the property's Montford Avenue frontage. This vegetation is not specifically dimensioned but is shown as varying in depth, becoming much deeper near the Klondyke Homes side of the property as it transitions into the setback area on that side of the site. Current site conditions are similar to this plan from the Klondyke Homes side to roughly halfway to the end of the vegetation; from that point, the vegetation becomes more narrow but has been supplemented by the additional tree plantings. Retaining walls have been removed from the plan, allowing building roof heights to be lower than originally proposed from Montford Avenue, lessening the potential for visual impact from that viewing angle. Staff feels that if the intent of the condition was to ensure a thorough screening of the site from this area of Montford Avenue, once the buffer plants are installed and mature, the condition will be satisfied.

Councilman Newman said that after reviewing the Council meeting tape where the conditional use permit was issued, the developer seemed to be so explicit in terms of his discussion of the buffer that would be on Montford Avenue. Mr. Harnett, who was representing the developers, said that "I'm not sure you will ever get a true site line on the property from Montford because we are going to be keeping the existing 80-foot tree buffer along Montford." When Mr. Sneed, attorney representing the developers, asked Mr. Harnett "from the houses across the street on Montford will you be able to see this property at all?" Mr. Harnett showed a photograph of a view from the westernmost home across the street from the property line. When Mr. Sneed asked "Does your plan envision cutting any of those trees?" Mr. Harnett replied "no sir." Mr. Harnett showed other photographs and repeated that their plan did not envision cutting any of the 80-foot existing forest buffer. There were also other illustrations at the Council meeting that appeared to represent a pretty large buffer all along Montford Avenue.

Mr. Shuford agreed that the statements made by the developer was confusing. He said City staff can only follow what the conditional use permit states in trying to enforce the requirements.

Councilman Newman said that the conditional use permit states "A ... Type-A buffer ... along Montford Avenue frontage; in addition, on-site retention shall be in accordance with the master plan provided by the developer." In reviewing the tape of the Council meeting, one of the exhibits submitted showed an extensive buffer all along Montford Avenue. That, in conjunction with the developer's statement very clearly that their plan calls for an 80-foot existing forest buffer, creates the strong impression that the site plan included the 80-foot buffer.

Councilman Newman suggested City Council give direction to City staff to talk to the developers and ask them if they would be willing to sit down with people in the neighborhood and talk about what might be a reasonable way to move forward. Obviously we won't be able to fully replace the mature forest buffer that was clear-cut or the aesthetic values, economic values or environmental values of that mature forest buffer, but there might be some ways to mitigate some of the other impacts of the project. He felt that it would make sense for the neighborhood to designate a couple of representatives to represent their concerns to the developer.

Mr. Shuford felt that the developer would be receptive to a voluntary meeting with the neighborhood and his development team to talk about possible mitigating actions that can be taken. We certainly would want to schedule that to occur fairly quickly to preserve other options for City Council.

Councilwoman Jones wanted to feel more confident that our conditions are enforceable and that the people that are given the trust of this Council to do something are not making too much of a subjective call. Mr. Shuford said that staff will be bringing some code amendments to Council to streamline enforcement and make it more effective.

There was discussion, initiated by Councilman Davis, about the site adjacent to the property being used for fill dirt. Mr. Shuford said that there is a provision in our Code that requires developments that are within a certain distance of each other, that are basically done by the same people, that occur within a 3-year timeframe have to be treated as a simultaneous development. If we had a building that was going onto that site, then we would have grounds to pursue that as a violation. Unfortunately it was just a fill site and had we known about it ahead of time, we would have asked that it be part of the application, but we didn't find out about it until after the work had started.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that we can (1) toughen up our section that deals with the consecutive development of property in close proximity; and (2) look at landscape standards and see that in the cases where we do have this type of mature vegetation, that we can look at the possibility of requiring some retention of a wider area.

Regarding the conditional use permit condition regarding landscaping, Mr. Shuford said that the 4-5 hour public hearing mostly surrounded traffic, parking and site access. As a result of all that, and in part of the developer's earlier discussion about existing vegetation, he didn't think he did as good a job as he could have in making sure that everyone understood what was likely to happen in that area. That is an area he will improve on and do a better job of that in the future. In addition, we have some computer imaging capabilities which we will, over time, be able to superimpose a building on a site. If an area is sensitive, we may also request the developer to provide that information to Council in order to give as accurate picture as possible.

City Attorney Oast said that there is a difference between expectations and requirements. What Council is struggling with is that the conditional use permit requirements are somewhat less than what Council was led to expect would occur in the development of this project. He said there has been no determinable violation but we are going to look into the issue of the expectations that Council had to see if there is anything that can be done to address what has occurred. One of the things that could be clarified in the discussion between the staff, the neighborhood and developer is not so much what is there now, but what will be there when the project is finished.

Mr. Shuford suggested that his next step be to immediately discuss with the developer the possibility of holding a neighborhood meeting to see if they can find some way to mitigate the issue to match the expectations with what is actually happening. He will get with Councilman Newman to help him get people from the neighborhood who would want to attend, unless Council thinks it should be anyone who wants to attend. He personally thinks it may be more effective to limit it to a smaller number. Then, after the meeting he will report back to Council with the results. Then Council can decide whether they are satisfied with that or if they want to pursue other options – but some of those are time limited and we would want to hold this meeting as quickly as possible so as to not preclude Council being able to be flexible in taking whatever action Council wants to take.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that we can only enforce the conditional use permit, not what was said at the public hearing.

Councilman Newman felt there is a good case to be made that the developer is in violation right now of the conditional use permit based on the evidence they submitted to City Council under oath at the quasi-judicial meeting.

City Attorney Oast said that our staff has investigated the complaints received by them to date and determined there has been no violation. City Council can appeal that determination to the Board of Adjustment. If Council is going to do that, that is a decision that needs to be made by Council acting as a body and should probably be done with the opportunity for the developer to be heard. Mr. Shuford noted that the appeal to the Board of Adjustment is one of the options that has a time limitation on it. Basically, 30 days from today (when Council has been formally notified that staff doesn't think there is a violation) is Council's window to take that action, which is why we think it would be appropriate to very quickly get the developer in and have that neighborhood meeting.

It was the consensus of City Council to have staff immediately talk to the developers and ask them if they would be willing to sit down with representatives from the neighborhood and talk about what might be a reasonable restitution for this project to move forward. After said meeting, Mr. Shuford will report back to Council.

It was Councilman Newman's hope that the developer and neighborhood can reach a reasonable compromise. If not, he did want this to come back to Council and will welcome the opportunity for the developers to talk to us about what happened here and for them to explain themselves. Then Council can consider appealing this decision to the Board of Adjustment or taking other courses of action that may be available to them.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on January 25, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Notice of Violation Procedures

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of changing the notice of violation procedures to allow notification and citation of property owners for tenant noncompliance.

Article XVIII of the City of Asheville's UDO sets forth procedures for enforcing the provisions set forth in the ordinance. The section (Sec. 7-18-3) dealing with procedures for notice of violation and the issuance of citations currently provides that notifications go to the person in violation and only if that person cannot be ascertained shall the notification be sent to the owner of the property on which the violation is occurring. The ordinance makes no provision for notifying and holding a property owner responsible when their tenant is non-compliant with the city's ordinances. In practice, there have been a number of instances where a tenant has failed to comply and notification of the property owner has brought quick results. The City Attorney's office, in working with the enforcement staff of the Planning and Development Department, has suggested that a provision be added to the ordinance that clearly allows for this additional measure to gain ordinance compliance.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment

Pros-

- The amendment provides a mechanism for improving the effectiveness of gaining compliance with the ordinance.

Cons-

- The amendment may create conflicts between property owners and tenants.

The Asheville Planning and Zoning Commission recommended approval of this code amendment on January 5, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Ms. Cogburn responded to questions from Councilwoman Bellamy about whether the property owner or tenant would be liable for fines.

Proposed Group Home Changes

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of correcting and clarifying zoning districts that allow group homes as a use of right, subject to special requirements.

This proposed ordinance amendment is intended to correct an error made in the UDO that lists "Group homes" as uses by right, subject to special requirements in the RM-6 and RM-8 districts. Presently, the standards for these two districts lists "Group homes" as both uses by right, subject to special requirements and conditional uses. As presented and discussed during a UDO amendment adopted by City Council in August, 2003, the intent was for group homes to be conditional uses in the RM-6 and RM-8 districts. The proposed amendment would eliminate the words "Group homes" from the listing under uses by right, subject to special requirements.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would correct the UDO to comply with City Council's intentions when adopting UDO requirements for group homes in August, 2003.
- This amendment would clarify the UDO for anyone seeking to know where group homes are allowed.

Cons –

- None

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the UDO for the purpose of correcting and clarifying zoning districts that allow group homes as a use of right, subject to special requirements.

Development Projects Scheduling Changes

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance to expedite the development approval process by allowing development projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the Technical Review Committee (TRC).

This proposed ordinance amendment is intended to expedite the development approval process by allowing projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the TRC. Presently, this section states that a project cannot be scheduled for a Planning & Zoning Commission meeting until after review and approval by the

TRC, which can place unnecessary restraints on time-sensitive projects. To help expedite the development review process in certain circumstances, staff is requesting this amendment to allow greater flexibility in scheduling applications for Planning & Zoning Commission review.

This amendment does not propose to change the number of required meetings, nor does it propose to change the order of the process. So, it does not limit opportunities for public review or comment in any way.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

This amendment would be one step toward meeting the goal of improving the plan review process outlined in City Council's adopted Strategic Operating Plan.

Pros –

- This amendment would help to expedite the review of development projects in certain situations.
- This amendment is consistent with the City Council's adopted Strategic Operating Plan.

Con –

- This amendment may be viewed by certain people as an attempt to "fast track" projects and limit public review.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the UDO to expedite the development approval process by allowing development projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the Technical Review Committee.

Reducing Window Sizes and Buffer Changes in the Neighborhood Corridor District

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of reducing the amount of windows required on the front and side facades of buildings in the Neighborhood Corridor District and to allow alternative forms of landscape buffering to better accommodate development in the Neighborhood Corridor District.

The Neighborhood Corridor District (NCD) was adopted by City Council in November of 2002 for the purpose of accommodating medium-density, mixed-use development in appropriate areas throughout the City of Asheville. Since this District was created, staff has been looking for opportunities to evaluate if the design and development standards are effective and reasonable. Evaluation of several recently proposed projects leads staff to believe that the current standards for landscaped buffers, building setbacks for taller buildings, and the amount of windows (60%) required on first floor facades are overly restrictive.

After reviewing these requirements, staff is recommending that a landscaped buffer ten feet (10') wide with the provision of a fence eight feet (8') in height be allowed as an alternative to landscaped buffer requirements in the NCD. Alternative landscaping solutions could also be approved by the Planning Director to provide appropriate buffers in unusual situations. In addition, staff is recommending the elimination of a forty-foot (40') setback requirement for buildings of four stories. The intent of these proposed amendments are to allow greater flexibility during site development.

Staff is also proposing new standards of 45% window coverage for front facades and 40% windows for side street facades. The intent of this standard is to have buildings constructed with more traditional, first floor storefront windows. The proposed amendment offers more flexibility for developers while still meeting this intent.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- These amendments would offer greater flexibility and encourage future development within the NCD district.
- The buffer amendment would allow staff to find creative solutions for providing appropriate buffers against adjacent residential properties.

Cons –

- It is hoped that these amendments will promote multi-story, mixed-use development along key corridors. Certain people perceive this type of development to be incompatible with adjacent residential areas.
- Certain people may also prefer a firm standard to the allowance of flexible options for landscaped buffers.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the Unified Development Ordinance for the purpose of reducing the amount of windows required on the front and side facades of buildings in the Neighborhood Corridor District and to allow alternative forms of landscape buffering to better accommodate development in the Neighborhood Corridor District.

Rounding Up Figures when Calculating Multi-Family Residential Densities

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of calculating maximum residential density requirements for multi-family residential development by rounding up.

This proposed ordinance amendment is intended to change the manner in which maximum residential densities are calculated in the UDO. In situations where the number of dwelling units allowed on a property is a fractional number, the proposed amendment states that all fractions of one-half or greater will be rounded up to the nearest number. For example, a property on which 8.4 units could be constructed would be limited to eight (8) units, but a property on which 8.5 units could be constructed would net nine (9) units, as the ".5" or higher is rounded up. This amendment would only apply to multi-family residential development of five (5) units or greater, not to duplexes, triplexes, and quadraplexes. To encourage mixed-use development along key corridors, the amendment is also proposed to apply to any level of multi-family residential use in the Neighborhood Corridor (NCD) and Urban Residential (UR) districts.

This amendment is consistent with the City of Asheville's adopted definition of "Smart Growth" as it would encourage higher density, infill development. This amendment is also consistent with policies recommended by the Affordable Housing Task Force as it would allow for a minor increase in housing density under certain circumstances.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment is consistent with the City's adopted "Smart Growth" policies.
- This amendment is consistent with recommendations of the Affordable Housing Task Force.
- This amendment could encourage infill housing by allowing a minor increase in housing density under certain circumstances.

Con –

- Certain people may be opposed to this allowance for additional residential density.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the Unified Development Ordinance (UDO) for the purpose of calculating maximum residential density requirements for multi-family residential development by rounding up.

Addition of Wedding Chapels as a Specific Use and Establish Parking Standards for this Type of Use

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of establishing development standards for commercial wedding chapels.

Planning & Development staff has received several inquiries regarding the establishment of wedding chapels in the City of Asheville. It has been difficult to review these requests, because commercial wedding chapels are not presently listed as specific uses in the UDO. Staff has studied the potential impact of these uses and researched standards for wedding chapels in other communities in developing this proposal.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would set clear, firm standards for commercial wedding chapels in the UDO for anyone seeking to establish this type of use.
- The proposed standards treat wedding chapels in a fair manner – allowing them in office or commercial districts while limiting their encroachment into residentially zoned areas.

Cons –

- Certain people may not agree with the standards proposed for wedding chapels.

The Planning and Zoning Commission recommended approval of these code amendments on January 5, 2005, by a unanimous vote of 7-0.

Increase the Maximum Length of Cul-De-Sac Streets

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of allowing longer cul-de-sac streets within manufactured home parks.

While reviewing the potential development of a manufactured home park in the extraterritorial jurisdiction area, a concern arose about the maximum length of 300 feet for cul-de-sac streets in a manufactured home park. Within typical residential subdivisions, a maximum

length of 1,000 feet for cul-de-sac streets is established based on N.C. Fire Code standards. Although streets within manufactured home parks are typically privately owned, they must be constructed to a similar standard as residential subdivision streets. After conferring with Engineering and Fire Department representatives and noting no issues, staff decided that it would be appropriate to consider similar cul-de-sac street lengths within manufactured home parks.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would set consistent cul-de-sac street length standards in the UDO for a variety of residential uses.
- The proposed standards would allow for additional development to take place in certain situations.

Cons –

- The proposed amendment would potentially encourage a more linear pattern of development with fewer connections between streets.

The Planning and Zoning Commission recommended approval of this code amendment on January 6, 2005, by a unanimous vote of 7-0.

City staff recommends approval of the amendment to the UDO for the purpose of allowing longer cul-de-sac streets within manufactured home parks.

Vice-Mayor Mumpower asked that the record show that City Council received this information and instructed the City Manager to place these public hearings on the next formal City Council agenda.

ASTON PARK

Mr. Irby Brinson, Director of Parks & Recreation, said that this report is to provide information to City Council in regard to the transfer of Aston Park from Buncombe County to the City of Asheville.

On November 16, 2004, Buncombe County Commissioners unanimously approved the transfer of Aston Park back to the City of Asheville. During this discussion, the Commissioners stated that the park would be submitted to the City "as is" and contingent upon the City accepting the current employee at the facility (which current employee resigned on January 15, 2005) and not charging a non-City resident fee until the Water Agreement has been resolved. On December 13, 2004, the City Manager addressed this issue with the County Manager and expressed concern over the removal of the playground equipment by the County several months prior to this. The estimated cost of this playground equipment is $80,000. In addition, the City Manager expressed concern about the non-City resident fee issue and the fact that this additional fee would help the City off-set costs incurred for operation.

The Parks and Recreation Department has been working on a Park and Recreation Trust Fund grant for Aston Park that would be used in conjunction with the Dick and Irene Covington Foundation funds. These funds would be used for improvements to the Aston Park facility including the construction of a new tennis center as well as the installation of a new playground. One of the key issues in regard to this grant involves the City having the title to the property. The title would be necessary in order for the grant process to proceed, which is due on January 31, 2005. Staff, however, does feel that the City should be compensated for the cost of the playground and that staff be able to set differential fees for City residents beginning in July of 2005.

Pros:

- The transfer of the facility will allow the City to apply for a Parks and Recreation Trust Fund grant that will make improvements to Aston Park without any City financial contribution.
- The transfer of the facility will occur prior to the tennis season for 2005.
- Transferring this facility prior to other County facilities will set the standard for how the overall transition occurs.

Cons:

- The replacement of the playground equipment will become an obligation of the City if the County fails to pay for replacement or reinstallation.
- Transferring this facility prior to other County facilities will set the standard for how the overall transition occurs.

This transfer relates to the City of Asheville Strategic Plan regarding steps necessary to resolve the Water Agreement.

The Parks and Recreation Department recommends the transfer of Aston Park to the City of Asheville effective February 1, 2005, if Buncombe County agrees to pay for the operating costs for the Park through June 30, 2005. The City would then be willing to forgive the cost or reinstallation of the playground equipment and implementation of differential rates for non-City residents until July 1, 2005.

Discussion occurred around the playground equipment and the injustice to the area residents (who are also County residents) of not replacing the equipment, especially since the equipment has been in storage for approximately a year.

Mr. Brinson said that if Council proceeds with the transfer, a budget amendment will be necessary, in the amount of $63,548 for expenditures and $25,000 for anticipated revenue, for the operating costs for five months.

Mr. Brinson responded to questions from Councilwoman Jones about the sidewalk on the South French Broad side of Aston Park.

It was the consensus of Council to have Mayor Worley write a formal letter to Chairman Ramsey asking that the playground equipment be reinstalled in Aston Park, and if not, asking them to outline some of their reasoning why the equipment will not be replaced.

Budget Amendment for Club House at Aston Park from Covington Foundation Funds

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a budget amendment, in the amount of $262,576.05, from the Irene and Dick Covington Foundation for the construction of a club house at Aston Park.

Several years ago, the Irene and Dick Covington Foundation was established in order to preserve the memorabilia from Dick Covington's life and tennis career and to construct a new club house at Aston Park. This Foundation was a dream of the Covington's, and at Dick Covington's death his entire estate was placed in this Foundation. Since Aston Park was operated by the County, in 2002 the Foundation approved the transfer of these funds to Buncombe County to construct this facility. Delays occurred in this construction to the point where the Covington Foundation requested from both the City and the County that this process be expedited by transferring the funds back to the City of Asheville. Now that the County has approved the transfer of Aston Park back to the City of Asheville, this process can continue and

be completed. The total amount that was originally sent to the County totaled $278,709.56. There were expenditures for architectural services that came out of this account.

Pros:

- The facility will be built prior to the 2006 City of Asheville Open Tennis Tournament in July.
- The City will have complete control over construction.

Cons:

- The Covington Foundation has been very frustrated in the delay of this construction and will be monitoring progress.
- Actual costs for construction will be higher than available funds.

The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of $262,576.05, to appropriate funds into the Capital Fund in order to enter into a contract for the construction of a new club house at Aston Park.

Vice-Mayor Mumpower asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

At 5:20 p.m., Vice-Mayor Mumpower announced a short break.

UPDATE ON YOUTH PROPOSAL

Mr. Butch Kisiah, Recreation Division Supervisor, said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with the Mountain Area Workforce Development Board for the 2005 Summer Youth Development Program.

The Parks and Recreation Department contacted the Mountain Area Workforce Development Board (MAWDB) on the campus of A-B Technical College to determine the feasibility of organizing and administering a summer youth employment program for 2005. The MAWDB has actively administered and delivered career development services, remedial education, job skills training and subsidized employment opportunities for Asheville's economically disadvantaged youth for more than 30 years.

Highlights of the proposal:

- Employment of 55 disadvantaged youth from the City of Asheville.
- Summer employment period of June 8, 2005 – July 29, 2005 (8 weeks)
- Youth Employees between the ages of 14 and 17 years old.
- Specific application process and selection procedures mutually agreed upon by the City and MAWDB.
- Education and training components aimed at assisting youth to move forward in school and toward a successful productive life.
- MAWDB will develop, organize, administer supervise and evaluate the program through an agreement with the city including recruitment of youth, development of worksite agreements, orientation and training of worksite supervisors and employees, monitoring and counseling of youth employees and program accounting and oversight.
- The City of Asheville will provide payroll services and worker's compensation insurance.

This action is in keeping with the City Council Strategic Plan's economic development goal #4 of providing vocational training opportunities for teenage youth and the plan's critical

services and infrastructure goal #4 of reducing drug related crime activities through holistic approaches targeting at-risk and economically disadvantaged youth. The Parks and Recreation Department recommends entering into an agreement with the MAWDB for the delivery of a youth development program that combine the opportunities for summer employment with meaningful training and education in the areas of job success skills, career planning, life skills, personal financial management and development of teamwork and interpersonal relations on the job.

Pros:

- History of proven professional administration of youth employment programs in Asheville by MAWDB for over 30 years.
- Cooperative agency approach to providing youth development activities.
- Ability to integrate the City's youth employment program with the efforts of the MAWDB career development programs.
- Existing connections to public and private agencies through the MAWFDB "workforce board partners program" which allows for better recruitment of disadvantaged youth and potential worksites.
- Allows for program over site by City staff without the extensive time commitment necessary to actually administer a program of this magnitude.

Cons:

- More students may apply than are funds available.

The Parks and Recreation Department recommends that City Council accept the proposal and authorize the City Manager to enter into an agreement with the Mountain Area Workforce Development Board for the 2005 summer youth development program.

Mr. Kisiah responded to various questions/comments from Council, some being, but are not limited to: why is preferential hiring treatment being given to youth who have previously volunteered as a Counselor in Training; what age do you have to be when you are hired for a position; what good will a background check on juveniles; some youth may not be able to document their involvement in the community, church or school because they have to help with smaller children after school; will computers be made available for the written essay portion of the application; will work site recruitment be a part of the contract; will the program be expanded to private employers; we should be more stringent about the participation in the program, other than the screening process; what is the breakdown in terms of working/education; how will the productivity of the youth be ensured; and how will discipline be administered.

Councilwoman Jones felt that in terms of retention of these employees, we should have some type of bonus at the end of the program as an incentive to complete the entire 8 weeks.

Councilwoman Bellamy suggested some information be placed on our Government Channel, like how to dress for an interview, etc.

It was the consensus of City Council to (put it as an optional) not disqualify a youth who is not able to provide a letter documenting their involvement in a community, church or school activity of no less than six hours in duration and signed by the leader of the activity.

Vice-Mayor Mumpower asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

At 5:50 p.m., Councilwoman Jones moved to excuse Councilwoman Bellamy from the meeting. This motion was seconded by Councilman Davis and carried unanimously.

PROFESSIONAL WATERSHED MANAGEMENT SERVICES

Interim Water Resources Director David Hanks said that this is the consideration of a resolution entering into a contract with Woolpert, Inc., to prepare the second phase of the Watershed Management Plan for North Fork and Bee Tree Watersheds.

City Council approved a watershed management plan in July, 2004 and a Request for Proposal (RFP) for the second phase of the plan in September, 2004. The RFP was distributed to 36 watershed and forestry management consultant firms. Four proposals were submitted and deemed qualified to do such work.

Each proposal received was reviewed for content, scope of services provided, professional certifications and background of principals in charge and project management, and cost of services offered.

The proposals received were detailed and followed the scope of the RFP. Each of the four submittals reflected in-depth professional knowledge of watershed and forestry management practices. Furthermore, due to the size of the watershed, respondents estimated it will require approximately five years to inspect, section, survey and prepare a comprehensive management plan for the entire watershed.

Annually, the Tree Commission has offered to conduct a technical review of each phase of the Watershed Master Plan and advise City staff and the City Manager, who will in turn present a final report to City Council for approval as part of the annual budget process.

Following is a list of proposals amortized over a five-year period:

	Average Annual Cost	5-Year Cost
• Woolpert, Inc.:	$56,908	$284,540
• Greenleaf Forest Management:	$51,400	$257,000
• Mattern & Craig:	$90,168 (estimated)	$450,840 (estimated)
• Equinox Environmental Consultation & Design:	$77,910	$389,549

Pros of the submitted proposals – Each proposal demonstrates professional watershed and forestry management knowledge by the company and the principals involved. Three of the proposals, Woolpert, Inc., Mattern & Craig, and Equinox Environmental Consultation and Design, Inc. were very detailed and listed a team strategy of watershed management. The fourth proposal, Greenleaf Forest Management, is a local forester who also demonstrated professional knowledge in his proposal. The submittals accurately address the scope of the RFP as requested.

While Woolpert was not the low bid, this partnership has the experience and professional credentials to prepare a master watershed management plan, per contract. The low bid is a local forester who does not have the assets and professional staff that is required to complete the watershed management plan that Woolpert, LLP demonstrated in their proposal.

Cons of the submitted proposals – Management of the watershed has become a controversial issue, which has taken away from the importance of establishing a methodology for insuring the continued use of the City-owned property to collect and filter water.

City staff recommends City Council approve the second phase of Watershed Management Plan as detailed in the Request for Proposals and award a contract to Woolpert, Inc.

Councilman Davis clarified that this second phase was to inspect, survey and prepare a management plan for the entire watershed in increments of five years. Mr. Hanks said that the RFP covered 18 separate items, with the most important item was to make sure that the water quality was maintained. Some of the other items covered were to ensure that everything that is done through this management plan is in compliance with the N.C. Conservation Trust easement that is currently on the watershed and also with the viewshed of the Blue Ridge Parkway.

In response to Councilman Davis, Mr. Hanks said that Woolpert would not be responsible for the actual action that would take place. They would put together a management plan, which would be reviewed on several levels and then brought back to Council for formal action as to what would be done. If it is something as simple as just moving a log, we would do that anyway as part of our normal operations. But anything that does require further action or monetary expense would be brought back to Council as part of the annual budget process for review and action to be taken either before or against.

Vice-Mayor Mumpower asked if we are required to award a contract having issued an RFP. Mr. Hanks said that as part of the RFP, there may or may not be a contract awarded.

Vice-Mayor Mumpower was concerned about the complexities, costs and length of time involved. He would like to see the City drop back some and reconsider this matter. We are talking about a planning process of five years at an annual cost of $56,000 - just for planning and no direct service. He suggested we step back and ask our Water Resources Department staff to look into the possibility of maintaining our access roads, removing the invasive species, and having a plan for catastrophic events. He wondered if we can take the information in hand and develop a plan. And, if we can, do we have the resources, or can we get the resources, to do that on some kind of cost effective basis.

Mr. Hanks said that currently we do not have the resources to do that with our current staff. Basically we have one person assigned to our watershed and it is not a full-time job for that person. We do not have the assets to maintain the watershed, other than the very minimum, which we do around the water plants. Back in July, the three proposals before Council were to move forward with a plan, do nothing as we have been doing for the past 10-15 years, or proceed on a more limited basis by adding staff.

City Manager Westbrook said that he would not want to go into the watershed with just staff and chainsaws, without a plan of some sort because the watershed is sensitive and we could make errors. If Council wants to have a less comprehensive plan, we can certainly come back with something else. This proposal, however, would satisfy all our needs for a long period of time.

Vice-Mayor Mumpower said that back in 1992 a plan was provided to Council. He wondered if we can take that plan, our own expertise and any additional information acquired since then, and have staff develop some kind of comprehensive plan that is workable.

Councilman Davis felt the watershed management plan prepared by Mr. Hicks in July of 2004 was a good plan. He too felt the current proposal was a lot of planning money.

City Manager Westbrook said that we can pull all that information together but he would prefer to have an independent third party review it to make sure it is reasonable. Whatever Council decides, he strongly felt that we need some independent oversight on it or some

independent quality control on it. Vice-Mayor Mumpower suggested the third party be Mr. Edward Hicks, a forester that the City has used in the past.

City Manager Westbrook asked for guidance from Council if they want a different proposal. He said they may be able to negotiate with the existing firm or with other firms for a different proposal.

Vice-Mayor Mumpower said that Councilwoman Bellamy and Councilman Dunn shared with him that they are both in favor of asking staff to come back with a modified plan that is at a different scale, along the lines of what we discussed – that is, handled in-house, emphasizes activity over planning (recognizing we need planning), and keeping things more simple.

Councilman Newman was astounded about how well our watershed property withstood the two hurricanes that came through Asheville in September of 2004. He felt this may be a process without a rationale. If our goal is clean water then the natural processes do a very good job maintaining clean water.

When Councilman Newman asked about a management plan prepared in the early 1990's, Mr. Hanks said that he was not aware of that plan. Then, when a copy was given to him he showed his staff and they were not aware of it either.

Councilman Newman said that the plan prepared in the early 1990's have some good ideas about how we maintain the road network with pretty specific recommendations, e.g., how many people are needed to mow the watershed and how long it would take them. He wondered if we should hire one more person part-time, which would be cheaper than the kind of course of action we are looking at now.

In response to Councilman Newman about repairing the bridges, Mr. Hanks said that we received $20,000 from FEMA. We did have another engineering firm come in and look at the watershed and bridges and they gave us an overall cost estimate to do all the bridges, to the point of where they would not wash out again, of $500,000. Since we would not be able to get that kind of money, we started looking at what we could do internally. We then asked the firm what else we could do, so we have started putting culverts in instead of rebuilding bridges in some of the areas. We are trying to mitigate the cost factors and get the accessibility back up and into the watershed.

Councilman Newman supported dramatically scaling back what is presented to Council. He said the role of whether or not we will be timber harvesting on the watershed was a legitimate question, and he felt that was reasonable to talk about. He feels at this time it is pretty clear that Council is not that interested in doing anything very aggressive in terms of logging the watershed. He felt we need to focus on taking care of exotic species, maintaining the road and fixing the bridges.

Vice-Mayor Mumpower appreciated staff raising the concerns on the watershed. His concern was not with the need for management, it's the extent to which we might be pursuing management.

Councilwoman Jones supported scaling back the plan and didn't want it to be construed that she would not support Mr. Hicks as being the third-party.

In response to Councilwoman Jones, Mr. Hanks said that Mr. Hicks' contract was $8,500.

Vice-Mayor Mumpower felt that if we used Mr. Hicks as a resource, and we can get him on a cost effective basis, he would certainly advocate for him just from that prospective.

Councilman Newman was disappointed in the first phase of the plan, not only because of some of the specific management recommendations, but just the fact that Mr. Hicks' first plan recommended things that were in violation of the conservation easement. He felt that Mr. Hicks' failure to do some research created more confusion than illumination for Council.

It was the consensus of Council to instruct City staff to create a scaled back management plan recommendation to Council.

Upon inquiry of Vice-Mayor Mumpower, City Manager Westbrook said that staff will have to look and see how much work we have to do and then advise Council on whether we can get it in the budget or come back a little bit later afterwards.

QUARTERLY REPORT ON THE STRATEGIC PLAN

Assistant City Manager Jeff Richardson said that this multi-year plan document outlines seven (7) key focus areas that City Council has identified as critical to the overall long-term positive growth and vibrancy of the Asheville community. Within those seven key focus areas, 45 goals and 94 operational tasks are identified. Timeframes were identified for each of the tasks. This report outlines staff progress in the second 90 days after adoption of this plan for those tasks with timeframes conducive to this fiscal year.

Pros: City Council will continue to receive quarterly updates to insure city staff is progressing as directed by City Council.

Cons: None noted.

No formal action is required. City Council may provide direction as necessary for tasks as appropriate.

There was a brief discussion, initiated by Councilwoman Jones, about allocating a percentage of Community Development Block Grant funding to small business development. At this point she felt we may advocate for that task to be deleted when the Strategic Operating Plan is revisited.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to reappoint Tom Muncy (Regular), Beverly Robinson (Regular) and David Brown (Alternate) to the Board of Adjustment:

It was the consensus of City Council to interview the following individuals for a vacancy on the Civic Center Commission: Linda Fowler, W.E. Lack, Brian Turner and Jean Ann Taylor.

It was the consensus of City Council to reappoint Leslie Hennessee and Dan Comer (if he is interested in reappointment) to the Asheville-Buncombe Community Relations Council:

It was the consensus of City Council to reappoint Christiana Tugman and Jim McCulley to the Asheville-Buncombe Fair Housing Commission:

It was the consensus of City Council to reappoint Paula Robbins and Scott Jackson to the Greenway Commission:

It was the consensus of City Council to interview W. Louis Bissette Jr. for a vacancy on the Metropolitan Sewerage District Board.

It was the consensus of City Council to reappoint W.F. Michie Jr. and interview the following individuals for vacancies on the Transit Commission: Kim MacQueen, Yuri Koslen, Thomas Hilgendorf, Robert Mair and Neal Jackson.

It was the consensus of City Council to interview the following individuals for vacancies on the Tree Commission: Robert Oast, Parker Andes, Richard Koerber and Jay Marino.

SCHOOL BOARD

City Council narrowed down the questions to ask candidates for vacancies on the Asheville School Board. It was also the consensus of City Council to have all candidates live in the Asheville School District.

ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 6:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 25, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Councilwoman Jones led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 11, 2005, AND THE WORKSESSION HELD ON JANUARY 18, 2005

B. RESOLUTION NO. 05-10 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE RENOVATION OF THE MONTFORD COMPLEX

Summary: The consideration of two resolutions authorizing the Mayor to apply for a grant and enter into an agreement with the N.C. Dept. of Environment and Natural Resources to assist with the renovations of the Montford Complex and Aston Park.

Funds are available through the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund (PARTF) to assist with the development of parks and greenways.

The renovation of Aston Park has been identified as a priority by the community at large and by the tennis community. For many years, the Dick Covington Foundation raised money to help build a new tennis center at the park. The City of Asheville now holds $260,000 from the Covington Foundation to help build the tennis center. In anticipation of the park transfer as part of the Water Agreement, Parks and Recreation wishes to pursue grant funds to renovate the park including construction of a new the tennis center, and renovation of the playground, trails and basketball court.

The Montford Complex is in the heart of the Montford neighborhood and the most heavily used park featuring the Montford Center and the surrounding park. The center and features in the park are in need of renovation and in some cases complete replacement in order to meet safety and handicap accessibility requirements. The Parks and Recreation Department wishes to pursue grant funds to renovate the park including improvements to the center, new amphitheater, playground, ball field lights, ropes course and basketball courts.

The Parks and Recreation Department is requesting $260,000 in grant funds for renovation of Aston Park, and $150,000 for renovation for the Montford Complex from the N.C.

Parks and Recreation Trust Fund. Each grant application requires a dollar for dollar cash match. The cash match for renovation of Aston Park is available in the Parks and Recreation Department's existing Capital Improvement Project budget via the Dick Covington Foundation. The cash match for the Montford Complex renovation is in the proposed Parks and Recreation Department's Fiscal Year 2005-06 Capital Improvement Project budget.

The Reid Center renovation, a top Capital Improvement Project priority, is not being considered for the 2005 PARTF funding cycle, but will be a PARTF application in January 2006. The PARTF awards up to $500,000 requiring a dollar for dollar cash match. The Reid Center fundraising team wishes to apply for the full amount but at this time the cash match is not available. By 2006, the first year of fundraising will be complete and matching funds will be in place to apply for the full amount.

This action complies with City of Asheville Strategic Operating Plan, Council Focus Area: Natural and Built Environment, Goal 2: Increased greenway benefits equitably throughout Asheville – Continue to implement and develop greenways that enhance quality of life for Asheville.

Pros:

- The trail in the Aston Park renovation will link densely populated neighborhoods near downtown Asheville to the Clingman Forest Greenway Corridor, which will connect to the French Broad River Greenway Corridor.
- Continue to make progress on the Parks and Recreation Department's strategic plan to renovate and improve Montford Complex.
- Respond to public demand to improve Aston Park.
- Be ready to manage Aston Park upon transfer from Buncombe County.
- Raise outside funds to support facility renovations and reduce reliability on City funds to support Capital Improvement Project cost.

Cons: None noted

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund for $260,000 for renovation of Aston Park, and for $150,000 for renovation of the Montford Complex.

RESOLUTION BOOK NO. 28 – PAGE 470

C. RESOLUTION NO. 05-11 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE RENOVATION OF ASTON PARK

Summary: See Consent Agenda Item "B" above.

RESOLUTION BOOK NO. 28 – PAGE 471

D. RESOLUTION NO. 05-12 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF AN EASEMENT ON REAL PROPERTY LOCATED ON BLACK OAK DRIVE FOR AN EASEMENT ON REAL PROPERTY LOCATED ON PINECROFT ROAD

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of an easement on real property located on Black Oak Drive for an easement on real property located on Pinecroft Road.

The City and Mr. & Mrs. Fulton H. Beville have negotiated an exchange of a driveway easement over the Beaverdam Reservoir property (PIN No. 9751.17-10-7654) on Black Oak Drive for a slope/fill easement across real property located on Pinecroft Road (PIN No. 9751.17-10-9594).

At the time that the Beaverdam Reservoir was built a substantial amount of fill was placed on the Beville's property thereby allowing a cost savings to the City and providing lateral support to the reservoir site maximizing the use of the property. The Beville's were not compensated for the use of their property, but instead understood that the use of the reservoir access road would be available to them to access a portion of their property not easily accessible from Pinecroft Road because of topography.

A formal arrangement has not been in place heretofore, but it is advisable to formalize the arrangement through an exchange of easements which will satisfy the City's need to keep the fill in place as well as the Beville's need to access their property.

The driveway easement would be 12' wide and about 350' long comprising an area of 4,200 square feet. Based on the tax value of the land per square foot (.92), at a 50% easement value, the driveway easement would have a value of $1,932. Water Resources staff estimates that the benefit to the City of having the fill in place would equal or exceed the value of the driveway easement.

The use of the driveway by the Bevilles will not impair the function nor security of the reservoir, but could improve security to the extent that the Bevilles would be able to observe the reservoir site.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will establish record title in the City of the right to have the fill area remain on the Beville's property.
- It will establish a clear description of the size and location of the driveway easement.
- It will formalize the arrangement thereby reducing the likelihood of future misunderstandings.

The negative aspects are:

- The driveway easement will limit the use of the reservoir property within the easement area.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff and Water Resources staff recommend adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of an easement on real property located on Black Oak Drive for an easement on real property located on Pinecroft Road.

E. RESOLUTION NO. 05-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR A GRANT TO ASSIST WITH THE PURCHASE AND INSTALLATION OF VIPER-COMPLIANT RADIOS

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Crime Control and Public Safety for funds through the Governor's Crime Commission to assist with the purchase of 800 MHz VIPER-compliant radios for Asheville Fire Rescue and Asheville Police Departments.

Public safety agencies in WNC experienced a serious need for interoperability in their communications systems when mutual aid services were provided during the historic flooding of 2004. In response to this need, several public safety agencies from Asheville and Buncombe County are collaborating to establish an interoperable communication system, which will ensure a better communication link among all agencies. In addition to promoting efficient disaster response, an interoperable system will be an important component of terrorism prevention.

To support this system, Asheville Fire Rescue and Asheville Police Departments are partnering with other agencies (Buncombe County Rescue, Buncombe County Sheriff, Buncombe County Emergency Services, Enka Fire, Haw Creek Fire, Reynolds Fire, Riceville Fire, Skyland Fire, Swannanoa Fire, and West Buncombe Fire) to apply for a $492,800 grant from the Governor's Crime Commission to purchase a total of 127 radios to be distributed among the participants. Asheville will assume lead responsibility in applying for the grant and purchasing all radios, including radios for our partner agencies. The grant requires a 25% match of the total cost ($492,800), or $123,200. The cost of the match will be shared by all participating agencies based on the number of radios each receives. The City's net cost is expected to be $61,300; it will come from the City's fund balance.

This action coincides with the City of Asheville's Strategic Operating Plan under the focus area of Partnerships To Improve Critical Services & Infrastructure, goal #3: Explore ways for the City and County to work together to share in regional infrastructure investment needs.

Pros

- This project will help develop in WNC the statewide voice interoperable network including 800 MHz radios, in collaboration with the Voice Interoperability Plan for Emergency Responders (VIPER) that has been established by the state of NC.
- The public safety agencies listed are committed to interoperability and have agreed to participate in the project and to match 25% of the cost of the radios.
- The project will improve public safety in Asheville and Buncombe County by enabling WNC emergency responders to communicate with each other and with others across the state.

Cons

- The cost of the match.

The Fire Rescue and Police Departments recommends the City of Asheville apply for and enter into an agreement for grant funds to assist with the purchase of the radios.

RESOLUTION BOOK NO. 28 – PAGE 473

F. RESOLUTION NO. 05-14 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOUNTAIN WORKFORCE DEVELOPMENT BOARD FOR THE 2005 SUMMER YOUTH DEVELOPMENT PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Mountain Area Workforce Development Board for the 2005 Summer Youth Development Program.

The Parks and Recreation Department contacted the Mountain Area Workforce Development Board (MAWDB) on the campus of A-B Technical College to determine the feasibility of organizing and administering a summer youth employment program for 2005. The MAWDB has actively administered and delivered career development services, remedial education, job skills training and subsidized employment opportunities for Asheville's economically disadvantaged youth for more than 30 years.

Highlights of the proposal:

- Employment of 55 disadvantaged youth from the City of Asheville.
- Summer employment period of June 8, 2005 – July 29, 2005 (8 weeks)
- Youth Employees between the ages of 14 and 17 years old.
- Specific application process and selection procedures mutually agreed upon by the City and MAWDB.
- Education and training components aimed at assisting youth to move forward in school and toward a successful productive life.
- MAWDB will develop, organize, administer supervise and evaluate the program through an agreement with the city including recruitment of youth, development of worksite agreements, orientation and training of worksite supervisors and employees, monitoring and counseling of youth employees and program accounting and oversight.
- The City of Asheville will provide payroll services and worker's compensation insurance.

This action is in keeping with the City Council Strategic Plan's economic development goal #4 of providing vocational training opportunities for teenage youth and the plan's critical services and infrastructure goal #4 of reducing drug related crime activities through holistic approaches targeting at-risk and economically disadvantaged youth. The Parks and Recreation Department recommends entering into an agreement with the MAWDB for the delivery of a youth development program that combine the opportunities for summer employment with meaningful training and education in the areas of job success skills, career planning, life skills, personal financial management and development of teamwork and interpersonal relations on the job.

Pros:

- History of proven professional administration of youth employment programs in Asheville by MAWDB for over 30 years.
- Cooperative agency approach to providing youth development activities.
- Ability to integrate the City's youth employment program with the efforts of the MAWDB career development programs.
- Existing connections to public and private agencies through the MAWFDB "workforce board partners program" which allows for better recruitment of disadvantaged youth and potential worksites.
- Allows for program oversight by City staff without the extensive time commitment necessary to actually administer a program of this magnitude.

Cons:

- More students may apply than are funds available.

The Parks and Recreation Department recommends that City Council accept the proposal and authorize the City Manager to enter into an agreement with the Mountain Area Workforce Development Board for the 2005 summer youth development program.

RESOLUTION BOOK NO. 28 – PAGE 474

G. RESOLUTION NO. 05-15 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Summary: The terms of Tom Muncy (Regular), Beverly Robinson (Regular) and David Brown (Alternate) on the Board of Adjustment expired January 21, 2006.

At the City Council's worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tom Muncy, as a Regular member; Beverly Robinson, as a Regular member; and David Brown, as an Alternate member, to the Board of Adjustment to serve a three year term respectively, terms to expire January 21, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 475

H. RESOLUTION NO. 05-16 - RESOLUTION APPOINTING MEMBERS TO THE FAIR HOUSING COMMISSION

Summary: The terms of Christiana Tugman and Jim McCulley, as members on the Asheville-Buncombe Fair Housing Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Tugman and Mr. McCulley to each serve an additional three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 476

I. RESOLUTION NO. 05-17 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Summary: The terms of Paula Robbins and Scott Jackson, as members on the Greenway Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Robbins and Mr. Jackson to each serve an additional three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 477

J. RESOLUTION NO. 05-18 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "OWENS BELL LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Owens Bell Lane."

Mountain Housing Opportunities, Inc., owner of lots on Owens Bell Lane off of Clingman Avenue has petitioned the City of Asheville to accept the street name " Owens Bell Lane." The new street will begin at Clingman Avenue and end at Rector Street.

City staff recommends adoption of the resolution accepting the new street name of "Owens Bell Lane."

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 8.8 ACRES LOCATED ON BRITT DRIVE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT

Mayor Worley said that, at the request of City staff, this public hearing will be re-noticed and scheduled for City Council consideration on February 8, 2005.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF TWO LOTS ON EDWIN PLACE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE; AND APPROVAL OF THE MASTER PLAN FOR PROPOSED BUILDINGS FOR DAYCARE AND NON-CHURCH RELATED COMMUNITY ACTIVITIES

ORDINANCE NO. 3202 - ORDINANCE REZONING TWO LOTS ON EDWIN PLACE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3203 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE MASTER PLAN FOR PROPERTY ON EDWIN PLACE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:06 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located on Edwin Place from RM-6 Residential Multi-Family Low Density District to Institutional District/Conditional Use, and a request to issue a conditional use permit for a Master Plan for proposed building(s) for daycare and non-church related activities.

In July of 2004 there was a conditional use rezoning request at 200 Charlotte Street. The rezoning request was to rezone a portion of a lot from RM-16 to CB-1 in order to accommodate a parking lot expansion for an existing office use (Attachment to City Exhibit 3 – Location Map). Additionally, approximately 4 years ago there was a conditional use permit request for an ancillary parking area on the southwest corner of Edwin Place and Charlotte Street that was denied at City Council (Attachment to City Exhibit 3 – Aerial Map).

The applicant, Unitarian Universalist Church, is seeking a Conditional Use Rezoning of both lots from RM-6 Residential Multi-Family Medium Density District to Institutional District to allow for the operation of a private daycare and other non-church related community uses.

The subject properties are located in north Asheville in the nationally registered historic Grove Park neighborhood. Both lots total 1.51 acres and are currently zoned RM-6. The larger of the two properties, the primary church property, is a through-lot with frontage on Edwin Street and Bond Street and is further bounded on a third side by Charlotte Street to the east. The smaller lot has frontage and access off of Edwin Place only. Directly across Charlotte Street is another church use while the rest of the adjacent properties all support residential uses ranging from low-density single-family homes to the high density historic Manor Inn apartments. Zoning ranges from RS-4 along the southern edge of the property and northeast corner, with Historic Conditional Use to the east, and RM-6 to the west and north.

The master plan shows two existing structures with the largest structure housing the Church sanctuary, offices, daycare, and other meeting rooms (Attachment to City Exhibit 3 – Concept Plan). The master plan delineates a future office expansion for the larger structure with area dedicated for additional parking as needed. The second smaller structure, "Jefferson House", is a former single family home that is currently used as additional meeting space for the church and community. Also shown on the site plan are the existing off-street parking, playground, street trees, street buffering, and other existing vegetation. A type 'B' landscape buffer is required but may be adjusted through alternative compliance. Off-street parking is limited with the balance of parking needs historically being met with on-street parking (permitted per Sec. 7-17-7(b)). A limited number of additional trees and shrubs are shown to meet landscaping compliance (Attachment to City Exhibit 3 – Site Photos).

The primary purpose of this application is to legalize a recently revived private child care center (Attachment to City Exhibit 3 – Concept Plan). Formerly, the church housed a half-day private child care center not understanding that the center was non-conforming and that a lapse in use would not allow the re-establishment of a new private day care. Although child care centers can be permitted as an accessory use to a church, the daycare must be operated by the church and the workers must be employees of the church. In addition, the majority of the children enrolled should be children of members of the congregation. Since this center is a private cooperative program operated by one full-time employee and parent volunteers, and because enrollment is open to the larger community, a rezoning would be required to a designation that allows "child care centers" which are not currently permitted in the RM-6 zoning district.

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Current enrollment is 13 children but staggered attendance results in no more than 11 children requiring supervision at any given time. Children attend the center between the hours of 9 a.m. and 12:45 p.m., Monday through Friday. In addition to approval for their current child care center; the church is also seeking approval for the ability to expand their enrollment to 20 children for regular full day care. In the event that a full-day program is pursued, additional site plan and building requirements may have to be met and a change of use application pursued.

In addition to the child care center, the church would also like to open their facilities to the community for other non-church related functions including, but not limited to, music and other performances as well as meeting space for small groups. Church use and non-church related activities, including the day care, will not overlap in operation and off-street parking along with other infrastructure needs appear to be adequately met.

At their January 5, 2005, meeting, the Asheville Planning and Zoning Commission met to review the project and made a motion to approve the rezoning and Conditional Use Permit request with the conditions that (1) All outstanding TRC conditions are met; and (2) Any future outdoor lighting be equipped with a 90 degree cutoff feature and be directed away from residences.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety including the NC Child Care Division for Daycare Licensing.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed project will be occupying an existing building and only a nominal amount of site disturbance is expected in order to comply with minimum landscaping requirements.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The proposed daycare use will be housed within the existing church building with the exception of the outdoor play area. The outdoor play area is located internally to the church property and is separated from adjacent uses by vegetation, parking, single family structures, and road right-of-way and is located no closer than 150' from the nearest single family home (140' to the nearest multi-family structure). The current use experiences no more than 11 children outside, for approximately 45 minutes a day. The expanded enrollment and hours would typically result in the same number of children on the playground at one time but would occur with more frequency. The past daycare use was not reported to have a negative impact on the value of adjacent properties where homes in the neighborhood have experienced an impressive appreciation. Similarly,

current and expanded day care and community use is not expected to have a negative impact on the value of adjacent properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The proposed use will not alter the current facilities and will remain in harmony with the neighborhood within which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   Although the Asheville City Development Plan 2025 does not specifically address support for churches or other non-profit business/organizations, there is discussion regarding public institutions (i.e. schools) as important neighborhood and community centers. It is recognized that new construction or additions/expansions of these neighborhood centers should be supported where good community access can be gained and neighborhood compatibility ensured. Additionally, the small area plan for the Charlotte Street Corridor includes both subject parcels and calls for a mix of uses south of Edwin Place and the continuation of the existing residential and institutional uses north of Edwin Place. It also calls for the identification of business and other uses which serve the needs of the adjacent neighborhoods to help create an economically vibrant and pedestrian environment. The Unitarian Universalist Church is strategically located to be an extremely walkable and valuable community gathering place and service provider.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The project area is located on the Charlotte Street within 1 mile of downtown and interstate connections. It is also well located in respect to transportation facilities with the Route 5 bus line operating up and down Charlotte St. In addition, sidewalk also surrounds the project area with extensive connections to existing neighborhoods and downtown. Lastly, technical review from other departments has not revealed any problems for serving the proposed use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The proposed use(s) will not overlap in hours of operation with regular church services and all parking and loading needs can be met with existing off-street parking. The proposal also calls for the elimination of one existing driveway cut on Edwin Street, reducing hazards associated with backward movements into traffic.

Pros

- Provides a valuable service to the church and neighborhood
- Provides valuable meeting space to the church and neighborhood
- Assures the preservation of the architectural integrity of the Jefferson House, reducing the potential for further encroachment into the residential neighborhood
- Results in minor site improvements including the reduction of driveway cuts

Cons

- Results in a slightly higher use and impact

Staff concurs with the Planning and Zoning Commission's recommendation of approval of the rezoning request from RM-6 to INST and approval of the associated Conditional Use Permit and conceptual master plan.

Ms. Christine Magnarella Ray, representing the Unitarian Universalist Church, urged City Council to support the conditional use permit and explained their outreach to the neighborhood (Applicant Exhibit 1).

Ms. Alicia Sessoms spoke about the integrity of the pre-school and urged City Council to support the conditional use permit.

After hearing no rebuttal, Mayor Worley closed the public hearing at 5:19 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located on Edwin Place from RM-6 Residential Multi-Family Low Density District to Institutional District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 458

Vice-Mayor Mumpower moved to adopt Ordinance No. 3203 to issue a conditional use permit adopting the proposed master plan and uses for the Unitarian Universalist Church located on Edwin Place, subject to the following conditions: (1) all outstanding Technical Review Committee conditions are met; (2) enrollment is restricted to not more than 20 children; and (3) any future outdoor lighting be equipped with a 90 degree cutoff feature and be directed away from residences. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 460

C. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO NAVIGATIONAL SCIENCES INC.

RESOLUTION NO. 05-19 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO NAVIGATIONAL SCIENCES INC.

Mayor Worley opened the public hearing at 5:23 p.m.

City Manager Jim Westbrook said that this is the consideration of a resolution granting an economic development incentive grant to Navigational Sciences, Incorporated (NavSci). This public hearing was advertised on January 14 and 21, 2005.

City Council has previously considered Navigational Sciences for an economic development incentive grant on March 18, 2003. The initial grant was for $25,000 payable in equal installments over three years. In December 2004, Navigational Sciences advised that a portion of the prior understanding would need to be changed. Based on new information, the current economic development incentive grant is based on the following: the project will entail a capital investment of $2 million and the creation of 12 new jobs with an average annual salary of $50,000. The prior commitment was for a $4 million investment.

Based on the new information with a capital investment of $2 million and the addition of 12 new jobs at an average annual salary of $50,000, staff feels the economic development

incentive of $25,000 paid in three equal installments over a three year period promotes economic development within the City, supports small businesses in the downtown area, and adds additional employment of highway jobs to the local economy.

Buncombe County has approved a grant under similar conditions as the City.

NavSci is a company that has developed a marine transportation control system. It's a global asset tracking and management system delivering a direct commercial value with direct applications for homeland security.

Strategic Plan:

- Grant supports expansion of local small business. Key Area – Economic Development Goal 1, Objective A.
- Navigational Sciences, Incorporated continues to invest in the downtown area.

Staff recommends City Council approve the resolution granting an economic development incentive grant to Navigational Sciences, Incorporated.

Mr. Ray Denny, Vice-President of Economic Development at the Chamber of Commerce, spoke in support of this economic development incentive grant.

Mr. Dale Carroll, President of AdvantageWest, said that he would appreciate City Council's consideration of joining Buncombe County and AdvantageWest in providing financial grant support regarding this technical operations center for western North Carolina. NavSci's plans for the future not only has implications for trade and commerce in this world, but there are also some very favorable homeland defense implications surrounding this technology. Mr. Carroll also thanked Congressman Taylor for his help with the pieces of infrastructure necessary for a high tech company.

Dr. Eric Dobson, CEO and founder and NavSci, said that in general they are constructing a network operations center. It will be the revenue center of a business tracking shipping containers as they move globally. The technology itself has a number of other market opportunities in areas that can move and they expect to commercialize those here in western North Carolina. He said that they will be outsourcing the manufacture, which is potentially another opportunity for western North Carolina. He said the idea started from a mandate from the Dept. of Energy to develop a means of operating robots wirelessly in plutonium recovery facilities. Very early in the discussion they realized the implications of this technology was such that you can put a container in a hold of a ship and still communication effectively with wireless technologies.

Upon inquiry of Councilman Dunn, Dr. Dobson said they ran a small business innovative research grant program through the Dept. of Homeland Security last year and received a grant. They expect to compete again this year for further work.

Upon inquiry of Councilman Newman, Dr. Dobson said they are relocating here from Charleston, South Carolina. He said they chose Asheville because they needed a place of low occurrence of natural hazards and a substantial commitment to broadband internet.

When Vice-Mayor Mumpower asked if they are anticipating hiring the 12 new employees from the Asheville area, Dr. Dobson said that they will be searching in the Asheville community but also there will be a national search for some of the employees, all which will have benefits. They have already found a number of very qualified candidates locally.

In response to Councilman Davis, Dr. Dodson said they plan to establish a much more significance presence in Asheville around March, with the expectation of relocating four people from the Charleston location by June.

In response to Mayor Worley, Dr. Dodson explained that while they are pledging 12 new jobs for this community now there is a tremendous potential for growth.

Upon inquiry of Councilman Newman, Dr. Dodson explained the different entities that are directly investing to help in the relocation.

Vice-Mayor Mumpower was glad that NavSci is relocating here and said that if there is a vote against this proposal, it is not a reflection on the good thing that they are bringing to Asheville. Personally, he has some philosophical issues about incentives because we do have limited dollars. We started out with a $4 Million capital investment and now it's $2 Million.

In response to Vice-Mayor Mumpower, Dr, Dodson said that part of the reduction from $4 Million to $2 Million was the fact that the computer hardware to accomplish these tasks is getting so much cheaper on a constant basis.

Mr. Fred English said Asheville needed more companies to bring jobs to the area but felt that the Chamber of Commerce should be doing more in that direction.

Mayor Worley closed the public hearing at 5:40 p.m.

Councilman Dunn felt that Asheville needs to start encouraging these types of businesses in Asheville, especially ones that might outsource work. He was, however, concerned that there are a lot of other companies that locate in Asheville that don't receive any incentive grants.

Councilman Newman shared some of Vice-Mayor Mumpower's philosophical concerns, but will support this incentive grant. Part of his concern is how a lot of businesses create jobs (sometimes one at a time) and don't' get any incentives from the City. He felt it would be good to review our economic development policy and develop ideas on how we can spread these benefits more equitably in the community.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Dunn moved for the adoption of Resolution No. 05-19. This motion was seconded by Councilman Davis and carried on a 5-1 vote with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 28 – PAGE 479

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NOTICE OF VIOLATION PROCEDURES

ORDINANCE NO. 3204 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NOTICE OF VIOLATION PROCEDURES

Mayor Worley opened the public hearing at 5:47 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of changing the notice of violation procedures to allow notification and citation of property owners for tenant noncompliance. This public hearing was advertised on January 14 and 21, 2005.

Article XVIII of the City of Asheville's UDO sets forth procedures for enforcing the provisions set forth in the ordinance. The section (Sec. 7-18-3) dealing with procedures for notice of violation and the issuance of citations currently provides that notifications go to the person in violation and only if that person cannot be ascertained shall the notification be sent to the owner of the property on which the violation is occurring. The ordinance makes no provision for notifying and holding a property owner responsible when their tenant is non-compliant with the city's ordinances. In practice, there have been a number of instances where a tenant has failed to comply and notification of the property owner has brought quick results. The City Attorney's office, in working with the enforcement staff of the Planning and Development Department, has suggested that a provision be added to the ordinance that clearly allows for this additional measure to gain ordinance compliance.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment provides a mechanism for improving the effectiveness of gaining compliance with the ordinance.

Cons-

- The amendment may create conflicts between property owners and tenants.

The Asheville Planning and Zoning Commission recommended approval of this code amendment on January 5, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 5:48 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Ms. Cogburn responded to various questions/comments from Council, some being, but are not limited to: what are the types of violations; what happens if the violation re-occurs; is there a provision in the ordinance to enable an extension; and how frequently does non-compliance occur.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that a property owner is not fined if they can establish they lack the ability to comply with the ordinance.

Councilman Davis moved for the adoption of Ordinance No. 3204. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 466

E. PUBLIC HEARING RELATIVE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CORRECT AND CLARIFY ZONING DISTRICTS THAT ALLOW GROUP HOMES AS A USE OF RIGHT, SUBJECT TO SPECIAL REQUIREMENTS

ORDINANCE NO. 3205 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CORRECT AND CLARIFY ZONING DISTRICTS THAT ALLOW GROUP HOMES AS A USE OF RIGHT, SUBJECT TO SPECIAL REQUIREMENTS

Mayor Worley opened the public hearing at 5:57 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of correcting and clarifying zoning districts that allow group homes as a use of right, subject to special requirements. This public hearing was advertised on January 14 and 21, 2005.

This proposed ordinance amendment is intended to correct an error made in the UDO that lists "Group homes" as uses by right, subject to special requirements in the RM-6 and RM-8 districts. Presently, the standards for these two districts lists "Group homes" as both uses by right, subject to special requirements and conditional uses. As presented and discussed during a UDO amendment adopted by City Council in August, 2003, the intent was for group homes to be conditional uses in the RM-6 and RM-8 districts. The proposed amendment would eliminate the words "Group homes" from the listing under uses by right, subject to special requirements.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would correct the UDO to comply with City Council's intentions when adopting UDO requirements for group homes in August, 2003.
- This amendment would clarify the UDO for anyone seeking to know where group homes are allowed.

Cons –

- None

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the UDO for the purpose of correcting and clarifying zoning districts that allow group homes as a use of right, subject to special requirements.

Mayor Worley closed the public hearing at 5:58 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3205. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 461

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO EXPEDITE THE DEVELOPMENT APPROVAL PROCESS BY ALLOWING DEVELOPMENT PROJECTS TO BE SCHEDULED FOR REVIEW BY THE PLANNING & ZONING COMMISSION PRIOR TO CONSIDERATION BY THE TECHNICAL REVIEW COMMITTEE

ORDINANCE NO. 3206 - ORDINANCE TO AMEND TO THE UNIFIED DEVELOPMENT ORDINANCE TO EXPEDITE THE DEVELOPMENT APPROVAL PROCESS BY ALLOWING DEVELOPMENT PROJECTS TO BE SCHEDULED FOR REVIEW BY THE PLANNING & ZONING COMMISSION PRIOR TO CONSIDERATION BY THE TECHNICAL REVIEW COMMITTEE

Mayor Worley opened the public hearing at 6:00 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance to expedite the development approval process by allowing development projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the Technical Review Committee (TRC). This public hearing was advertised on January 14 and 21, 2005.

This proposed ordinance amendment is intended to expedite the development approval process by allowing projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the TRC. Presently, this section states that a project cannot be scheduled for a Planning & Zoning Commission meeting until after review and approval by the TRC, which can place unnecessary restraints on time-sensitive projects. To help expedite the development review process in certain circumstances, staff is requesting this amendment to allow greater flexibility in scheduling applications for Planning & Zoning Commission review.

This amendment does not propose to change the number of required meetings, nor does it propose to change the order of the process. So, it does not limit opportunities for public review or comment in any way.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

This amendment would be one step toward meeting the goal of improving the plan review process outlined in City Council's adopted Strategic Operating Plan.

Pros –

- This amendment would help to expedite the review of development projects in certain situations.
- This amendment is consistent with the City Council's adopted Strategic Operating Plan.

Con –

- This amendment may be viewed by certain people as an attempt to "fast track" projects and limit public review.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the UDO to expedite the development approval process by allowing development projects to be scheduled for review by the Planning & Zoning Commission prior to consideration by the Technical Review Committee.

Mayor Worley closed the public hearing at 6:01 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3206. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 469

G. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE THE AMOUNT OF WINDOWS REQUIRED ON THE FRONT AND SIDE FACADES OF BUILDINGS IN THE NEIGHBORHOOD BUSINESS DISTRICT AND TO ALLOW ALTERNATIVE FORMS OF LANDSCAPE BUFFERING TO BETTER ACCOMMODATE DEVELOPMENT IN THE NEIGHBORHOOD CORRIDOR DISTRICT

ORDINANCE NO. 3207 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE THE AMOUNT OF WINDOWS REQUIRED ON THE FRONT AND SIDE FACADES OF BUILDINGS IN THE NEIGHBORHOOD BUSINESS DISTRICT AND TO ALLOW ALTERNATIVE FORMS OF LANDSCAPE BUFFERING TO BETTER ACCOMMODATE DEVELOPMENT IN THE NEIGHBORHOOD CORRIDOR DISTRICT

Mayor Worley opened the public hearing at 6:03 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of reducing the amount of windows required on the front and side facades of buildings in the Neighborhood Corridor District and to allow alternative forms of landscape buffering to better accommodate development in the Neighborhood Corridor District. This public hearing was advertised on January 14 and 21, 2005.

The Neighborhood Corridor District (NCD) was adopted by City Council in November of 2002 for the purpose of accommodating medium-density, mixed-use development in appropriate areas throughout the City of Asheville. Since this District was created, staff has been looking for opportunities to evaluate if the design and development standards are effective and reasonable. Evaluation of several recently proposed projects leads staff to believe that the current standards for landscaped buffers, building setbacks for taller buildings, and the amount of windows (60%) required on first floor facades are overly restrictive.

After reviewing these requirements, staff is recommending that a landscaped buffer ten feet (10') wide with the provision of a fence eight feet (8') in height be allowed as an alternative to landscaped buffer requirements in the NCD. Alternative landscaping solutions could also be approved by the Planning Director to provide appropriate buffers in unusual situations. In addition, staff is recommending the elimination of a forty-foot (40') setback requirement for buildings of four stories. The intent of these proposed amendments are to allow greater flexibility during site development.

Staff is also proposing new standards of 45% window coverage for front facades and 40% windows for side street facades. The intent of this standard is to have buildings constructed with more traditional, first floor storefront windows. The proposed amendment offers more flexibility for developers while still meeting this intent.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- These amendments would offer greater flexibility and encourage future development within the NCD district.
- The buffer amendment would allow staff to find creative solutions for providing appropriate buffers against adjacent residential properties.

Cons –

- It is hoped that these amendments will promote multi-story, mixed-use development along key corridors. Certain people perceive this type of development to be incompatible with adjacent residential areas.
- Certain people may also prefer a firm standard to the allowance of flexible options for landscaped buffers.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the Unified Development Ordinance for the purpose of reducing the amount of windows required on the front and side facades of buildings in the Neighborhood Corridor District and to allow alternative forms of landscape buffering to better accommodate development in the Neighborhood Corridor District.

Mayor Worley closed the public hearing at 6:07 p.m.

Discussion occurred, initiated by Councilman Newman, regarding the initial group who had significant input into the standards in the Neighborhood Corridor District not being given an opportunity to review this proposed ordinance and getting feedback from them.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3207. This motion was seconded by Councilwoman Jones.

Councilman Newman was not convinced that sending a letter to the President of the Coalition of Asheville Neighborhoods for input was the same thing as notifying the group of people who had significant input into the original District standards. He felt that some of the changes are not substantial, but the elimination of the 40-foot setback requirement for buildings of four stories is a substantive change and should have review by the group.

Upon inquiry of Vice-Mayor Mumpower about a possible conflict of interest, City Attorney Oast said that he did not feel Vice-Mayor Mumpower had a conflict of interest. The proposed ordinance is a general application throughout the Neighborhood Corridor District, not specifically regarding Vice-Mayor Mumpower's property.

Councilwoman Jones felt that even though running proposed ordinances by CIBO, CAN and CREIA was a good idea, sometimes there may be other groups that could lend their expertise. From a courtesy standpoint, she felt it would have been good to invite comments from the group, especially since they volunteered their time to help develop the initial standards. She hoped that staff would think outside of the traditional box in the future

Councilman Davis felt that when you send a revision back to a group formed 2 years ago, it might be hard to get the same people to review it. You may get new people who want to be involved and make various other changes to the District. He was encouraged that we are encouraging development with these ordinance revisions.

The motion made by Councilman Davis and seconded by Councilwoman Jones carried on a 5-1 vote, with Councilman Newman voting "no."

ORDINANCE BOOK NO. 21 – PAGE 470

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CALCULATING MAXIMUM RESIDENTIAL DENSITY REQUIREMENTS FOR MULTI-FAMILY RESIDENTIAL DEVELOPMENT BY ROUNDING UP

ORDINANCE NO. 3208 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CALCULATING MAXIMUM RESIDENTIAL DENSITY REQUIREMENTS FOR MULTI-FAMILY RESIDENTIAL DEVELOPMENT BY ROUNDING UP

Mayor Worley opened the public hearing at 6:26 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) for the purpose of calculating maximum residential density requirements for multi-family residential development by rounding up. This public hearing was advertised on January 14 and 21, 2005.

This proposed ordinance amendment is intended to change the manner in which maximum residential densities are calculated in the UDO. In situations where the number of dwelling units allowed on a property is a fractional number, the proposed amendment states that all fractions of one-half or greater will be rounded up to the nearest number. For example, a property on which 8.4 units could be constructed would be limited to eight (8) units, but a property on which 8.5 units could be constructed would net nine (9) units, as the ".5" or higher is rounded up. This amendment would only apply to multi-family residential development of five (5) units or greater, not to duplexes, triplexes, and quadraplexes. To encourage mixed-use development along key corridors, the amendment is also proposed to apply to any level of multi-family residential use in the Neighborhood Corridor (NCD) and Urban Residential (UR) districts.

This amendment is consistent with the City of Asheville's adopted definition of "Smart Growth" as it would encourage higher density, infill development. This amendment is also consistent with policies recommended by the Affordable Housing Task Force as it would allow for a minor increase in housing density under certain circumstances.

This proposed amendment has been forwarded to the Coalition of Asheville Neighborhoods, CIBO, and CREIA.

Pros –

- This amendment is consistent with the City's adopted "Smart Growth" policies.
- This amendment is consistent with recommendations of the Affordable Housing Task Force.
- This amendment could encourage infill housing by allowing a minor increase in housing density under certain circumstances.

Con –

- Certain people may be opposed to this allowance for additional residential density.

The Planning and Zoning Commission recommended approval of these code amendments on December 1, 2004, by a unanimous vote of 6-0.

Staff recommends approval of the amendment to the UDO for the purpose of calculating maximum residential density requirements for multi-family residential development by rounding up.

Mayor Worley closed the public hearing at 6:28 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Heard said that Ms. Barber Melton, with CAN, expressed some concern of the cumulative effects of incremental increases in density.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3208. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 472

I. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD WEDDING CHAPELS AS A SPECIFIC USE AND ESTABLISH PARKING STANDARDS FOR THIS TYPE USE

ORDINANCE NO. 3209 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD WEDDING CHAPELS AS A SPECIFIC USE AND ESTABLISH PARKING STANDARDS FOR THIS TYPE USE

Mayor Worley opened the public hearing at 6:33 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) for the purpose of establishing development standards for commercial wedding chapels. This public hearing was advertised on January 14 and 21, 2005.

Planning & Development staff has received several inquiries regarding the establishment of wedding chapels in the City of Asheville. It has been difficult to review these requests, because commercial wedding chapels are not presently listed as specific uses in the UDO. Staff has studied the potential impact of these uses and researched standards for wedding chapels in other communities in developing this proposal.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would set clear, firm standards for commercial wedding chapels in the UDO for anyone seeking to establish this type of use.
- The proposed standards treat wedding chapels in a fair manner – allowing them in office or commercial districts while limiting their encroachment into residentially zoned areas.

Cons –

- Certain people may not agree with the standards proposed for wedding chapels.

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The Planning and Zoning Commission recommended approval of these code amendments on January 5, 2005, by a unanimous vote of 7-0.

Mayor Worley closed the public hearing at 6:35 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3209. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 474

J. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO INCREASE THE MAXIMUM LENGTH OF CUL-DE-SAC STREETS

ORDINANCE NO. 3210 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO INCREASE THE MAXIMUM LENGTH OF CUL-DE-SAC STREETS

Mayor Worley opened the public hearing at 6:36 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) for the purpose of allowing longer cul-de-sac streets within manufactured home parks. This public hearing was advertised on January 14 and 21, 2005.

While reviewing the potential development of a manufactured home park in the extraterritorial jurisdiction area, a concern arose about the maximum length of 300 feet for cul-de-sac streets in a manufactured home park. Within typical residential subdivisions, a maximum length of 1,000 feet for cul-de-sac streets is established based on N.C. Fire Code standards. Although streets within manufactured home parks are typically privately owned, they must be constructed to a similar standard as residential subdivision streets. After conferring with Engineering and Fire Department representatives and noting no issues, staff decided that it would be appropriate to consider similar cul-de-sac street lengths within manufactured home parks.

This proposed amendment has been forwarded to CAN, CIBO, and CREIA.

Pros –

- This amendment would set consistent cul-de-sac street length standards in the UDO for a variety of residential uses.
- The proposed standards would allow for additional development to take place in certain situations.

Cons –

- The proposed amendment would potentially encourage a more linear pattern of development with fewer connections between streets.

The Planning and Zoning Commission recommended approval of this code amendment on January 6, 2005, by a unanimous vote of 7-0.

City staff recommends approval of the amendment to the UDO for the purpose of allowing longer cul-de-sac streets within manufactured home parks.

Mayor Worley closed the public hearing at 6:38 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3210. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 476

IV. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3200, AN ORDINANCE TO REZONE 9 CURRY COURT FROM COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Urban Planner Julia Cogburn said that a certified letter, return receipt requested, was sent to the property owners and the return receipt was received by the Planning Department. In the letter she specifically asked for them to contact her if they had any concerns or questions regarding the proposed rezoning. She has not heard anything from the property owners.

Upon inquiry of Vice-Mayor Mumpower, Ms. Cogburn explained why the Planning & Zoning Commission initiated the rezoning.

Councilman Dunn expressed concern with the City zoning someone else's property.

Councilman Davis felt that the City has other important issues to deal with than to zone someone's property not in the City limits.

Councilman Newman felt that in the first or second quarter of this year Council needs to focus on some of the big issues. One is that if we are going to extend regulatory land use policies to the extraterritorial jurisdiction, it is our choice to do it and to make sure they make sense. If we don't want to have land use policies out there, we need to decide that.

When Mayor Worley called for a vote on the second and final reading of Ordinance No. 3200, it carried on a 5-1 vote, with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE 454

V. NEW BUSINESS:

A. RESOLUTION NO. 05-20 - RESOLUTION AUTHORIZING ACCEPTANCE OF TRANSFER OF ASTON PARK TO THE CITY OF ASHEVILLE EFFECTIVE FEBRUARY 1, 2005

Parks & Recreation Director Irby Brinson said that on November 16, 2004, Buncombe County Commissioners unanimously approved the transfer of Aston Park back to the City of Asheville. During this discussion, the Commissioners stated that the park would be submitted to the City "as is" and contingent upon the City accepting the current employee at the facility (which employee has since resigned) and not charging a non-City resident fee until the Water Agreement has been resolved. On December 13, 2004, the City Manager addressed this issue with the County Manager and expressed concern over the removal of the playground equipment by the County several months prior to this. The estimated cost of this playground equipment is

$80,000. In addition, the City Manager expressed concern about the non-City resident fee issue and the fact that this additional fee would help the City off-set costs incurred for operation.

The Parks and Recreation Department has been working on a Park and Recreation Trust Fund grant for Aston Park that would be used in conjunction with the Dick and Irene Covington Foundation funds. These funds would be used for improvements to the Aston Park facility including the construction of a new tennis center as well as the installation of a new playground. One of the key issues in regard to this grant involves the City having the title to the property. The title would be necessary in order for the grant process to proceed, which is due on January 31, 2005. Staff, however, does feel that the City should be compensated for the cost of the playground and that staff be able to set differential fees for City residents beginning in July of 2005.

Pros:

- The transfer of the facility will allow the City to apply for a Parks and Recreation Trust Fund grant that will make improvements to Aston Park without any City financial contribution.
- The transfer of the facility will occur prior to the tennis season for 2005.
- Transferring this facility prior to other County facilities will set the standard for how the overall transition occurs.

Cons:

- The replacement of the playground equipment will become an obligation of the City if the County fails to pay for replacement or reinstallation.
- Transferring this facility prior to other County facilities will set the standard for how the overall transition occurs.

This transfer relates to the City of Asheville Strategic Plan regarding steps necessary to resolve the Water Agreement.

The Parks and Recreation Department recommends the transfer of Aston Park to the City of Asheville effective February 1, 2005, if Buncombe County agrees to pay for the operating costs for the Park through June 30, 2005. The City would then be willing to forgive the cost or reinstallation of the playground equipment and implementation of differential rates for non-City residents until July 1, 2005.

Mayor Worley said that he has talked to some of the Buncombe County Commissioners and they don't meet again until after February 1, 2004, however, there has been an indication that they have heard City Council's concerns and will work with us to resolve those concerns. As a result of that, he felt that some of the wording in the proposed resolution will need to be amended.

City Attorney Oast suggested the following amendment to Paragraph 1: "The City be, and is hereby, authorized to accept the transfer of Aston Park from Buncombe County to the City; subject to satisfactory resolution of issues identified by Buncombe County in its action authorizing the conveyance; the form of this conveyance shall be subject to approval by the City Attorney." Paragraph 2 in the proposed resolution would be deleted in its entirety.

Mr. Fred English supported the City taking over Aston Park but was concerned about who would have to pay for damages and the security of the Park.

Mr. Gene Hamilton supported the City taking over Aston Park. He felt the clay tennis courts are the best in the southeast.

In response to Vice-Mayor Mumpower about operating costs, Mr. Brinson said that a budget amendment will be brought back to Council which represents an expenditure of $63,548, which will be offset by $25,000 anticipated in revenue for the five-month operation. The result is a cost of $38,598 to the City for this five-month operation. For a full year, he believed the net cost would be approximately $86,000.

Vice-Mayor Mumpower was grateful to Buncombe County for working with Asheville to transfer this facility, which is in the middle of the City. It makes good sense for the City to manage it. He was sure that the City intends to have this nice facility a safe place. Mr. Brinson said that it is the City's intent to convert the Park into a very active location for positive alternatives.

Councilman Newman asked if we anticipate Buncombe County transferring any additional recreation properties in advance of the termination of the Water Agreement. City Manager Westbrook said that the County has notified us that on June 30 they would transfer Nature Center back to the City. That was under a separate inter-local agreement that was not renewed by the County – not a part of the Water Agreement.

Councilman Newman said that there are several different recreational properties that are wrapped up in the Water Agreement. Out of all of them, Aston Park is the strongest argument that it should be operated by the City of Asheville, since it is in the heart of downtown and primarily used by Asheville residents. However, some of the other recreational properties serve a much more regional audience. While he supports the Aston Park transfer, he hoped that we can talk about the others and where those would best be administered in the future.

Upon inquiry of Councilman Dunn, City Manager Westbrook said that the Municipal Golf Course and McCormick Field are part of the Water Agreement.

City Attorney Oast said that he did have a discussion relative to McCormick Field coming back to the City before July 1, but he didn't know that any action has been taken on that.

Upon inquiry of Councilman Newman, City Attorney Oast said that other recreational properties Buncombe County wishes to transfer to the City prior to the termination of the Water Agreement would require the City to affirmatively say we want it back, unless the entire Water Agreement is terminated in which case they automatically revert.

Mr. Brinson noted that this transfer is tied to a grant request as well. The grant does require us to have a clear deed to the property by January 31, 2005. He was hopeful that we will be able to have a clear deed by that time, however, if not, then we would not be able to apply for the funds through the Park and Recreation Trust Fund.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-20. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 480

G. ORDINANCE NO. 3211 - BUDGET AMENDMENT FROM THE IRENE AND DICK COVINGTON FOUNDATION FOR THE CONSTRUCTION OF A CLUB HOUSE AT ASTON PARK

Parks & Recreation Director Irby Brinson said that this is the consideration of a budget amendment, in the amount of $262,576.05, from the Irene and Dick Covington Foundation for the construction of a club house at Aston Park.

Several years ago, the Irene and Dick Covington Foundation was established in order to preserve the memorabilia from Dick Covington's life and tennis career and to construct a new club house at Aston Park. This Foundation was a dream of the Covington's, and at Dick Covington's death his entire estate was placed in this Foundation. Since Aston Park was operated by the County, in 2002 the Foundation approved the transfer of these funds to Buncombe County to construct this facility. Delays occurred in this construction to the point where the Covington Foundation requested from both the City and the County that this process be expedited by transferring the funds back to the City of Asheville. Now that the County has approved the transfer of Aston Park back to the City of Asheville, this process can continue and be completed. The total amount that was originally sent to the County totaled $278,709.56. There were expenditures for architectural services that came out of this account.

Pros:

- The facility will be built prior to the 2006 City of Asheville Open Tennis Tournament in July.
- The City will have complete control over construction.

Cons:

- The Covington Foundation has been very frustrated in the delay of this construction and will be monitoring progress.
- Actual costs for construction will be higher than available funds.

The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of $262,576.05, to appropriate funds into the Capital Fund in order to enter into a contract for the construction of a new club house at Aston Park.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

When Councilman Dunn asked if this amount would cover the total cost of the clubhouse, Mr. Brinson responded that the grant we are working on with the Park and Recreation Trust Fund will cover the additional costs. If we are not able to apply for that grant, then we will look at other sources.

Upon inquiry of Councilman Davis regarding the Trust Fund grant, Mr. Brinson said that if we don't have a clear title by January 31, 2005, we will have to wait until 2006 to reapply. Again, we will be looking at other sources for funding.

In response to Councilman Davis, City Attorney Oast said that the City has been doing the legal work necessary to get clear title, which involves title searches and preparation of the deed. He felt fairly certain that those issues will be resolved in time to facilitate the transfer, however, it's the resolution of the other issues that may interfere with that.

Mayor Worley said that the Buncombe County Commissioners are aware of the need to have clear title by the end of January in order to apply for the grant.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3211. This motion was seconded by Councilwoman Jones and carried unanimously.

C. **RESOLUTION NO. 05-21 - RESOLUTION APPOINTING THE CHAIR TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Vice-Mayor Mumpower said that City Council appoints the Chair to the Alcoholic Beverage Control Board. Current members on the Board include: Chair Debora Holmes Young, Tom Bell, Barbara Field, Ken Kaplan and Duane Jarnecke.

Tom Bell received 1 vote and Duane Jarnecke received 5 votes. Therefore, Duane Jarnecke was appointed as Chairman to the Alcoholic Beverage Control Board to serve until his term expires on November 13, 2005, or until City Council appoints his replacement.

RESOLUTION BOOK NO. 28 – PAGE 481

VI. OTHER BUSINESS:

Councilman Dunn, member of the Asheville Regional Airport Authority, reported on the increased air traffic capacity in Asheville. He also explained why the Airport Authority would like City Council to consider adding a Henderson County person as an ex-officio non-voting member on the Authority. Mayor Worley said that the Boards and Commissions Committee will review this request and bring a recommendation to the full Council. In addition, City Attorney Oast said that the Airport Authority is made up in an Inter-local Agreement. He will review that agreement and if Council wishes, bring an amendment forward to make that change.

Vice-Mayor Mumpower announced various board and commission vacancies for the month of February.

Councilwoman Jones announced that the 3rd annual Cut-the-Risk "cut-a-thon" was held on January 17, 2005, and was a great success. She thanked the 80 stylists who donated their time at 18 Asheville salons and spas and served over 200 customers in the benefit that raised nearly $10,000 for the Women At Risk Program.

The following claims were received by the City of Asheville during the period of January 8-20, 2005: James E. McKinney (Transit Services), John W. Cole (Transit Services), Susan Hise (Police), John Morgan (Transit Services), Dean Metcalf (Transit Services), Kevin Jenkins (Transit Services) and James McElreath (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English commented on the 10-Year Plan to End Homelessness in Asheville and his version of said plan.

Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council, briefed Council on their past year's activities and thanked City Council for their support.

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, said that in this 21st century it is virtually impossible to operate successfully without a Comprehensive Quality Plan. The International Standards Organization 9000 Series provides ample guidance for the development of such a plan. Since the City is already doing quality management, he suggested City Council perform an audit to determine the degree of quality achievement in all City departments.

At 7:27 p.m., Councilman Newman moved to go into closed session in order to consider the qualifications, competence, performance, character, or fitness of an individual public officer or

employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - The statutory authorization is contained in G.S. 143-318.11(a)(2); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carolina Power & Light Company; and the City of Asheville - The statutory authorization is contained in G.S. 143-318.11(a)(3). The motion was seconded by Councilman Dunn and carried unanimously.

At 9:15 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:15 p.m.

Magdalen Bradley
CITY CLERK

Charles R. Worley
MAYOR

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

The Army ROTC Color Guard from Owen High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. UNITED WAY

Mr. David Bailey, representing the United Way, thanked the City of Asheville for the outstanding United Way campaign. City employees exceeded their goal by an increase of 16.4%. Mayor Worley also thanked the City of Asheville's Campaign co-coordinators Kelley Webb and David Cole.

B. PROCLAMATION PROCLAIMING FEBRUARY 2005 AS "BLACK HISTORY MONTH"

Mayor Worley read the proclamation proclaiming February 2005 as "Black History Month" in the City of Asheville.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2005

B. RESOLUTION NO. 05-22 - RESOLUTION AUTHORIZING THE EXCHANGE OF AN EASEMENT ON REAL PROPERTY LOCATED ON BLACK OAK DRIVE FOR AN EASEMENT ON REAL PROPERTY LOCATED ON PINECROFT ROAD

Summary: The consideration of a resolution authorizing the Mayor to convey an easement on real property located on Black Oak Drive in exchange for an easement on real property located on Pinecroft Road.

The City and Mr. & Mrs. Fulton H. Beville have negotiated an exchange of a driveway easement over the Beaverdam Reservoir property (PIN No. 9751.17-10-7654) on Black Oak Drive for a slope/fill easement across real property located on Pinecroft Road (PIN No. 9751.17-10-9594).

At the time that the Beaverdam Reservoir was built a substantial amount of fill was placed on the Beville's property thereby allowing a cost savings to the City and providing lateral

support to the reservoir site maximizing the use of the property. The Beville's were not compensated for the use of their property, but instead understood that the use of the reservoir access road would be available to them to access a portion of their property not easily accessible from Pinecroft Road because of topography.

A formal arrangement has not been in place heretofore, but it is advisable to formalize the arrangement through an exchange of easements which will satisfy the City's need to keep the fill in place as well as the Beville's need to access their property.

The driveway easement would be 12' wide and about 350' long comprising an area of 4,200 square feet. Based on the tax value of the land per square foot (.92), at a 50% easement value, the driveway easement would have a value of $1,932. Water Resources staff estimates that the benefit to the City of having the fill in place would equal or exceed the value of the driveway easement.

The use of the driveway by the Bevilles will not impair the function nor security of the reservoir, but could improve security to the extent that the Bevilles would be able to observe the reservoir site.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will establish record title in the City of the right to have the fill area remain on the Beville's property.
- It will establish a clear description of the size and location of the driveway easement.
- It will formalize the arrangement thereby reducing the likelihood of future misunderstandings.

The negative aspects are:

- The driveway easement will limit the use of the reservoir property within the easement area.

On January 25, 2005, City Council approved Resolution No. 05-12 directing the City Clerk to publish a notice regarding the proposed exchange. Pursuant to N.C.G.S. sec. 160A-271 the notice was published in the Asheville Citizen-Times on Friday, January 28, 2005.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. sec. 160A-271.

Planning & Development staff and Water Resources staff recommend adoption of the resolution.

RESOLUTION BOOK NO. 29 – PAGE 1

C. RESOLUTION NO. 05-23 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CRAFTSMAN CIRCLE" LOCATED OFF ROLLING TERRACE

Summary: The consideration of a resolution accepting the new proposed street name "Craftsman Circle."

Chunns View LLC, owner of lots on Craftsman Circle, off of Rolling Terrace, has petitioned the City of Asheville to accept the street name " Craftsman Circle." The new street will begin at Rolling Terrace in a complete circle and end at Rolling Terrace.

City staff recommends adoption of the resolution accepting the new proposed street name "Craftsman Circle."

RESOLUTION BOOK NO. 29 – PAGE 2

D. RESOLUTION NO. 05-24 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "VILLAS COURT" OFF CEDAR HILL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Villas Court."

Villas at Cedar Hill, LLC, owner of lots on Villas Court off of Cedar Hill Road and Pisgah View Road, has petitioned the City of Asheville to accept the street name " Villas Court." The new street will begin at Cedar Hill Road and end at Pisgah View Road.

City staff recommends adoption of the resolution accepting the new proposed street name "Villas Court."

RESOLUTION BOOK NO. 29 – PAGE 3

E. RESOLUTION NO. 05-25 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAMES OF "VERONA DRIVE," "SPRINGMILL DRIVE," AND "TIVOLI DRIVE" LOCATED IN WOODLAND DRIVE SUBDIVISION

Summary: The consideration of a resolution accepting the new proposed street names "Verona Drive," "Springmill Drive," and "Tivoli Drive."

Michael Pierce of MK Properties of Fairview, Inc., owner of lots in Woodland Drive Subdivision, has petitioned the City of Asheville to accept the street names of "Verona Drive," "Springmill Drive," and "Tivoli Drive." The new streets will begin near the intersection of Woodland Drive and Spring Drive and end near the intersection of Woodland Drive and Shadowlawn Drive.

City staff recommends adoption of the resolution accepting the new proposed street names "Verona Drive," "Springmill Drive," and "Tivoli Drive."

RESOLUTION BOOK NO. 29 – PAGE 4

F. RESOLUTION NO. 05-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE PURCHASE OF SPEED ENFORCEMENT EQUIPMENT AND TRAVEL/TRAINING MONEY FOR THE ASHEVILLE POLICE DEPARTMENT'S REGIONAL COUNTY COORDINATOR

Summary: The consideration of the resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program (GHSP) for the purchase of speed enforcement equipment and travel/training money for the Asheville Police Department's Regional County Coordinator, and the associated budget amendment, in the amount of $10,000.

The City of Asheville has been awarded a grant from the GHSP in the amount of $10,000 with no local match required. The purpose of the grant program is to fund highway safety projects, allowed under the grant program, designed to reduce traffic speed, traffic accidents and

improve highway safety. We have chosen to purchase five Custom Pro 1000 RADAR Units at $1,000 each with a total of $5,100. The other grant monies would be spent on in-state and out-of-state travel expenses, totaling $4,900. The desired equipment, to be installed in Patrol Division vehicles, is for the purpose of speed reduction through rigorous enforcement, thus reducing minor and major accident statistics. The travel monies will allow out department's Regional Liaison Officer to keep in contact with the other eight

Pros:

- Equipment will improve the quality of evidence obtained by police officers during their daily interaction with the public particularly in the area of traffic enforcement.
- Will contribute to the reduction of crime by improving the effectiveness of traffic enforcement which is related to the discovery and solvability of a variety of other criminal activities.
- Equipment will increase public safety by ensuring that officers are conducting themselves in the proper manner and within the legal requirements of state law.
- Officer safety will be increased by documenting encounters between the police and contacts in the public.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment including servicing and replacement when needed.

This action complies with City Council's Strategic Operating Plan: Goal #2 A multi-modal and congestion management transportation program - In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective B. Mitigate overall impacts of congestion through effective local partnerships.

This is accomplished by identifying areas of the City that are particularly prone to traffic accidents due to speed and other aggressive driving tactics. Through the efforts of the Asheville Police Department and the use of the equipment purchased through the GHSP Grant, this will alleviate minor traffic accidents and reduce traffic congestion.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program (GHSP) for the purchase of speed enforcement equipment and travel/training money for the Asheville Police Department's Regional County Coordinator; and (2) the associated budget amendment, in the amount of $10,000.

RESOLUTION BOOK NO. 29 – PAGE 5

G. ORDINANCE NO. 3212 - BUDGET AMENDMENT TO ALLOCATE FUNDS FROM N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM GRANT

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 22 – PAGE 1

H. ORDINANCE NO. 3213 - BUDGET AMENDMENT FOR ASTON PARK TENNIS CENTER TRANSFER

Summary: The consideration of a budget amendment, in the amount of $63,548 for expenditures and $25,000 for anticipated revenue, to proceed with the transfer of the Aston Park Tennis Center to the City of Asheville.

On November 16, 2004, Buncombe County Commissioners voted to authorize the County Manager to proceed with the transfer of the Aston Park Tennis Center to the City of Asheville. On January 25, 2005, City Council adopted Resolution No. 05-20 authorizing acceptance of the transfer effective February 1, 2005. The Parks and Recreation Department is recommending a budget amendment, which represents an expenditure of $63,548, which will be offset by $25,000 anticipated in revenue (from membership fees, daily court fees and concessions) for the five-month period. The result is a cost of $38,548 to the City for this five-month operation.

The Parks and Recreation Department recommends City Council approve a budget amendment for $63,548 for expenditures and $25,000 for anticipated revenue

ORDINANCE BOOK NO. 22 – PAGE 3

I. **RESOLUTION NO. 05-27 - RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT TO THE METROPOLITAN SEWERAGE DISTRICT FOR A SEWER LINE REPLACEMENT ACROSS CITY-OWNED PROPERTY**

Summary: The consideration of a resolution granting a sewer line easement to MSD.

MSD is currently rehabilitating its sewer lines within the Smith Mill Creek corridor along Patton Avenue. This work consists of repairing broken lines and enlarging existing lines. The line crosses the City's property occupied by the Army Reserve Training Center on Louisiana Avenue, on the north end of the property, which is also the south side of the creek.

As proposed, part of the line will be relocated across the creek so that in the end, less of it will be on the City's property than currently. It will be enlarged from its current 16 inch diameter to a 20 inch size. This is an old line, and although it will essentially be repaired/enlarged in place, there is currently no easement for it, probably because it was installed back when the City operated the system, and this is City property.

The requested easement consists of a permanent easement approximately 20-25 feet in width, and a temporary construction easement that is a little wider, at approximately 35-40 feet in width.

The easement will not interfere with the current use of the property by the Army Reserve. The Reserve has been contacted, and has consented to and signed the easement.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 6

J. **RESOLUTION NO. 05-28 - RESOLUTION APPOINTING JAMES L. WESTBROOK JR. AS INTERIM CITY MANAGER EFFECTIVE FEBRUARY 28, 2005**

Summary: The consideration of a resolution appointing retiring City Manager Jim Westbrook as Interim City Manager, and a resolution authorizing the City to enter into a contract with Mr. Westbrook for interim management services.

Current City Manager Jim Westbrook is retiring effective March 1, 2005. Council has not selected his replacement, but is in the process of doing so. However, there will be a continuity gap between Mr. Westbrook's retirement date, and the date when the new manager starts.

North Carolina law, N.C.G.S. 160A-150, provides that when the manager's position is vacant, "the council shall designate a qualified person" to perform the duties of the manager until the position is filled. At Council's request, Mr. Westbrook has consented to continue as manager in an interim capacity until the new manager is on the job. He has agreed to do this at his current compensation (salary plus certain expenses).

One resolution appoints Mr. Westbrook as Interim City Manager, effective February 28, 2005, at 5:00 p.m., until the new city manager is on the job.

Another resolution authorizes the Mayor to sign a contract with Mr. Westbrook setting out the terms and conditions of his employment as Interim City Manager.

The appointment and the contract are both terminable at the will of Council, as the law requires; however, the contract contains some provisions for notice of any premature termination. The contract also contemplates that Mr. Westbrook may be retained in a consulting capacity even after the new manager is on the job, but any such service would be pursuant to a separate agreement.

If Council approves of the appointment of Mr. Westbrook as interim city manager, adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 29 – PAGE 7

K. RESOLUTION NO. 05-29 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH JAMES L. WESTBROOK JR. TO SERVE AS INTERIM CITY MANAGER

Summary: See Consent Agenda Item "J" above.

RESOLUTION BOOK NO. 29- PAGE 8

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 8.8 ACRES LOCATED ON BRITT DRIVE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT

Mayor Worley opened the public hearing at 5:12 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to rezone 8.8 acres located on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District. This public hearing was advertised on January 28 and February 4, 2005.

The Asheville City Development Plan 2025, the Wilma Dykeman Riverway Master Plan and the Economic Development Strategic Plan all call for redevelopment efforts along Asheville's riverfront areas that will maximize its full potential as a quality of life amenity as well as the assignment of appropriate zoning along portions of the riverfront that will permit higher density development and mixed use opportunities.

The future Land Use and Transportation plan of the *Asheville 2025 Plan* identifies redevelopment of the riverway in the core areas as an Urban/Neighborhood Corridor (connects neighborhoods with each other, with employment centers, with institutional uses and with major thoroughfares) and the remainder of the parkway being designed as a Gateway Boulevard (adjacent development in the form of residential subdivisions, apartment complexes, office parks or concentrated commercial development).

The subject site was denied approval of a Level III, Conditional Use project for an affordable housing development in March 2004.

The subject site is located off of Swannanoa River Road and Britt Drive and consists of approximately 8.8 acres. The lot is currently vacant and split zoned RM-16 and RS-4. The zoning line between the two districts runs directly behind the 14-foot strip of land that abuts White Pine Drive and the remainder of the site.

Surrounding land uses and zoning include: multi-family (2 units) uses to the north and single-family residential uses to the east zoned RS-4; commercial uses to the south zoned River; and a mix of residential and commercial uses zoned RS-8, RM-16 and River to the west of the site.

The subject site has road frontage along Swannanoa River Road and also Britt Drive. The property may also have the ability to access White Pine Drive via the narrow strip of land along the east side of the property. The topography on the lot is fairly steep along the north and east sides of the property. The land begins to gradually level out throughout the center of the property and along the west and south sides of the site. Abutting residential uses along the north and east sides of the property, for the most part, sit at a much higher elevation than the subject site. Abutting commercial uses to the west and south of the property sit at or just slightly below the same elevation as the more level areas of the site.

The applicant is requesting a rezoning of the lot in order to maximize its development potential in allowing the wider range of uses that would be permitted in the River District.

- The purpose, intent and goals of the River District is to promote economic revitalization throughout the river valleys by allowing a mixture of river oriented land uses (residential, recreational, office/institutional, commercial, manufacturing, industrial, open space and agricultural) to be developed responsibly by ensuring that new development is compatible with and enhances the riverway's unique river resources.

- The purpose and intent of the RM-16 district is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses to be located near employment centers, shopping facilities, and other urban infrastructure capable of handling the demand generated by high density residential development.

A recent effort to develop the property with apartments was denied by City Council due to public safety concerns for residents due to the location of a private dam in the area. Allowing a wider range of uses, especially nonresidential uses, may serve to address this concern, although it should be noted that the River District does allow residential development as well as nonresidential development.

On January 5, 2005, the Planning and Zoning Commission made a positive recommendation (6-1) to approve the rezoning of the property, as requested.

Pro's

- Rezoning the lot to River District will allow the applicant an opportunity to select from a range of uses when developing the site that may be more compatible with the existing development along Swannanoa River Road, and also with the redevelopment efforts along the riverway.
- The existing topography on the site provides, somewhat of, a natural separation from abutting residential uses on the north and east sides of the property, making the land more suitable for a wider range of uses.
- Any development of the site will require review by the River District Design Committee.
- Any development of the site must comply with all City regulations including UDO requirements, NC State Building Code, and FEMA requirements.

Con's

- Portions of the site are within a flood hazard area. However, any development of the site would be required to comply with all FEMA regulations prior to the issuance of any building permits.
- The potential for an access connection from the lot to White Pine Drive may be of concern to abutting residential property owners.

The proposed rezoning to River District would be consistent with the zoning of abutting properties to the south of the site along Swannanoa River Road, and also with the established zoning along the north and south sides of the riverway. Staff feels that rezoning the lot to River District will have little effect on the residential uses to the north and east of the site due to the existing topography and differences in elevation. Any development of the site would have to comply with the development and design standards required in the Unified Development Ordinance, including the landscaping and buffering of incompatible uses.

Based on the above, staff recommends approval of the rezoning to River District as requested by the applicant.

Mr. Thomas Wolfe, agent for the owner, Batt and Associates, Inc., said that the current density is RM-16 which would provide for approximately 150 units and the conditional use permit brought before Council last year was for 100 units, which permit was denied by City Council. From that denial, he understands that Council feels this property is not conducive to high density residential development (which is what it is currently zoned). Therefore, the owner desires to develop it sensitively and responsibly, but they needed some parameters they can work within.

Councilman Newman asked what might be developed on the property if it were rezoned to River District. Mr. Wolfe said that there have been several options, however, after spending approximately $40,000 last year on the plan denied by Council, they are hesitant to move forward with any plans.

City Attorney Oast reminded Council that if the property is rezoned, it is available for any use in that zoning classification. Council should not rely on any representation about specific uses on the property.

Mr. Mike Wiseman, resident at 7 East Shore Drive in Kenilworth Forest, said that his neighborhood is not trying to obstruct the process of development, however, they have a specific concern about the rezoning in light of the potential for residential development. They would like to help Mr. Wolfe develop the land responsibly. He briefly reflected on City Council's wisdom last year to deny the multi-unit project by showing various photographs of the area during recent

floodings. In fact, the Swannanoa River has flooded 5 times in the last 9 years. Another concern is that any residential development that has fewer than 20 units is only subject to River District Design Committee review with no City Council approval and no public hearing. He urged City Council to put the citizens of Asheville's safety first and don't allow for residential development on that property.

Ms. Addison Martin, secretary of the Kenilworth Forest Community Club, said they are concerned about the habitual flooding of the Swannanoa River and the safety of any potential resident. She also showed photographs of recent floodings, in particular of how the River directly impacts the access to Mr. Wolfe's property and why they request that no residential buildings be allowed on that property.

Mr. William Mansfield, resident at 215 White Pine Drive, also showed Council photographs of recent floodings in the area proposed for rezoning. He stressed out how difficult it would be for any emergency vehicles to reach the residential property during flooding. They are not opposed to development of the property, however, they do not feel any form of residential, single-family or multi-family homes, should be allowed on that property. This is a plea to prevent potential loss of life and/or homes when flooding happens again with no access for emergency response. He suggested the property be developed with light commercial or light industrial. If the property is rezoned to River District, he requested the owner put in writing that they will not develop any residential dwellings on the property. Or, he requested City Council to remand this matter back to the Planning & Zoning Commission for their review of light industrial or commercial use.

City Attorney Oast said that City Council cannot condition its vote on the application for rezoning to do or not to do any particular kind of development.

Ms. Claire Payne, resident at 291 White Pine Drive, said that an historian has said that this property was used as a dumping ground for asbestos from the construction materials removed from the Kenilworth Inn. She said that during the previous hearing last year the City Engineer said that the City would not put a road within the 100-year floodplain. She questioned if the City's position has changed. During the hearing last year Mr. Wolfe said that he did not plan to develop or use that narrow strip of land that connects Mr. Wolfe's property to White Pine Drive. Mr. Wolfe had offered to deed the land to adjacent neighbors on White Pine Drive. She asked that condition be offered again to the Kenilworth Forest Community Club. If Mr. Wolfe rejects that request, then she requested the City make sure that strip of land remains zoned RS-4.

City Attorney Oast said that it would be possible for Council to zone this property to some classification other than River District, provided it was less intense zoning than the River District, which may or may not prohibit residential development. As far as the access onto White Pine Drive, there is a provision in our Zoning Code that would not allow the strip that connects to White Pine Drive to be used to access the property – it would be allowing access to a nonresidential use through a residential area and our Zoning Code prohibits that.

Mr. Rick Holm, resident at 414 Beaucatcher Road, urged City Council to not zone the property when they can't put restrictions on the developer. He used his neighborhood as an example, citing the location of the new Cheeseburger from Paradise restaurant is where the originally proposed development was a medical/dental cluster of buildings.

Ms. Kathy Sheldon, resident at 159 White Pine Drive, spoke against any residential development on the property due to the anticipated flooding in the area.

Mr. Harold Payne, resident at 299 White Pine Drive, said that his property abuts the narrow strip of land from White Pine Drive to the subject property. Regardless of what is

developed on that property, he asked Council to do what they can to keep that strip of land from becoming a thoroughfare.

At 5:40 p.m., Mayor Worley closed the public hearing.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said if Council makes no changes to the zoning, the owner is limited to residential, with very limited institutional, public and commercial uses. With the current zoning, she said that he could build 20 or fewer units with only staff level review. Twenty to fifty units would go before the Technical Review Committee for review. Under the current zoning, the owner can build up to 150 units, but that would trigger the conditional use permit process. Again, she said that even if the property were rezoned to River District the same density (16 units per acre) is permitted in the River District.

In response to Vice-Mayor Mumpower, Planning & Development Director Scott Shuford said that during the first flood, portions of Swannanoa River Road were closed for approximately 72 hours due to debris, mud and roadway damage. During the second flood, Swannanoa River Road was closed for approximately 24-28 hours.

Vice-Mayor Mumpower questioned safety concerns. Ms. Hamel said that at the last hearing some access concerns with the 100-year floodway were raised. After review with our City Engineer Cathy Ball, she believed that the access issue was in regard to the application being reviewed by the U.S. Dept. of Housing and Urban Development (HUD) for affordable housing. HUD was who actually limited the access onto Swannanoa River Road. Ms. Ball clarified today that the Flood Code requires that they would have to provide a dry access route only if it is not adjacent to a public road. Because Swannanoa River Road is a public road, they would still allow access, regardless of whether it was below the flood elevation or not.

Mr. Shuford said that the safety issue is hard to determine until we have some certainty what is being proposed for the property. Residential is a possibility under the River District and almost a certainty under the current RM-16 zoning. About the only zoning district that would not have a significant residential component might be industrial, which does allow accessory units, like a caretaker's residence. He didn't know how acceptable that district would be to the applicant, however.

Mr. Shuford said there is an awful lot of property in the River District that is either in the floodway or floodplain. It is possible to develop that property and to develop it safely. This particular property is not going to have an access connection to White Pine Drive, simply because we have a provision in our Code that does not allow nonresidential uses to connect through to a residential area. In addition, that strip of land won't be a primary access to White Pine Drive because of the width of the access area. It's possible that it could be some sort of an emergency access to the site, but we would have to review that and we don't have any plans to accommodate that. This is an area that will be basically isolated in a flood event and the developer will have to understand that as well as the people involved. If it is used for residential, then some provisions will need to be made to get the people out in the event of a flood which would threaten their access to their homes.

When Vice-Mayor Mumpower asked if the Fire Department was concerned at the last hearing about the number of units, Ms. Hamel said that they were okay with the number of units proposed. She didn't know if the Fire Department's opinion has changed since the floods.

Vice-Mayor Mumpower asked if, as a matter of policy, if it is not Planning's recommendation to Council that we take land off the table because access might be impaired by floodplains. Mr. Shuford said that was correct and that we would have to take a lot of property off the table if that would be the case, including significant portions of Biltmore Village.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford explained what happened at the Cheeseburger in Paradise location. He didn't think there was any zoning change by City Council on that site, but would have to check the file to verify that.

Councilman Dunn recalled that the dam had not had a major inspection in a long time and he recalled the City Engineer saying that if the dam broke it would be catastrophic. He might be able to support a commercial zoning district, but would not support this zoning change in that we will risk human life. Mr. Shuford responded that he didn't know what the inspection process is for that, but it is an annual inspection process for these types of privately owned dams. He said that Kenilworth Lake is not a public lake and the dam is not a public dam. It is privately owned and there are inspections that are required by the State to maintain it. The only sure way to ensure safety downstream of the dam would be to remove the dam and drain the lake. There is no guarantee that even if that were a new dam that it would not fail at some point in time.

Councilman Newman moved to deny rezoning 8.8 acres on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District. This motion was seconded by Councilman Dunn.

Councilman Newman said that he doesn't support rezoning of the property at this time. The dam is not the reason for his lack of support because at the hearing last year he was persuaded by the developer's attorney who made the case that if the dam is genuinely considered a safety risk, the neighborhood has a responsibility to dismantle the dam - there are already people who work below the dam. There are dams all across Western North Carolina and people live and work below dams and it's the State's responsibility to make sure that dam is safe. He does not support this rezoning because it is a very difficult site to develop. The topography is very difficult and on the previous project he voted against it citing more issues on the scale and character criteria of the conditional use permit. The fact that Council did not support the previous development proposal, which was consistent with the RM-16 zoning, does not logically follow to him that Council would then turn around and give the property owner greater flexibility. He doesn't want to make this property impossible for the developer to develop, but at the same time he was not sure he wants to give greater flexibility in terms of what can be allowed as a use by right on that site. The developer can already develop up to 50 units with the current zoning. A smaller development with a smaller footprint may make sense on that site. But if it's going to be a larger, more intense development, he feels it would have to be tied up into some careful conditional use aspects that Council would need to consider. He also noted that in staff's analysis of compatibility, they show the only high degree of compatible is on the south side which is up against commercial and industrial uses. He would be open to the idea that there may be some nonresidential uses that might be more compatible.

In response to Vice-Mayor Mumpower, Ms. Hamel said that the developer did consult with City staff prior to bringing forth the application to River District. Ms. Hamel said that given what happened with the project last year when Council didn't think the site was safe for residential, staff looked at the existing zoning pattern along Swannanoa River Road (and we did take topography into account - the residential area sits 20-30 feet above), River District was what was most compatible with the established zoning along the riverway.

When Councilman Newman asked if there has been any progress made about using Britt Drive as a key access, City Attorney Oast said the opponents to the project, through their attorney, raised issues regarding the availability of Britt Drive as an access point. Those issues have not been resolved but they would have to be resolved before any site specific development plan could be approved that used Britt Drive.

Mr. Shuford said that Council may only be comfortable with a zoning change that was associated with a particular development plan. However, because of the expenditure made by the applicant last year may make them reluctant to pursue that route.

Mayor Worley felt it was hypocritical to say, last year, that we are not going to approve any residential development on this property, and then turn around and say we are not going to change the zoning to anything other than residential. The other part is that even though Council may feel more comfortable with a development specific project though a conditional use process, the developer spent $40,000 last year and they may be reluctant to spend a lot of money to go through another conditional use process, with the possibility of losing that money as well.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said that there are portions of the property along Ross Creek that are within the 100-year floodplain. It's more likely that it would include Swannanoa River Road due to its close proximity to the river. The development proposed last year did not have any buildings in the floodplain - it was the access.

Vice-Mayor Mumpower said there is a difference between convenience and safety concerns. We just can't reach down and take property off the map because there are convenience concerns. He thinks Council may be micromanaging because we're saying our expertise exceeds that of the authorities in this matter, which would be the Fire Department and the people who evaluate the dam. If these people have an unsafe dam, they are responsible for it – not the people below the dam. The safety concerns are concerns, but that should paralyze this person's ability to do something with their property, especially in a City that needs property to develop. It is private property and he has some difficulty with us artificially impairing people's ability to use their property. He thinks controlled growth makes sense, but we have to do it thoughtfully and carefully. He feels the motion on the floor forces residential use, which doesn't make any sense. To allow the property owner a little more limited flexibility for them to make a meaningful use of this property makes more sense.

Councilman Davis recalled that last year the project was denied because the density was not compatible, among other issues. He would like to see that property be developed and would like to see some good uses in there – maybe some different uses than allowed in the River District. Without being able to add conditions, he is not comfortable with rezoning the area to River District given the types of uses allowed in that District and the density it can be developed. He would not be supportive of rezoning this property to River District.

Mr. Wolfe asked City Council to postpone action for 2-4 weeks in order to give him an opportunity to consult with Planning staff about a different district which may more be acceptable to Council, given Council's discussion.

Councilman Newman didn't have any problem with continuing to explore ideas. He wants to be supportive of finding a way to improve the property consistent with the concerns from Council.

Mr. Wolfe said that the leaning of the property owner is certainly towards commercial development. He asked Council to continue this matter in order for him to go back to his clients to see if they can narrow the scope of their development possibilities. He will then consult with Planning staff and see if they can amend the application.

Councilman Dunn wanted the owner to be able to use his property, however, City Council has already conducted two public hearings on this property and personally he preferred to make a decision now.

Upon inquiry of Councilman Newman, City Attorney Oast said that the only thing City Council could do, other than vote the River District zoning request up or down, is to rezone this to a less intensive zoning classification or to rezone part of the property to River District. He senses there is a possibility that a site specific development plan may be coming to Council, and he doesn't know if Council can change the procedure in mid-stream. If this proposal is denied, there is a one-year delay in coming back with the same rezoning proposal, but there would be nothing to prevent him from coming back within a year with a different rezoning proposal.

Vice-Mayor Mumpower made a substitute motion to continue this matter until March 8, 2005. This motion was seconded by Councilwoman Jones.

Mr. Shuford said that it sounds like Council will be reluctant to go forward with something other than a specific plan for the property, and that would be a conditional use zoning, which will require a re-start on the entire process. One alternative for consideration is to have Council refer this back to the Planning & Zoning Commission – which basically starts the process again. He didn't think they could find a satisfactory single zoning district that is going to address the issues Council has raised. It will have to be a site plan issue. If referred back to the Planning & Zoning Commission, they may take it up at their April meeting and then back to Council sometime after that.

Mr. Wolfe said that he is asking for the continuance to give him an opportunity to meet with his client to see if another zoning district might be acceptable. He said that there are certain requirements in the UDO for a conditional use permit application and he doesn't believe his client is willing to go through those motions again with full blown drawings.

Mr. Shuford said that they can explore some opportunities to split zone the property that might address some of the issues raised. However, if another zoning district is recommended, we are opening up that wider range of uses.

At this time, Councilwoman Jones withdrew her second on the substitute motion to continue because she said she would be interested in a site plan.

Vice-Mayor Mumpower's substitute motion to continue this matter until March 8, 2005, failed, due to a lack of a second.

The original motion made by Councilman Newman and seconded by Councilman Dunn to deny rezoning 8.8 acres on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District carried on a 4-2 vote, with Mayor Worley and Vice-Mayor Mumpower voting "no."

Councilman Newman said that he hopes that the property owner does not interpret Council's vote as saying there is nothing they can do to get Council's approval. In fact, the instincts where they wanted to go with this in terms of giving some commercial possibilities is good, and that is probably some of the kinds of things that could work well there. Council does have to consider the most intense possible use that can be allowed under that zoning district, and there were a few things in the River District classification that if fully built out would be a little too much for that site.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-30 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Mumpower said that Denise Goodson has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2005.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for Jean Ann Taylor, Brian Turner, Linda Fowler and W.E. Lack.

After Council members spoke in support of the candidates interviewed and the difficult decision to appoint one member, Jean Ann Taylor received no votes, Brian Turner received 2 votes, Linda Fowler received 2 votes, and W.E. Lack received 2 votes. Because of the three-way tie, it was necessary to vote again. Brian Turner received 3 votes, Linda Fowler received 2 votes, and W.E. Lack received 1 vote. Therefore, Brian Turner was appointed to fill the unexpired term of Ms. Goodson, term to expire June 30, 2005, and then to serve a full three year term, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 9

B. RESOLUTION NO. 05-31 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Mumpower said that the term of Brady Blackburn, as a member on the Metropolitan Sewerage District Board (MSD), expired on January 19, 2005.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange an interview with W. Louis Bissette Jr.

City Council spoke about the outstanding work Mr. Blackburn contributed to the MSD Board, however, he has served two full consecutive terms. Therefore, City Council unanimously appointed W. Louis Bissette Jr., as a member of the Metropolitan Sewerage District Board of Directors to serve a three year term, term to expire January 19, 2008, or until his successor has been appointed.

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C. RESOLUTION NO. 05-32 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Mumpower said that the terms of Stacy Anderson, Ruth Chaet and W.F. Michie Jr., as members on the Transit Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. W.F. Michie Jr., to serve a three year term, term to expire December 31, 2007, or until his successor has been appointed.

Also at the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for J. Neal Jackson, Robert W. Mair, Yuri Koslen, Thomas Hilgendorf and Kim A. MacQueen. Mr. Hilgendorf withdrew his name from consideration.

After Council members spoke in support of the candidates interviewed, J. Neal Jackson received 6 votes, Robert W. Mair received 4 votes, Yuri Koslen received no votes, and Kim A. MacQueen received 2 votes. Therefore, J. Neal Jackson and Robert W. Mair were appointed to each serve a three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

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D. RESOLUTION NO. 05-33 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Mumpower said that the terms of Margaret Tinkler and Ginger Mahler, as members on the Asheville Tree Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for Robert W. Oast, Jay Marino, Richard Koerber and Parker Andes.

After Council members spoke in support of the candidates interviewed, Robert W. Oast received 4 votes, Jay Marino received 2 votes, Richard Koerber received no votes, and Parker Andes received 6 votes. Therefore, Robert W. Oast and Parker Andes, were appointed to each serve a three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

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VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of January 21-February 3, 2005: Miriam Hoch (Streets), M'Press Cards (Streets), Patti Cassida (Streets), Kimberly J. McKinney (Sanitation), Paul McIntosh (Parks & Recreation), Lizzetta Slack (Streets), BellSouth (Water) and Gene Lummus (Police.) These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar voiced concern over the College Street roadway improvements and how the City spends more money in downtown than in other areas of the City.

Mr. Walter Plaue voiced concern over the College Street roadway improvements and urged City Council to contact our legislators to help fund flood recovery efforts in Western North Carolina.

Mr. Gene Hamilton, founder of Asheville Citizens for Quality Government, urged City Council to perform an audit, as specified under the International Standards Organization 9000 Series, to determine the degree of quality achievement in all City departments. He felt the audit would be beneficial in the new City Manager search.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:44 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 15, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Bellamy

ADDITION TO AGENDA

At the request of Councilman Newman, an update regarding Campus Crest was added to the end of the worksession agenda. Staff was instructed to invite the developer and stakeholders to this meeting.

CONSENT AGENDA:

Parks & Recreation Co-Sponsored Events

Summary: The consideration of approving a list of co-sponsored events for 2005.

Several years ago, the Parks and Recreation Department developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 37 events were approved last year resulting in a cost of approximately $75,000. This year the number has been reduced to 31 and the cost to the city is approximately $65,000 in in-kind support.

Pros:
- Generates in excess of $10 million dollars for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities
- Expands and enhances special events and festivals to the City

Cons:
- The city's financial contribution is $65,000
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Department requests City Council's approval of this list that will provide authorization for in-kind support by the City.

City staff recommends City Council approval of the list for co-sponsored events in 2005.

Provisions for Malt Beverages and/or Unfortified Wine at Various Events

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Earth Day 2005, scheduled for April 16, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.

- The Mountain Sports Festival, scheduled for April 29-May 1, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.

- The WOXL 96.5 Birthday Bash, scheduled for May 7 in City-County Plaza, will celebrate the three-year birthday of the radio station with food vendors and bands.

- The Larkin event is a wedding scheduled for May 15 on Wall St.

- The A.I.R. Taste of Asheville, scheduled May 21-22, is an event to promote the many independently-owned restaurants in the Asheville area.

- The "Atlantis Party", as part of the Green Ball, produced by the Asheville Area Arts Council is annual event that serves as a fundraiser. This event is scheduled for June 25.

- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.

- For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 29-30.

- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 26-28.

- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 23-25.

- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation to bring both citizens and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.*

- The Asheville Grizzlies are a semi-professional sports team that seek to serve alcohol at their home games throughout the summer at Memorial Stadium.

Pros:
- Allows fundraising opportunities for charities
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Cons: None noted.

City staff recommends City Council approve the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

Street Acceptance of Distant View Drive

Summary: The consideration of a resolution to accept Distant View Drive in South Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Distant View Drive is a developer-constructed street that has an average paved width of 20 feet and a length of 0.48 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Distant View Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- The City will receive Powell Bill funds from the N.C. Dept. of Transportation to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Distant View Drive in South Asheville as a City maintained street.

Minority Business Commission Appointments

Summary: The consideration of a resolution confirming the appointment of members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Karen Ballard, owner of Productive Consulting Resources, has been named by the Minority Business Commission to replace Ms. Claudia Thomas, owner of CAT Network Systems, whose term expired August 2004, as a minority business owner representative. Ms. Ballard's term will run through August 2006.

Ms. Althea Gonzalez has been named by Asheville-Buncombe Community Relations Council (ABCRC) to represent them on the Minority Business Commission. Ms. Gonzalez has been nominated to replace Clara Jeter who resigned. Ms. Gonzalez's term will run through August 2006.

Ms. Althea Goode has been named by Eagle/Market Streets Development Corporation (EMSDC) to represent them on the Minority Business Commission. Ms. Goode has been nominated to replace Thomas Kling who is deceased. Ms. Goode's term will run through August 2007.

Mr. David Price has been named by the Associated General Contractors of America to represent them on the Minority Business Commission. Mr. Price has been nominated to replace

Wendell Howard whose term expired August 2004. Mr. Price's term will run through August 2007.

The following MB Commission members whose term expired August 2004 have requested reappointment:

Ms. Connie Mitchell	American Institute of Architects **(August 2007)**
Ms. Carol Hensley	Asheville Area Chamber of Commerce **(August 2007)**
Mr. Marvin Vierra	Asheville Business Development Center **(August 2006)**
Ms. Latrella Higgins	Council of Independent Business Owners **(August 2007)**
Ms. Valerie Dennis	Minority Business Owner (Anaya Gallery) - **(August 2007)**
Ms. Carmella Watkins	NAACP **(August 2006)**
Ms. Lisa Siechter	National Association of Women in Construction **(August 2007)**

City staff recommends City Council adopt a resolution confirming the appointments to the Minority Business Commission.

Housing Trust Fund Loans

Summary: The consideration of a resolution allocating $370,000 in Housing Trust Fund loans for affordable housing development.

This is the fifth annual allocation of funds from the City's Housing Trust Fund (HTF). The 2005 budget included an appropriation of $600,000 for the HTF and $340,000 has accrued in loan repayments, making a total of $940,000 available for lending. The application process was opened on November 1, 2004, and four applications were received by the January 7th deadline, three of which were viable applications.

The applications were evaluated by a panel of outside experts and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding the following three projects:

Neighborhood Housing Services – 12 units, scattered sites	$240,000 (2 years at 2%)
Neighborhood Housing Services – 18 units, Brotherton Ave.	$ 50,000 (2 years at 2%)
Paul Saylor – 2 units, 7 Oakview Road	$ 80,000 (3 years at 2%)
Total (32 units)	$370,000

Attachments provide a summary of all applications submitted.

It is recommended that the unallocated funds in the amount of $570,000 be made available on a first come first served basis to qualified projects until exhausted, subject to all HTF criteria, staff review, and Housing and Community Development Committee recommendation.

Advantages:

- Assists the development of 32 units of affordable housing
- 90% of units are for homeownership (last year's projects were 100% rental)
- Remaining funds will be available to developers who were not ready to apply during the short initial application period.

Disadvantages: None

Staff recommends adoption of the Housing Trust Fund loans listed above and the first come first served availability of the remaining unallocated HTF funds.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

City Attorney advised Council that he will be seeking Council's authorization for an encroachment agreement with Progress Energy regarding re-routing some power lines for the new jail. He said that he will place that item on the next formal meeting Consent Agenda.

STOP THE SIGNS PRESENTATION

Mr. Ashton Walters, representing the Stop the Signs Committee, said that the Stop the Signs Committee is a group of citizens who have organized to promote (1) consistent sign code enforcement; safety; improved aesthetics; and equitable treatment of businesses. They have identified a significant problem with illegal, temporary signs and displays that negatively impact our community.

Mr. Walters said that in March 2004 they wrote to the City of Asheville about the proliferation of illegal signs along our roadways. Then, they began meeting with the Planning & Development staff and the City Attorney to jointly study the problem. Since then, they have watched the continued invasion of our public rights-of-way, roadways and utility poles by many hundreds of illegal signs. Major nuisances include "litter on a stick," vendor advertising, notices nailed to poles, temporary banners, and merchandise displays. City sign enforcement staff have called on merchants to stop, but many citizens and businesses simply choose to continue this illegal form of advertising, in disregard of City sign ordinances and regulations.

They have also met with the N.C. Dept. of Transportation (NC DOT), Progress Energy, Quality Forward and Buncombe County sign enforcement. They have the support of the Coalition of Asheville Neighborhoods (CAN. These groups have provided letters backing their efforts.

In coordination with City staff, they have continuously reported violations, asking that illegal signs be removed. However, sign enforcement staff simply cannot keep up given the limited hours they can spend on sign removal. On days staff are not free to be on the roads, new signs appear again. The current enforcement process is not working. There are approximately 20,000 illegal signs per year in the Asheville area.

Ms. Renate Rikkers said that illegal signs are one of the most visible affronts to City management. Their continuing proliferation presents an unresolved enforcement issue for the City. Asheville is a major tourist destination and a leader in attracting new residents. Civic pride should be a high priority for City management and would add to the positive efforts of Quality Forward, the "Keep North Carolina Green and Clean" program, and the N.C. roadside beautification program that we all appreciate.

Illegal sign proliferation constitutes a variety of safety hazards by (1) signs block visibility at intersections; (2) nails in utility poles are a hazard to linemen; and (3) signs distract drivers. Illegal signs reflect poorly on our community as (1) Asheville is known for its scenic beauty; (2) these signs make our city look cheap and trashy; and (3) improving our gateways is a major goal of City Council's Strategic Operating Plan. Also, illegal signs are unfair to law-abiding businesses because they must compete against this illegal form of cheap and abundant advertising.

Their concerns are: safety on our roadways and for utility linemen; using NC DOT and City rights-of-way for private advertising; not allowing illegal advertisers to take unfair advantage of complying businesses; protecting our neighborhood images and property values; presenting Asheville as a clean and attractive community to visitors and citizens alike; and reducing the environmental impact these signs have on roadways and landfills.

Enhanced enforcement requires (1) prioritizing resources to address the problem; (2) new regulations; and (3) public education.

The City staff currently devotes 15-20 hours per week to sign code enforcement. Enforcement efforts include mailings, site visits and citations. Current resources are inadequate to deal with out-of-town violators, new businesses and repeat violators. Current regulations are heavily constrained by due process issues, making timely enforcement difficult. City staff is developing regulations to expedite and provide more effective penalties for repeat violators. Stop the Signs is providing suggestions for improvement. City staff needs to take significant action, including mass mailings to businesses, site visits, letters and other measures. With Council's direction, staff will inform the public more aggressively through a media campaign.

Stop the Signs' goal is to eliminate all illegal signs. Legal temporary signs need to be more clearly defined and regulated.

The Stop the Signs Committee requests City Council (1) to be aware of the problem and support strong enforcement; (2) consider code amendments being prepared and submitted by City staff; (3) prioritize resources to address the problem; (4) support more aggressive efforts to inform public about sign code enforcement requirements, objectives and penalties for violations; and (5) explore new ways to approach the issue.

City Attorney Oast said that he is researching ways to make it less difficult for staff to remove signs. A lot of concern is from a safety standpoint in the rights-of-way and with the obstruction of vision. It may be a matter of making the enforcement less burdensome than it is.

Upon inquiry of Councilman Dunn regarding new businesses, Planning & Development Director Scott Shuford said that our Code already has an allowance for temporary signs in order for new businesses to get that initial publicity.

In response to Councilman Dunn about yard sale signs, lost dog signs, etc., Mr. Shuford said that we have a provision in our Code that allows a neighborhood identification sign. That would be the best place for neighborhoods to place those types of signs and to also keep the nice appearance of a community. He said that he will work to inform the public of this solution for these type signs.

Regarding election signs, there are also specific provisions in our Code that allow for them.

Vice-Mayor Mumpower commended the Stop the Signs Committee for their measured, helpful fashion in working with City staff to approach this problem. He wondered if a task force, made up of businesses and neighborhoods, could craft an ordinance and then the City strongly enforce that ordinance. He felt the businesses and neighborhoods might find creative ways to get the signs removed.

Mayor Worley saw less of a need for a task force and major re-writes of our existing ordinance. Our ordinance is being violated and enforcement is the key issue. The City Attorney has noted that he is working on amending our existing ordinance. We need to find an effective way to discourage the people who are putting the signs up and be effective with City resources.

City Manager Westbrook said that we have employees in the Planning & Development Department and the Public Works Department working on sign code enforcement.

Upon inquiry of Vice-Mayor Mumpower, Mr. Jerry Reece, Code Enforcement Officer, said that the City collected approximately $3,000 from sign code enforcement violations last year.

Mr. Shuford explained that when illegal signs go up, the City must notify the owner of the violation and then give them 30 days to cure the problem before a penalty can be assessed. What City Attorney Oast is researching is treating the illegal signs to be nuisances, which gives the City a different range of enforcement options – including a ticket for each sign. City Attorney Oast noted that the downside is that a nuisance violation would not apply in the extraterritorial jurisdiction.

When Mr Shuford noted that some businesses cited find it cheaper to pay our fines than pay for regular advertising, Councilman Newman said that he would support moving to a higher penalty to discourage that type of behavior.

Councilman Davis felt the majority of illegal signs are from commercial vendors. He felt we should be paying particular attention to the repeat offenders and those who are abusing the system.

All of Council agreed that illegal signs are a problem that continue to grow. It was the consensus of City Council to instruct City staff to include information about what constitutes illegal signs on our Government Channel; research whether the public is allowed to remove signs in the City's rights-of-ways or on utility poles; distribute information to sign shops, coffee shops, etc. about what is and what is not allowed; research amendments to our existing ordinance to make is less difficult for staff to remove signs; and research amendments to our existing ordinance for illegal signs being treated as nuisances.

On behalf of City Council, Mayor Worley thanked the Stop the Signs Committee for their support and hard work on this very important issue.

UPDATE TO ABC OPERATIONS

Mr. Curtis Canty, General Manager/Supervisor of the ABC Board, updated City Council on the operations of the ABC Board. He presented Council with a copy of the financial statements for the first six months of their 2004-2005 fiscal year for the period ending December 31, 2004. As the results indicate, the organization has responded very well to the challenges of new growth and new changes that have been implemented in the last six months.

Mr. Canty said that since joining the Asheville ABC Board in August, 2004, he has spent a great deal of time studying the organization, building relationships as he works with his managers and employees and consulting with the Board to bring about needed change. In addition, he has had the opportunity to speak with City Council to share the huge potential and some challenges that face this organization. Early on, he shared with his Board of Directors two key things that needed to be done to position this organization to move forward.

1) **Organize in a way** that better leverages the skills of our people and positions the organization to overcome obstacles that may hold us back from future growth. In early 2004 the consulting firm of Deloitte conducted a review of the Asheville ABC operations. Their review included a detailed analysis of the retail, mixed beverage and warehouse functions and included an extensive review of the administrative processes. He spent time working with the Deloitte consultants and the Board regarding that study. He also engaged many of the employees in group and one-on-one conversations to obtain feedback and share the potential and challenges that face the organization. To that end he has implemented several changes in our management team that will be key to helping us achieve the level of performance we desire.

2) **Utilize the technology** and other innovations that exist in our industry to make us more efficient. We have entered into new relationships with local providers of customer and

financial services technology to begin to maximize our efficiencies and leverage the talents of our employees to enhance the customer shopping experience. While we are just in the beginning stages of these changes early indications are we are moving in the right direction.

Also, we have addressed the financial and operational issues raised in the management letters from the 2003 and 2004 public audit by the firm of Crawley, Lee & Company P.A. We have also taken advantage of several opportunities to strengthen internal controls throughout the organization.

Financial highlights of our first six months are listed below:

- Sales for the six months ending December 2004 are up 6.5% over the same period 2003. Inventory levels have been reduced 8% while total sales were increased in the same period as we begin to focus our inventory more towards customer buying preferences.
- July-December 2004 net income (NI) (Excluding the "non recurring" expense of the Biltmore flood) grew 25.6% over the same period 2003. (NI including the Biltmore expense was down 9.7% for the same period.)
- Four of the eight retail outlets posted record NI for the six months ending December 2004.
- July-December 2004 investment income is up 45% over the same period last year.
- Working capital (Current assets less current liabilities) increased 13% over the same period last year.

In addition, the Asheville ABC Board has seen many other achievements and improvements in business practices and accountability. The recent expansion of the Board from three to five members allows for a greater cross-section of ideas and insight that will be helpful to me as the organization moves forward.

He believes the Asheville ABC Board has the potential to be one of the best in the state. He is committed to seeing that potential become reality, and my team and looks forward to the challenges that lie ahead.

Discussion surrounded Mr. Canty responding to various questions/comments from Council, some being, but are not limited to: is the ABC Board retaining too money in their cash reserve; has there been discussion about turning over law enforcement to the City of Asheville; was there a net loss of income in the Biltmore store from the flooding; and how did the ABC Board reduce their employee insurance by 50%.

Upon inquiry of Councilman Dunn, Mr. Canty said that the ABC Board is always open for information that would help them guide their grant process and to fine-tune it towards the needs of Asheville. He explained their grants are for education or rehabilitation. He invited the City of Asheville and the Housing Authority to submit applications through their grant program.

On behalf of City Council, Mayor Worley thanked Mr. Canty for his hard work with the ABC Board and hoped he would report back to Council on a periodic basis.

IMPLEMENTATION PLAN OF DEVELOPMENT TASK FORCE'S RECOMMENDATION

Building Safety Director Terry Summey said that this is a report from City staff regarding the improvement recommendations from the Implementation Plan for "2004 Development Review Task Force Recommendations."

As part of the Fiscal Year 2004-05 budget approval process, members of City Council requested that a Task Force be created to evaluate the current development processes. Approximately 50 citizens were invited to participate, with as many as 35 citizens attending various meetings. The Task Force consisting of Architects, Engineers, Designers, Surveyors, Business Owners, Managers and Commercial/Residential Contractors and Developers, developed several recommendations for streamlining the development process. The recommendations consisted of 10 primary focus areas along with a total of 32 ideas of implementation. The recommendations were presented to Council at its October 19, 2004, worksession.

Council asked that a response be brought back to Council pertaining to the Task Force's recommendations. A staff report attaching Staff's Response was presented at the Council's January 18, 2005, worksession. After some discussion, Council continued the matter to its February 15, 2005, worksession due to the absence of Mayor Worley and Councilmember Dunn. In the interim, Council suggested that additional public comment may need to be solicited. City staff held open public forums on February 1 and 3, 2005, at the Public Works Facility. He provided staff's response along with a summary of comments from approximately 50 citizens. Mr. Summey said that the responses can be summarized by saying that developers, the Chamber of Commerce, Council of Independent Business Owners, Task Force members and CREIA support the recommendations. Most concerns were raised by The Coalition of Asheville Neighborhoods, which do not support items 1 and 10 of the recommendations.

Mr. Summey reviewed with Council the multiple goals of Council's Strategic Operating Plan and how the recommendations from the Task Force addresses the areas. He then presented Council with the Task Force's 10 focus areas with 32 items (color-coded for different actions), public comments and staff responses. He noted that some items will require Council action, some items staff has already implemented and other items are currently in the process of being implemented.

Considerations in implementing the recommendations:

- Greater reliance on staff expertise, and facilitation on development projects
- More business friendly approach to development
- More timely review and approval of projects
- Better communication and coordination with industry

Mr. Summey explained that the following items are recommendations that will require action by City Council in the form of public hearings, ordinance amendments and further changes to the process. He asked for Council direction on the following recommendations:

1 - A We advocate that major changes be made to the UDO

- **Limit City Council Reviews**
- **Only those processes that are statutorily required should go to Council (rezonings)**
- **Eliminate Level III Conditional Use Permits from Council approval**

All non-Conditional Use projects that meet the UDO and Engineering Specifications should be approved at staff level. Let staff do their job.

Mr. Summey and Planning & Development Director Scott Shuford responding to various questions/comments from Council, some being, but are not limited to: how many Level III

projects come before Council in a year; and how much of a delay is there when City Council is involved.

Councilman Newman said that he hears a lot that people want to see more environmentally sustainable development, more green building, and more projects that integrate market rate in affordable housing projects – opposed to all big luxury condos. That is a good way to reconcile the need for affordable housing in a way that works for neighborhoods. He encouraged the Planning staff to continue thinking about ways that we can reward the kinds of projects that produce the type of community development that he thinks there is a lot of support for in Asheville.

Mr. Shuford understood Council that if the development is the type of development that we are trying to encourage then the review process should be streamlined as much as possible. He said that he would explore some ideas and report back in approximately 30 days.

After discussion, it was the consensus of City Council to keep City Council involved in all Level III conditional use permits.

1-B Eliminate the formal TRC reviews since they add delays to the process; recommend informal TRC reviews at least twice a month.

Mr. Summey and Planning & Development Director Scott Shuford responding to various questions/comments from Council, some being, but are not limited to: does the public provide technical input or is the input aimed toward design or opposition; how often does the public provide technical information for a meaningful impact; what type of candid conversations might be held with developers if we had an informal TRC review; and are we giving more work to staff if there are two meetings a month.

Councilwoman Jones said that this makes sense, but felt we have a bigger perception problem if we eliminate the formal TRC review. She felt we should do some trust building with the community first in the next year and then revisit this issue. She felt that to eliminate public comment at the TRC level, we are also missing an opportunity for the public to learn.

Vice-Mayor Mumpower felt there is a difference between including the public and indulging the public. If we are including the public in purely technical matters and creating an illusion that this is a public forum, that is not helpful. We need to say this is a technical piece of the puzzle and include the public in the early stages and then at the decision-making stage.

Mayor Worley asked if there would still be a way for the public to deliver technical information about a project. Mr. Shuford said that right now we don't notice or provide any indication to the public that a Level I project might be coming their way. With the TRC projects (Level II), we do put up a sign on the property and we do notice the adjacent property owners within the appropriate range. In an informal process, we could make plans available, provide staff if people have questions, and that sort of thing. In addition, we could ask the public to submit their technical information in writing so that there is still a mechanism for the technical public comment.

Vice-Mayor Mumpower spoke in support of the compromise where the public has access to the information and they provide their comments in writing.

Mr. Shuford understood that Council wants staff to continue to try to alert people to the fact that there is a project coming to their area. In some cases though, those projects will have a public hearing associated with it and in other cases there will be a staff review with an opportunity to comment on the technical aspects.

After discussion, the majority of Council gave direction to City staff to start the process of a UDO amendment to eliminate the formal TRC reviews and revise the TRC process to hold bi-monthly meetings. In addition to moving forward with a UDO amendment, Council reminded Mr. Shuford that communication is a two way street and in order for someone to comment on the technical aspects they have to be able to understand exactly what is being proposed as well.

Vice-Mayor Mumpower asked staff to building some feedback at an appropriate time.

1-C Recommend maximum approval times of:

- **Level I – one week**
- **Level II – three weeks**
- **Level III – five weeks**

Mr. Summey responded to Vice-Mayor Dunn about what the turn-around time is in other cities and how does Asheville compare to those.

Upon inquiry of Mayor Worley, Mr. Summey said that five weeks on a Level III project is not realistic, given the project has to go through TRC, the Planning & Zoning Commission and City Council.

Mr. Tim Turner, WNC Glass Surveyors and member on the Task Force, said the timeframes are when they would like to get all of the responses back from the initial submittal, not necessarily the approval.

Mayor Worley felt that "approval" time is the wrong word – it should be "response" time.

Upon inquiry of Councilwoman Jones about the Council direction in this matter, Mr. Summey said Council might monitor complaints heard regarding the turnaround time and let him know. He felt that turnaround times will be reduced with the hiring of four new positions.

Vice-Mayor Mumpower asked if staff can begin to keep records so we can definitively say we are meeting those timelines, including when the plans come in incomplete, etc. Discussion then occurred about the response timelines by City staff. City Manager Westbrook said that we don't have control over how well the plans are done when they initially come in, or how long it takes us to go through it, or how many red-lines there are and therefore how many times it has to be re-submitted to make sure they are correct. In addition, there are also a number of other bodies the plan goes through, e.g., Planning & Zoning Commission, Downtown Commission, River District Design Review Committee, Tree Commission, etc. All of that takes time as well as the time before City Council. Mr. Summey can define what that those timelines mean and specify that those are goals, because we don't have all the variables. It's unfair to hold the City responsible when we don't have that control. All said, City Manager Westbrook said that staff will come up with some way to provide the data in an understandable form so it doesn't give either the City or the developer the wrong impression from reading it, because the results may be behind the data in specific instances.

Councilman Davis felt we might call these "goals" and not "maximums" and that eight weeks on a Level III project would be more realistic.

Vice-Mayor Mumpower was interested in our ability to track what we are doing. If we can't track it, we can't determine inefficiencies. And, we can't improve if we don't know where we might be breaking down.

1-E The time requirement to upgrade to current code a nonconforming structure that becomes vacant should be extended to 12 month

Mr. Shuford said he felt the real issue is that there are some properties along the river that were not occupied for a long period of time and then came in and didn't want to have to meet the floodplain requirements. However, that is a FEMA issue. He would provide City Council with more information on the number cases that we've had, but there are very few non-floodplain issues with regard to this particular situation.

After a brief discussion, it was the consensus of City Council to not make any changes regarding this recommendation.

2-B The turnaround times for Permit and Plan Review approvals need to be reduced as previously recommended, even if additional staff is required

This issue was discussed in Item 1-C above.

5-A We recommend creation of an industry review committee be involved in changes to the "Asheville Standard Specifications and Details Manual" (updates proposed to come to Council in November).

Since updates are proposed to come back to City Council in November and since City Engineer Cathy Ball is coordinating a group of citizens to review the changes, City Council gave no direction on this issue.

5-B Code interpretations and review shall be consistent between plan reviewers and inspectors as well as among inspectors.

Discussion surrounded this recommendation. Mr. Summey said they have instituted monthly code consistency meetings with plan reviewers, inspectors and industry to discuss any code consistency issues. In addition, inspectors will be sent to training programs.

Councilman Dunn wondered if the same inspector can follow the same development as much as possible, even though there is subjectivity at times. Mr. Summey said that they are constantly putting on seminars and programs for our own staff, as well as industry, so that we all try to be consistent in what we are going.

Vice-Mayor Mumpower suggested a one-page complaint form. Mr. Summey said that they have started tracking complaints just to help with the consistency meetings, noting that his staff operates on a same day basis dealing with complaints. He said that they would try to track the issues leaving the actual complainant out of the picture.

At 5:26 p.m., Mayor Worley called a short recess.

5-E Provide incentives (less fees and charges) for installation of fire sprinklers (the State Code provides tradeoff for sprinklers; the Water Authority's fees and policies discourage installing sprinkler systems).

Since this issue deals with Water Authority policy, City Council will not give staff direction on this issue until after July 1, 2005.

9-B Consider other enhancements that are business friendly and provide time savings to industry

Mr. Summey responded to various questions/comments from Council, some being, but are not limited to: can the Public Works Building be expanded; do other cities in North Carolina have a "one-stop" center; and is there ample parking in the Public Works Building lot.

Mr. Tim Turner, member on the Task Force, felt the Task Force wanted to bring the all the plans and just drop them off and let the City circulate them to the appropriate departments.

During discussion about the "one-stop" vs. "one-drop" center, Mr. Summey explained the pros and cons of each approach and what is being done currently.

It was the consensus of Council to allow staff to continue with the one-stop center and continue to analyze the efficiencies.

10-A To encourage development, the City, not the developer, should pay for public infrastructure (sidewalks, hydrants, etc.)

Mr. Summey and City Engineer Cathy Ball responded to various questions/comments from Council, some being, but are not limited to: what are the types of infrastructure developers want the City to pay for; what is the difference between asphalt and concrete sidewalks; what is the amount per foot of sidewalk; does the developer have the option of a "fee in lieu of"; and how much is the budget for sidewalks.

Mr. Tim Turner, member of the Task Force, said that the Task Force was concerned about the requirement for sidewalks, especially when they would not connect to any others.

City Manager Westbrook said it was a philosophical issue of whether City Council wants the development to pay for itself or for the taxpayers to pay for that improvement.

Mayor Worley was not concerned with the sidewalk requirement, but felt the ordinance should be tweaked. He used an example of two different property owners building the same type of development but one owns more property than the other. Our current ordinance says that all of that property that you own has to have a sidewalk on it. That can result in some inequities He'd rather see the sidewalk requirement relate to the project itself and the land used by the project. He noted that "applicable project area" is not defined in our ordinance. We need to make sure we apply the burden equitably.

Discussion occurred regarding the need for sidewalks in our community and who should pay for them.

Vice-Mayor Mumpower felt there is a point of fairness in that we don't require developers to provide police or fire services. He was not sure we are trying to encourage development.

Ms. Ball explained to Council the history of sidewalks in Asheville and how sidewalks are a viable mode of transportation.

Councilman Newman felt Asheville needed more sidewalks but this approach will take us a long time before we get to where we need to be.

After all ten items requiring Council direction were discussed, Vice-Mayor Mumpower questioned the new permit application form being on legal sized paper. Mr. Summey said that staff is trying to get all the information from different departments on one application form. Presently we have one form, double sided for residential. Commercial is on a legal form. He felt that as long as the industry knows they need legal size paper, he didn't think it would be a problem. He said that as they pilot the new form, they will find out if they are working well.

Mr. Summey thanked City Council for their direction and said that staff intends to update Council quarterly with implementation updates.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on February 22, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Addition of Urban Place District

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the addition of Urban Place District.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for and provides incentives for mixed use development. Asheville has a number of areas where mixed use development has been proposed as part of neighborhood plans or other planning initiatives. Additionally, this is one of several actions being proposed by staff to simultaneously implement portions of the Urban Riverfront Master Plan and address redevelopment of flooded areas.

The new zoning district would be somewhat similar to the Neighborhood Corridor District (NCD), although it would differ in being oriented more toward node development than to linear development along a corridor. It allows a wider range of uses and has less stringent design standards than those in the NCD

The amendment has been routed to CAN, CREIA, and CIBO for review and comment. There was no public comment at the Planning and Zoning Commission meeting.

Pros –

- Several goals and strategies of the 2025 Plan and Urban Riverfront Master Plan will be implemented.
- A wider range of land uses would be available to property owners.

Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford noted that the City Attorney will be refining the purpose statement.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that this district could apply to properties by the river.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

ASHEVILLE PEDESTRIAN PLAN UPDATE

Transportation Planner Elizabeth Teague said that this is the consideration of a resolution adopting the Asheville Pedestrian Plan Update.

The purpose of this plan is to keep the City Pedestrian Thorcughfare Plan current and useful to the City and the public. This update is written to provide City staff and elected officials with timely, technical information to make decisions on where to invest limited resources and how to improve policies and procedures that improve pedestrian safety and infrastructure.

The Plan was developed in coordination with the Asheville Bicycle and Pedestrian Task Force, City staff from the Engineering, Public Works, Planning, and Parks and Recreation Departments, and public comments and requests on sidewalk and pedestrian safety needs collected over the past year.

This project is Task # 3 of Goal #3 under the Natural and Built Environment areas of the City's Strategic Plan to increase street and sidewalk connections.

The positives of the Pedestrian Plan update are that it:

- Updates the "Needed Linkages Map" that regulate where sidewalk construction is required and the *fee-in-lieu* option may not be used (note: it does not amend the sidewalk regulation itself, but does provide recommendations on how to improve those regulations to include greenways, transit amenities and other pedestrian and ADA related improvements).
- Better positions the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;
- Establishes a working sidewalk and pedestrian safety request list, identified priorities list, and criteria for future prioritization and project selection processes.
- Provides recommendations for changes to policies and procedures that will facilitate implementation of sidewalk and greenway construction, internal procedure and budgeting and grants management.

The negatives of this project are that it will:

- Require time from City staff and the Planning and Zoning Commission to implement the recommendations of the Plan.

Ms. Teague explained that the mission of the Plan is that Asheville will develop and maintain a pedestrian network that includes sidewalks, pedestrian crossings and greenways that: (1) offer convenience, safety and connectivity to citizens and visitors; (2) encourage and reward the choice to walk and use transit; (3) improve access for those with disabilities; and (4) add to the quality of life and unique character of the City of Asheville.

An inventory of pedestrian project needs include (1) sidewalk and greenway projects on the Transportation Improvement Plan and Priority Needs List; (2) citizen requests; and (3) priorities based on criteria: (a) transit routes; (b) proximity to schools, parks, commercial centers; (c) zoning; (d) strategic corridors; and (e) feasibility (right-of-way, engineering, cost).

The following is estimated sidewalk need construction costs: 108 miles of needed linkages - $15 Million; poor or non-compliant sidewalks - $2 Million; removal of obstacles - $9.5 Million; and ADA ramps - $.5 Million. The estimated construction total is $27 Million. 25-50% right-of-way and engineering is $6-13.5 Million. The range of need is $33-40.5 Million and it does not include on-going maintenance.

Ms. Teague explained some considerations and recommendations are (1) Greenways Master Plan; (2) staffing/coordination; (3) right-of-way acquisition and engineering; (4) continue coordination with the Metropolitan Planning Organization; (5) update regulations and fees; and (6) annual budget process and new funding sources.

Staff recommends that City Council adopt the Asheville Pedestrian Plan Update.

Ms. Teague and City Engineer Cathy Ball responded to various questions/comments from Council, some being, but are not limited to: how much was the referendum on streets and sidewalks back in the late 1980's; how much did the City spend on sidewalks this year; and how long was the portion of Patton Avenue sidewalk on hold by the N.C. Dept. of Transportation.

Discussion surrounded how much the City currently allocates for sidewalks and whether we need to start allocating money for a meaningful show of sidewalks or for a dedicated funding source for a long-term commitment.

Ms. Ball said that she will come back to City Council during the budget process with some recommendations on Council's alternative funding options and how we can address our needs.

At 7:21 p.m., Mayor Worley announced a short recess.

A brief discussion was held about the physical size of the Plan and whether the plan was giving the public false hope on what the City can realistically accomplish.

City Manager Westbrook said that the Plan serves a number of different groups and if Council wishes, staff could distill it down to a more understandable document

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

TRAFFIC CALMING

Mayor Worley said that at the request of City Council this item was placed on the agenda and he asked staff to prepare the following information.

COMPLETED PROJECTS:

- South French Broad (phase 1 of 2), Florida/Dorchester, Caribou, Wyoming, Gracelyn/Ottari – 3.3 miles, $97,000
- Murdock/Ridgelawn/Wellington (in progress) – 1.5 miles, $82,000

PROJECTS UNDER DESIGN:

- Kenilworth Road – 1.3 miles, est. $80,000
- Redwood Forest (from Riverbend) – 0.96 miles, $65,000 max private funds
- Shiloh (from Appeldoorn) – 2.3 miles, $84,000 max
- Biltmore Park (HOA project) – 2.7 miles, est. $65,000 private funds

PLANNED PROJECTS:

- Grove Park neighborhood (from GPI) – 3.4 miles, est. $200,000 private funds

LIKELY FUTURE CITY PROJECTS:

- Governors View/Arco (from Riverbend UV) – 1.3 miles, $25,000 max private funds
- South French Broad (phase 2 of 2) – 0.5 miles
- Cedar Street and Wood Avenue – 0.7 miles

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COSTS AND NEEDS: The engineer's estimate for the most recent project was about $77,000 per mile of traffic calming. The most recent bid for same was about $114,500 per mile. We believe the engineer's estimate is reasonable, and that the contractor's bids were excessive due to lack of local competition, particularly in the asphalt industry.

At this time, we have not prioritized future projects beyond Kenilworth Road. We have requests for traffic calming on about 300 street segments in the City, totaling about 100 miles of streets. The streets which appear to be most impacted by existing traffic, based on measured traffic volumes and measured speeding are:

- Cedar Street and Wood Avenue, 0.74 miles
- South French Broad Avenue (Phifer to Livingston), 0.47 miles
- Kimberly Avenue and Edwin Place, 1.65 miles
- Montford Avenue, 0.89 miles
- Edgewood Road (north), 0.36 miles
- School Road East, 0.52 miles
- Chestnut Street, 1.12 miles
- Bear Creek Road, 0.73 miles
- London Road, 0.70 miles
- Burton Street, 0.56 miles
- Hanover Street, 0.50 miles
- State Street, 1.00 miles
- Forest Hill Drive (Wyoming to Biltmore), 0.23 miles
- Westwood Place, 0.70 miles
- Shelbourne Road, 0.67 miles

These total to 10.84 miles. In addition, there are many more residential streets on which traffic volumes are relatively low, but speeding is particularly prevalent, including Cisco Road, Michigan Avenue, and Riverview Drive.

Pros of traffic calming:

- Speeding is reduced
- Need for enforcement is reduced
- Quality of life is improved for residents of streets
- Can include aesthetic enhancements to support community

Cons:

- Costs for installation
- Costs of maintenance
- Some opposition to measures (typically a minority of residents)

Regarding City Council's Strategic Operating Plan, traffic calming supports an efficient transportation system by managing traffic demand in neighborhoods.

Councilman Dunn felt that traffic calming measures were too expensive and wondered how we can continue to afford traffic calming where there are limited dollars available. He felt we should stop the traffic calming program and look for other options to deal with speeders in a cost effective manner and not impact emergency services.

Mayor Worley felt that traffic calming measures are the only way to deal with cut-through traffic. He felt that traffic calming is cheaper than police enforcement. He spoke in support of the use of the technology available, which is speeding cameras and red-light cameras. He proposed that we adopt as a legislative goal to put cameras on streets in neighborhoods that need help with

speeders. The use of cameras would benefit the neighborhoods at little or no cost to the City. The technology is there – we should use it.

Throughout the discussion, City Traffic Engineer Anthony Butzek responded to various questions/comments from Council.

Asheville Police Department Captain Ted Lambert responded to various questions/ concerns from Vice-Mayor Mumpower, some being, but are not limited to: what is the City's effort on traffic enforcement over the past five years; how much energy are we putting into the enforcement of traffic laws; are we putting the same energy and manpower into traffic enforcement today as we did 10 years ago; what is the time difference when emergency vehicles travel over speed bumps; and what is the comparable data showing the number of tickets issued (accidents, fatalities) over the past 5-10 years, factoring in the increases in traffic that we have in Asheville and other variables. Questions Capt. Lambert was unable to respond to, he said that he would provide what information was available.

Vice-Mayor Mumpower would be surprised to learn that Asheville is enthusiastic about traffic enforcement today as it was ten years ago. He felt that in recent years we have defaulted on traffic law enforcement in the City. He was not comfortable with the use of traffic cameras from a philosophical and constitutional standpoint. He would have a problem in going to traffic cameras until we have a good hold on traffic enforcement. He would advocate backing off of traffic calming as it relates to speeding and would lay aside his philosophical difference about the use of cameras when we clearly define traffic enforcement in the City and we can demonstrate such. Again, he has concerns that we are not prioritizing traffic enforcement at the level that we should for a city this size with the traffic volume we have.

Councilwoman Jones felt that traffic calming, around parks especially, makes a positive difference. She would be willing to listen to ways to save money and still keep the public safe.

Councilman David felt we should be more judicial in where we place traffic calming.

Councilman Newman supported traffic calming and felt we should review what is working well and what is not. He was supportive of investing our traffic calming funds into key pedestrian points, not whole thoroughfares. He would also be open to consider traffic cameras.

Mr. Butzek said that if Council does decide to make changes to the current Traffic Calming Program, there are a number of projects in the works and they will need direction as soon as possible.

It was the consensus of Council to instruct City staff to provide City Council with details on traffic cameras and how they work in other locations; how much we have spent on public safety over the past four years; and information requested earlier from Vice-Mayor Mumpower from the Police Department.

City Manager Westbrook said that depending on how much time is necessary to accumulate the information requested by Council, staff will try to bring back this information to council at their next worksession.

2006 CONGRESSIONAL PRIORITIES

City Manager Westbrook said that this is the consideration of a motion adopting the 2006 congressional priorities.

City Council and key staff recently met with Ball Janik staff to discuss our congressional priorities for the upcoming year. Based on those discussions with Council Members and key staff, Ball Janik performed an analysis which compared our preliminary request against upcoming and existing federal priorities and goals.

As you know, we were extremely successful this year with our requests to congress. Two projects that received Fiscal Year 2005 funds were the 800 MHz digital platform communications upgrade and the Wilma Dykeman Riverway Project. These received a total of $2.6 million. On behalf of staff and City Council, much appreciation is expressed to Congressman Taylor, Senator Dole and Senator Edwards for their efforts.

The following is a list of projects that were identified last year and not funded, or identified as new this year in the meetings.

1. Pack Square. The Conservancy has requested $4 million for the Renaissance project. It is recommend that the City support the Conservancy's funding request and assist the effort on Capitol Hill. Since the Conservancy will be taking the lead on the project, any funds obtained will flow to it. Nonetheless, all funds obtained will benefit the City.

2. City Bus Replacement. Although $300,000 was obtained for a bus in Fiscal Year 2005, this is likely a viable transit funding request for Fiscal Year 2006.

3. Wal-Mart/Shopping Mall Pedestrian Circulator Bus. The amount is undetermined. It is recommended that the City pursue this in the future, this idea probably has not been fleshed out enough to provide the necessary detail (cost, route, ridership, impact on traffic, etc.) to request funding. It is recommended waiting until this idea has been further developed.

4. I-40 Aesthetic Noise Wall. An amount of $107,000 is sought to upgrade a 2/3 mile noise wall located in the redesigned portion of I-40. The funding would upgrade the wall from one color to something more aesthetically pleasing (i.e., a mountain design). The state will not pay for the aesthetic upgrade.

5. Park and Ride Facilities. Again, while this may be something the City may want to pursue in the future, there is little detail available regarding where, outside the urban core, such facilities would be sited, the number of sites, projected use and increased bus ridership due to such facilities, and, most importantly, the cost. Park and ride lots are common transit funding projects, so the City may want to develop the information necessary for a future request.

6. Veterans' Memorial at Memorial Stadium. The fact that $800,000 has already been raised for this project will set well with federal appropriators. Privately, Rep. Taylor has indicated support for the Memorial. Strategically, the City may want to request $750,000, but should realize that, even if successful, the amount may be reduced by appropriators.

7. Water System Upgrades. The Fiscal Year 2005 request for $600,000 was unsuccessful due to reduced EPA funds across the board. The situation in Fiscal Year 2006 will be similarly tight, if not more so.

8. Azalea Park. It is unlikely that a funding request at this time would be successful, as park money is scarce and is targeted to existing parks that need upkeep rather than developing new parks. However, for the past two years, the Parks and Recreation Department has submitted grant proposals for Land and Water Conservation Fund (LWCF) money, which were turned down. Should the City submit a proposal this year,

Ball Janik could generate support for it from our delegation to increase its chances of success.

9. Thomas Wolfe Cabin. An amount of $300,000 is needed to stabilize and refurbish the Thomas Wolfe Cabin located within the Azalea Park. This project is recommended because of an excellent funding source – America's Treasures in the Interior Appropriations bill.

10. Methamphetamine Enforcement and Clean-Up. This Department of Justice program funds over $52 million in methamphetamine projects, much of it earmarked to specific state and local governmental entities. These funds help combat methamphetamine production and distribution, along with clean-up and disposal of hazardous materials. Ball Janik recommends that the Asheville Police Department work with the State Bureau of Investigation to develop a methamphetamine project for interested Western North Carolina law enforcement agencies. The project could entail methamphetamine education, training, equipment, or increased personnel for enforcement or clean-up. Rep. Taylor is very interested in enhancing methamphetamine response in Western North Carolina and would support a strong multi-jurisdictional project. Depending on the scope of the project and the entities involved, this request could be as high as $1 million or as low as $300,000.

11. Western North Carolina Emergency Training Center. Requested amount is $5 million. This project is envisioned to be a joint effort of the City (the Police and Fire Departments) and the local community college, A-B Tech. Feasibility discussions between the City and the college have been initiated, but concept development has not sufficiently progressed to the point where the issue is ready for a funding request this year.

Authorizing Committee Issues – Transportation

A major piece of legislation unfinished in the last Congress is the Transportation Equity Act for the 21st Century (TEA-21) reauthorization. Ball Janik worked on the bill to include language that would permanently or at least temporarily exempt Asheville from the "over 200,000 population" urbanized area (UZA) threshold that jeopardizes the City's use of federal dollars for transit operations. Language included in the temporary extension bill provided Asheville Transit with 100% flexibility on the use of transit operating funds through September 2005, our lobbyist will continue to pursue a permanent fix.

Since the 108th Congress adjourned without finishing the TEA reauthorization, the entire legislative process starts over again. That means the City has the opportunity to request a funding project through this major bill that it did not participate in last year. Ball Janik suggests that this account be explored for funding Pack Square. Should that coincide with the goals of our Congressional delegation, it would be a good source of money that does not compete with any of the City's "appropriations" requests. It could be in the range of $2-4 million.

Based on the recommendations from Ball Janik, staff recommends City Council adopt the following congressional priorities for 2006:

Appropriations bills:

1. Methamphetamine interdiction: $300,000-$1 million – Commerce, Justice, State bill

2. Thomas Wolfe Cabin: $300,000 – Interior bill

3. Veteran's Memorial: $750,000 – VA/HUD bill, EDI Account

4. Bus replacement: $300,000 – Transportation bill

Authorizing legislation:

1. Pack Square: $2-4 million – potentially the TEA-21 Reauthorization bill (with the City supporting the request of the Conservancy)

2. UZA/transit funding issue – TEA-21 Reauthorization bill

During discussion, each Council member voiced their opinion on the recommended congressional priorities as follows:

Mayor Worley supported the all recommendations from Ball Janik.

Vice-Mayor Mumpower supported the methamphetamine interdiction bill and the bus replacement bill.

Councilwoman Jones supported the methamphetamine interdiction bill and the bus replacement bill. In addition, she supported the authorizing legislation.

Councilman Newman supported all the recommendations from Ball Janik. He also supported the Park and Ride Facilities bill for a future request.

Councilman Dunn supported the methamphetamine interdiction bill and the bus replacement bill. He also supported the Park and Ride Facilities bill, especially in areas of big box developments where mass transportation would help.

Councilman Davis supported all the recommendations from Ball Janik, except to reduce the Veteran's Memorial amount to $250,000.

Discussion then occurred that if the City is reducing the amount of requests we are asking Ball Janik to lobby on our behalf, then perhaps we should reduce their contract amount. He did feel the City needed lobbyists working our behalf regarding the census issue and the problem that presents to transit funding.

Mayor Worley felt it would be appropriate to postpone taking action on this matter until all seven members of Council are present.

N.C. LEGISLATIVE AGENDA FOR 2005

City Attorney Oast said that in the past, the presentation on legislative issues has been made at Council's annual retreat. Due to the somewhat different schedule and format for this year's Council retreat, this presentation has been scheduled for a worksession.

Last year's legislative session was a short session, and major substantive changes in the law are not usually undertaken. There is also limited ability to pursue local legislation.

In terms of general legislation, probably the item of most importance to local governments actually grew out of 2003 legislation. This was the passage of Amendment 1 in the November 2004 election. This enables local governments to participate in "project development financing," an economic development tool similar to the tax increment financing as used in other states to

assist in the provision of public improvements in redevelopment areas, and to spur economic growth. We have been gathering information on this, and may soon see it used in Asheville.

Another piece of general legislation of interest to us was the law that permitted cities and sign owners to enter into agreements for the removal, relocation and replacement of billboards. Asheville's City Council entered into such an agreement last Fall, and it may have been the first use of such an agreement in North Carolina.

A third item of interest was the passage of the Phase II Stormwater Management legislation. As Council knows, we are currently in the process of developing regulations under this authority.

There were other items of interest to municipalities generally, including the extension of the "hold harmless" protection for State budget distributions to local governments through 2012. My office can supply you with more information on any of these items.

Our local legislative requests were limited. We sought and obtained an act clarifying that members of the Civil Service Board serve two year terms; this had been inadvertently omitted from the 1999 legislation that amended the Civil Service Act. We sought and obtained an act expanding the membership of our local ABC Board from three to five; Council has now made the additional appointments to the ABC Board.

The 2005 legislative session seems certain to involve issues of substantial interest to municipalities. We have already seen the introduction of proposed legislation affecting annexation. There has also been proposed legislation affecting the available uses of the fines collected from "red light camera" traffic enforcement. The City of Asheville currently is not authorized to use camera enforcement for traffic violations, but has considered it in the past. As other legislation of interest is introduced or discussed, we will track it and bring it to Council's attention. Also, Mayor Worley is involved in the leadership of the N.C. League of Municipalities, and may learn of potential legislation that could affect us.

As to requests for local legislation for Asheville this year, we are not aware of any changes that need to be made to our Charter or other local laws at this time. As a long range project, however, Council may wish to consider a comprehensive revision of the Charter, which has some obsolete provisions in it and is redundant with State law in many respects.

Legislative requests from the 2003 session that were requested but not introduced included authorization to use camera enforcement of red light violations, authorization for a prepared food and drink tax, authorization to adopt campaign contribution limits for City Council elections, and a reduction in term length for the Housing Authority members. Council may wish to reconsider some or all of these items. However, Council was not unanimous in making these requests in 2003, and our delegation has indicated that a lack of unanimity in Council's request will cause them to have some hesitation with respect to introducing the legislation.

Other subjects for possible legislative authorization are found in the Asheville City Development Plan 2025:

- authorization to allow transfer of development rights
- authorization for design review of certain development projects
- authorization for "inclusionary zoning."

These are essentially authorizations to adopt zoning regulations to employ or implement concepts with respect to which there is no authority in the general zoning enabling legislation, or with respect to which the enabling legislation is not clear. Other cities are doing these things on a

limited basis pursuant to their own local acts, and we have been following their progress. Also, some planning and land use initiatives were included with a State-directed report on smart growth that has been referred for further study. Some proposals for general legislation may come from that study.

There may be other matters that Council is interested in that require special legislative authorization. At your direction, we will be glad to investigate these matters as well, and draft proposed legislation, as appropriate.

The deadline for submission of local bills in the N.C. Senate is March 2. The House has not established its deadline yet, but it is not likely to be much later, if at all. This is a fairly short time frame, and seems more abbreviated than in previous years. In view of this short time period and the fact that Council may wish to discuss potential legislation more fully, Council may wish to consider requesting the introduction of one or more "blank" bills, with some indication to our legislators of the nature of the legislation that may be requested.

Direct staff as to legislation that Council wishes to be submitted to our delegation for introduction, or as to the introduction of any "blank" bills.

Councilwoman Jones asked for legislation that would allow people to be exempt from a certain percentage of property taxes if they are in a certain level of income (which she suggested be $25,000). She understands that has larger implications than just Asheville, but that would help a lot of people. City Attorney Oast said that he would meet with her on this request but he did not think it could be local legislation.

It was the consensus of City Council to instruct the City Attorney to introduce 3-4 "blank" bills and City Council will fill in the nature of the legislation at a later date.

RESOLUTION NO. 05-34 – RESOLUTION OF CONCERN REGARDING FLOOD RELIEF FUNDING FOR THE CITY OF ASHEVILLE AND WESTERN NORTH CAROLINA

Vice-Mayor Mumpower read the resolution as follows: In September of 2004, Asheville and Western North Carolina experienced two primary catastrophic weather events that resulted in major and extensive damage to life and property. The associated impact on our citizens has resulted in significant economic hardship for individuals, families, businesses, and communities through our region. The critical and appreciated support provided by FEMA, governmental agencies, private insurance, and other helping resources has not been sufficient to reasonably compensate for the catastrophic impact of these storm events. The collective harm has been of a nature so extensive as to preclude our capacity to absorb without long-term harmful impact on the quality of life, economic viability, and infrastructure supporting our communities and people. The State of North Carolina has a stated responsibility for supporting its citizens, including those of the Western North Carolina region. The State of North Carolina has identified the needs of this region and pledged substantial financial resources to assist in realistic recovery from these recent catastrophic events. Apprehensions have arisen concerning the timely and equitable distribution of funds to those areas of the State most graphically impacted by these storms. It is known to the City of Asheville that it is the sincere wish of the State to give fair and due response to the needs of the citizens of Asheville and Western North Carolina. City Council respectfully submits a formal request that the State make all necessary efforts to address the post-event realities of our region through timely and appropriate distribution of the funds and support fairly due to the people and communities of Western North Carolina.

Councilman Newman moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-34. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 12

BOARDS/COMMISSIONS

City Attorney Oast said that he received a letter from the attorney for the Airport Authority stating that the Airport Authority intends to appoint someone from Henderson County as an ex-officio non-voting member to the Regional Airport Authority, if there are no concerns from the City or County Attorneys. Council supported this action by the Airport Authority.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for Barbara Marlowe and Jose Ruiz for a vacancy on the Community Relations Council.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for James Hood, Lewis Isaac and David Bonyun for a vacancy on the Educational Access Channel Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Barry Pate Jr. to fill the unexpired term of Mr. Flaum on the Public Art Board.

ASHEVILLE SCHOOL BOARD

It was the consensus of City Council to instruct the City Clerk to arrange interviews for Elizabeth Hubbell, Leslee Kulba, Keith Thomson, Alfred Whitesides Jr., Jim Taylor and Gene Bell for vacancies on the Asheville School Board.

CAMPUS CREST UPDATE

At the request of Councilman Brownie, Planning & Development Director Scott Shuford updated City Council on the meeting with the Campus Crest developer and neighborhood representatives. The meeting went very well. A number of different issues were talked about that were of a concern to the neighborhood and they settled on the idea that pedestrian safety enhancements on Montford Avenue would probably be the most fruitful direction that we should proceed. The developer is evaluating their cost factors for looking at the types of features and will be back in touch with us in the very near future. He was fairly confident that there will be an agreement between both sides on this issue.

Councilman Newman felt the mediation process was moving forward, but just didn't want the opportunity to run out for Council to revisit the issue if the mediation process turns out to be unsuccessful.

City Attorney Oast said that although the appeal deadline on this current decision runs later this week, there will be several intermittent approvals that are required of this project, many of which will involve on-site inspections and that kind of thing and some later permits that will need to be issued, like Certificates of Occupancy and permits of that nature that will provide an opportunity to monitor compliance.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:17 p.m.

Magdalen Boulleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – February 22, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Mr. Timothy Dutcher, representing the Marine Junior ROTC Program at Asheville High School, led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

Mayor Worley recognized Troop 26 from Camp Stevens in Arden, N.C.

Ms. Rebeccah Falk, reporter with the Asheville Citizen-Times, introduced a journalist from Belarus who is visiting the United States.

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "G" be removed from the Consent Agenda for individual discussion.

Councilman Dunn asked that Consent Agenda Item "F" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 8, 2005, AND THE WORKSESSION HELD ON FEBRUARY 15, 2005

B. RESOLUTION NO. 05-35 - RESOLUTION APPROVING THE LIST OF CO-SPONSORED EVENTS FOR 2005

Summary: The consideration of approving a list of co-sponsored events for 2005.

Several years ago, the Parks and Recreation Department developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 37 events were approved last year resulting in a cost of approximately $75,000. This year the number has been reduced to 31 and the cost to the city is approximately $65,000.

Pros:

- Generates in excess of $10 million dollars for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities

- Expands and enhances special events and festivals to the City

Cons:

- The city's financial contribution is $65,000
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Department requests City Council's approval of this list that will provide authorization for in-kind support by the City.

City staff recommends City Council approval of the list for co-sponsored events in 2005.

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C. **RESOLUTION NO. 05-36 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE EARTH DAY EVENT**

RESOLUTION NO. 05-37 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

RESOLUTION NO. 05-38 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WOXL 96.5 BIRTHDAY BASH

RESOLUTION NO. 05-39 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LARKIN WEDDING EVENT

RESOLUTION NO. 05-40 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE INDEPENDENT RESTAURANTS' TASTE OF ASHEVILLE

RESOLUTION NO. 05-41- RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "ATLANTIS PARTY" EVENT

RESOLUTION NO. 05-42 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 05-43 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

RESOLUTION NO. 05-44 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY FESTIVAL

RESOLUTION NO. 05-45 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION NO. 05-46 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS

RESOLUTION NO. 05-47 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Earth Day 2005, scheduled for April 16, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.
- The Mountain Sports Festival, scheduled for April 29-May 1, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.
- The WOXL 96.5 Birthday Bash, scheduled for May 7 in City-County Plaza, will celebrate the three-year birthday of the radio station with food vendors and bands.
- The Larkin event is a wedding scheduled for May 15 on Wall St.
- The A.I.R. Taste of Asheville, scheduled May 21-22, is an event to promote the many independently-owned restaurants in the Asheville area.
- The "Atlantis Party", as part of the Green Ball, produced by the Asheville Area Arts Council is annual event that serves as a fundraiser. This event is scheduled for June 25.
- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.
- For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 29-30.
- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 26-28.
- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 23-25.
- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation to bring both citizens and visitors to the downtown area. These events include: *Moonlight Over Downtown* and four *Downtown After Five* activities.

- The Asheville Grizzlies are a semi-professional sports team that seeks to serve alcohol at their home games throughout the summer at Memorial Stadium.

Pros:
- Allows fundraising opportunities for charities
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Cons: None noted.

City staff recommends City Council approve the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

Resolution No. 05-36 - **RESOLUTION BOOK NO. 29 – PAGE 16**
Resolution No. 05-37 - **RESOLUTION BOOK NO. 29 – PAGE 18**
Resolution No. 05-38 - **RESOLUTION BOOK NO. 29 – PAGE 20**
Resolution No. 05-39 - **RESOLUTION BOOK NO. 29 – PAGE 22**
Resolution No. 05-40 - **RESOLUTION BOOK NO. 29 – PAGE 24**
Resolution No. 05-41 - **RESOLUTION BOOK NO. 29 – PAGE 26**
Resolution No. 05-42 - **RESOLUTION BOOK NO. 29 – PAGE 28**
Resolution No. 05-43 - **RESOLUTION BOOK NO. 29 – PAGE 30**
Resolution No. 05-44 - **RESOLUTION BOOK NO. 29 – PAGE 34**
Resolution No. 05-45 - **RESOLUTION BOOK NO. 29 – PAGE 36**
Resolution No. 05-46 - **RESOLUTION BOOK NO. 29 – PAGE 38**
Resolution No. 05-47 - **RESOLUTION BOOK NO. 29 – PAGE 40**

D. RESOLUTION NO. 05-48- RESOLUTION ACCEPTING DISTANT VIEW DRIVE IN SOUTH ASHEVILLE AS A CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept Distant View Drive in South Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Distant View Drive is a developer-constructed street that has an average paved width of 20 feet and a length of 0.48 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Distant View Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:
- The City will receive Powell Bill funds from the N.C. Dept. of Transportation to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Cons:
- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Distant View Drive in South Asheville as a City maintained street.

RESOLUTION BOOK NO. 29 – PAGE 42

E. RESOLUTION NO. 05-49 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Karen Ballard, owner of Productive Consulting Resources, has been named by the Minority Business Commission to replace Ms. Claudia Thomas, owner of CAT Network Systems, whose term expired August 2004, as a minority business owner representative. Ms. Ballard's term will run through August 2006.

Ms. Althea Gonzalez has been named by Asheville-Buncombe Community Relations Council (ABCRC) to represent them on the Minority Business Commission. Ms. Gonzalez has been nominated to replace Clara Jeter who resigned. Ms. Gonzalez's term will run through August 2006.

Ms. Althea Goode has been named by Eagle/Market Streets Development Corporation (EMSDC) to represent them on the Minority Business Commission. Ms. Goode has been nominated to replace Thomas Kling who is deceased. Ms. Goode's term will run through August 2007.

Mr. David Price has been named by the Associated General Contractors of America to represent them on the Minority Business Commission. Mr. Price has been nominated to replace Wendell Howard whose term expired August 2004. Mr. Price's term will run through August 2007.

The following MB Commission members whose term expired August 2004 have requested reappointment:

Ms. Connie Mitchell	American Institute of Architects (August 2007)
Ms. Carol Hensley	Asheville Area Chamber of Commerce (August 2007)
Mr. Marvin Vierra	Asheville Business Development Center (August 2006)
Ms. Latrella Higgins	Council of Independent Business Owners (August 2007)
Ms. Valerie Dennis	Minority Business Owner (Anaya Gallery) - (August 2007)
Ms. Carmella Watkins	NAACP (August 2006)
Ms. Lisa Slechter	National Association of Women in Construction (August 2007)

City staff recommends City Council adopt a resolution confirming the appointments to the Minority Business Commission.

RESOLUTION BOOK NO. 29 – PAGE 43

F. RESOLUTION APPROVING LOANS FROM THE CITY'S HOUSING TRUST FUND

This item was pulled off the Consent Agenda for individual discussion.

G. RESOLUTION ADOPTING THE ASHEVILLE PEDESTRIAN PLAN UPDATE

This item was pulled off the Consent Agenda for individual discussion.

H. RESOLUTION NO. 05-50 - RESOLUTION SETTING THE DATE FOR A PUBLIC HEARING ON MARCH 8, 2005, TO CONSIDER THE VOLUNTARY ANNEXATION OF THREE LOTS LOCATED AT THE CORNER OF BREVARD AND SARDIS ROADS

Summary: The consideration of a resolution setting the date for a public hearing on March 8, 2005, to consider the voluntary annexation of three lots located at the corner of Brevard and Sardis Road.

John and Vaso Barlas and Simi, LLC (of which Mr. Barlas is the sole member/owner/ manager) have petitioned the City for the annexation of three lots (totaling 1.26 acres) they own located at the corner of Brevard and Sardis roads. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31 such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next steps in this process are for City Council to fix the date for the public hearing on this matter. The petitioner has requested that the annexation be effective on the date of adoption of the ordinance, if City Council decides to proceed with this request.

City staff recommends City Council adopt the resolution setting the date of March 8, 2005, as the date for public hearing on the annexation petition.

RESOLUTION BOOK NO. 29 – PAGE 45

I. RESOLUTION NO. 05-51 - RESOLUTION IN SUPPORT OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG) PROGRAM

Summary: The consideration of a resolution in support the Community Development Block Grant (CDBG) Program

The President's draft budget for federal fiscal year 2006 proposes the elimination of the CDBG program, along with 17 other smaller programs. The total Fiscal Year 2005 funding of these programs was $5.6 billion. A new program called "Strengthening America's Communities" is proposed for the Commerce Department, funded at only $3.71 billion. The program is described as "a source of funding for planning, infrastructure development, and business financing ... [for] communities most in need of assistance". Little is known about how this program might operate.

The City of Asheville has used the CDBG program since its start in 1974 to revitalize four blighted city neighborhoods, renovate many hundreds of units of housing, provide land and infrastructure for several hundred new homes, invest in downtown economic development, and support key social service programs. Aside from downtown economic revitalization, all funds have been used to benefit low income individuals and low-income neighborhoods.

The loss of CDBG funding would cause serious setbacks in the progress we are making to provide low-income people with decent housing opportunities and to address homelessness. It is unclear how much the City would benefit from the new program, which has only 66% of the funding for the programs it replaces and will apparently be targeted to areas of highest job loss.

Advantages:

- Authorizes the Mayor to express the City's concern to our Congressional representatives
- Adds the City's voice to that of the National League of Cities, US Conference of Mayors, National Community Development Association, and other organizations.

Disadvantages: None

Staff recommends approval of the resolution supporting the continuation of the CDBG program.

RESOLUTION BOOK NO. 29 – PAGE 48

J. RESOLUTION NO. 05-52 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Summary: A vacancy exists on the Public Art Board until December 31, 2007.

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Barry Pate as a member to the Public Art Board to serve the unexpired term of Mr. Jonathon Flaum, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 49

K. RESOLUTION NO. 05-53 - RESOLUTION AUTHORIZING THE CITY TO CONVEY AN EASEMENT FOR POWER LINE RELOCATION

Summary: The consideration of a resolution authorizing the City to consider an easement for power line relocation.

Shortly after the beginning of the year, Buncombe County began construction on the addition to the County jail on the property located on the east or rear side of City Hall, formerly a City parking lot. In connection with this construction, it is necessary to re-route the power transmission lines in the block of Marjorie Street that borders the property where construction is occurring. This re-routing will include two new poles along Marjorie Street, and transversing the northeast corner of the City's property at Marjorie and Valley Streets. Two poles and some length of the lines will be removed. The City's property will not be transversed over a buildable portion of the lot, and the easement will not interfere with any City plans for use of the lot. Although some consideration was given to requiring the lines to be buried, it is not being required at this time. There will, however, be a net reduction in the amount of overhead lines.

If Council approves of this conveyance, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 50

L. **RESOLUTION NO. 05-54 - RESOLUTION AMENDING THE 2005 CITY COUNCIL MEETING SCHEDULE TO DELETE THE MARCH 15, 2005, WORKSESSION AND RESCHEDULE THAT WORKSESSION UNTIL MARCH 16, 2005**

RESOLUTION BOOK NO. 29 – PAGE 52

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 05-55 - RESOLUTION ADOPTING THE ASHEVILLE PEDESTRIAN PLAN UPDATE

Summary: The consideration of a resolution adopting the Asheville Pedestrian Plan Update.

The purpose of this plan is to keep the City Pedestrian Thoroughfare Plan current and useful to the City and the public. This update is written to provide City staff and elected officials with timely, technical information to make decisions on where to invest limited resources and how to improve policies and procedures that improve pedestrian safety and infrastructure.

The Plan was developed in coordination with the Asheville Bicycle and Pedestrian Task Force, City staff from the Engineering, Public Works, Planning, and Parks and Recreation Departments, and public comments and requests on sidewalk and pedestrian safety needs collected over the past year.

This project is Task # 3 of Goal #3 under the Natural and Built Environment areas of the City's Strategic Plan to increase street and sidewalk connections.

The positives of the Pedestrian Plan update are that it:

- Updates the "Needed Linkages Map" that regulate where sidewalk construction is required and the *fee-in-lieu* option may not be used (note: it does not amend the sidewalk regulation itself, but does provide recommendations on how to improve those regulations to include greenways, transit amenities and other pedestrian and ADA related improvements).
- Better positions the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;
- Establishes a working sidewalk and pedestrian safety request list, identified priorities list, and criteria for future prioritization and project selection processes.
- Provides recommendations for changes to policies and procedures that will facilitate implementation of sidewalk and greenway construction, internal procedure and budgeting and grants management.

The negatives of this project are that it will:

- Require time from City staff and the Planning and Zoning Commission to implement the recommendations of the Plan.

Staff recommends that City Council adopt the Asheville Pedestrian Plan Update.

Vice-Mayor Mumpower felt that City staff has crafted a well-written document and they are pursuing the policies that City Council has asked them to pursue. He does, however, have a hard time with activities that involve illusions of action and this document represents one of those activities. He said we have identified $30 Million of sidewalk and related needs in the City and we budget $50,000 a year. Ultimately approximately $150,000 a year, including monies from developers and grants, goes towards sidewalks. He felt this is an unrealistic budget and didn't think we should invest staff time and energy into activities that represent illusions of action. He felt this document is just that. He felt that adoption of this Plan is a misguided policy approach.

Councilman Newman said this is a long-range Plan that identifies about $30 Million in pedestrian infrastructure needs in the City. He felt it was good to know what the needs are and this Plan tells us what a really high quality pedestrian infrastructure and sidewalk network would look like in the City if we make a sustained commitment to move in that direction. When the original Plan was adopted about five years ago, we didn't have the resources to make a lot of progress. He felt that rather than scaling back the Plan, he felt we should scale up the resource investment that we are making in our pedestrian environment.

Councilwoman Jones felt this Plan will also facilitate more physical activity for our community.

Vice-Mayor Mumpower said that we have a lot of cow trails in Asheville where it's obvious that people walk and need a sidewalk. He felt that rather than creating an elaborate infrastructure that we hope people use, we should take of the places that we already know people do use.

Councilman Davis felt this is a very good Plan but only dedicating $200,000 a year to this $30 Million Plan is not realistic. He understands that we do use the Plan to help obtain grants for parks, greenways, etc. and doesn't want to reject it at all. He would support it, but felt we have many plans that are not funded. He felt that in the future we need to be more realistic about were we are going with the Plan and make a conscious effort to do better with sidewalks and pedestrian efforts.

Mayor Worley said that one essential function of a City Council is to gather information and the other is to make decisions based on that information. If we didn't have this Plan we wouldn't be able to know what our needs are or the magnitude of our needs. This Plan sets some priorities and better positions us to pursue funding for grants. He would support adoption of the Plan and then during our budget process we can set the priorities among other competing needs.

Councilman Newman moved that we adopt the Asheville Pedestrian Plan Update and direct staff to begin exploration of dedicated funding source options to more meaningfully implement this Plan, especially the high priority aspects of the Plan. This motion was seconded by Councilwoman Jones.

Councilman Newman felt we should look at dedicated funding because, as with other transportation plans, the price tag is so large that if we implement a Plan like this on a year to year basis, we will never get some of the important priorities met. He felt we needed to ask staff to begin working with Council to identify different funding options.

After a discussion, Mayor Worley moved to amend the motion to only adopt the Asheville Pedestrian Plan Update. This motion was seconded by Councilman Davis. After further

discussion, said motion carried on a 4-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

The original amended motion was then voted on and carried on a 4-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 52

RESOLUTION NO. 05-56 - RESOLUTION APPROVING LOANS FROM THE CITY'S HOUSING TRUST FUND

Summary: The consideration of a resolution allocating $370,000 in Housing Trust Fund loans for affordable housing development.

This is the fifth annual allocation of funds from the City's Housing Trust Fund (HTF). The 2005 budget included an appropriation of $600,000 for the HTF and $340,000 has accrued in loan repayments, making a total of $940,000 available for lending. The application process was opened on November 1, 2004, and four applications were received by the January 7th deadline, three of which were viable applications.

The applications were evaluated by a panel of outside experts and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding the following three projects:

Neighborhood Housing Services – 12 units, scattered sites	$240,000 (2 years at 2%)
Neighborhood Housing Services – 18 units, Brotherton Ave.	$ 50,000 (2 years at 2%)
Paul Saylor – 2 units, 7 Oakview Road	$ 80,000 (3 years at 2%)
Total (32 units)	$370,000

It is recommended that the unallocated funds in the amount of $570,000 be made available on a first come first served basis to qualified projects until exhausted, subject to all HTF criteria, staff review, and Housing and Community Development Committee recommendation.

Advantages:

- Assists the development of 32 units of affordable housing
- 90% of units are for homeownership (last year's projects were 100% rental)
- Remaining funds will be available to developers who were not ready to apply during the short initial application period.

Disadvantages: None

Staff recommends adoption of the Housing Trust Fund loans listed above and the first come first served availability of the remaining unallocated HTF funds.

Mr. Walter Plaue felt that the Housing Trust Fund program needs to be revisited. He felt that something must be wrong when we have a shortage of low income housing and we have a surplus of funds in the Housing Trust Fund Program.

Councilman Dunn was concerned about the unallocated funds being made available on a first come first served basis. He felt the Housing Trust Fund needed to be revisited to see why the private sector is not coming forward.

Councilman Newman supported approving the three loans and would support bringing the unallocated funds up at the next Housing & Community Development Committee meeting. He felt there may be ideas to make the process more effective and appeal more to the community. Councilwoman Jones concurred.

Mayor Worley suggested the resolution be amended to delete the following wording: "The unallocated HTF funds be made available on a first come first served basis subject to all HTF criteria, staff review, and recommendation by the Housing and Community Development Committee."

Field Services Coordinator Ed Vess said that the intent of City staff was not to run projects through on a first come first served basis without any consideration of criteria and certainly not without bringing it back to the Housing & Community Development Committee. They would all be subject to all Housing Trust Fund criteria, staff review and recommendation by the Housing & Community Development Committee. He said they are trying to make sure that we get the best projects and the first come first served was merely to say that the loans would no longer be funded on an annual basis but they would be available as far as the money would go. Again, this was not staff's intent to try to circumvent the Housing & Community Development Committee or any of the criteria established for a quality project.

Councilman Dunn moved to amend Resolution No. 05-56 to only approve the three loans outlined above; and that the Housing & Community Development Committee be authorized to look at our means by which we will continue to address the funding issue for applicants for the Housing Trust Fund and report back to the City Council. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower felt this would be an appropriate time to have a policy discussion on the Housing Trust Fund since it has been in existence for approximately five years. He felt it would be good for the Housing & Community Development to discuss the inequities of affordable housing and look for ways that we might more creatively and enthusiastically respond.

Councilwoman Jones said that the Housing & Community Development Committee works really hard, and she wasn't sure that they should make a lot of policy decisions based on one year of data. She felt they needed to look at the trends and gather more information.

The motion made by Councilman Dunn and seconded by Councilwoman Jones carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 53

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY EMERGENCY MANAGEMENT FACILITY LOCATED ON 129 S. LEXINGTON AVENUE FOR A PROPOSED 911 CALL AND COMMUNICATION CENTER, AND EMERGENCY DISPATCH FACILITY

On October 7, 2004, a letter was received from Buncombe County Manager Wanda Greene requesting "that the hearing on the Conditional Use Permit application for the Union Transfer Building (tax lots PIN 9648.06-48-0774 and 0445), located on Hilliard Avenue, be delayed until the fourth Tuesday in February, 2005." On October 12, 2004, Vice-Mayor Mumpower moved to continue this public hearing until February 22, 2005. This motion was seconded by Councilwoman Bellamy and carried unanimously.

On February 8, 2005, Buncombe County Manager Wanda Greene notified the City that "after receiving your email that City Planning staff would not support putting the ambulances at Union Transfer, we put the building up for upset bid. We have accepted an offer on the building." Therefore, this conditional use permit is withdrawn and no public hearing is necessary.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF FOUR LOTS ON TUNNEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT / CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED MULTI-USE BUILDING

ORDINANCE NO. 3214 - ORDINANCE REZONING FOR FOUR LOTS ON TUNNEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT / CONDITIONAL USE

ORDINANCE NO. 3215 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR FOUR LOTS ON TUNNEL ROAD FOR A PROPOSED MULTI-USE BUILDING

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:56 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of a request to rezone four lots on Tunnel Road from RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Use, and a request to issue a conditional use permit for a proposed multi-use building.

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required, complying with another of the plan's goals.

As mentioned above, the proposed project would improve sidewalk connectivity and set aside open space. While it would take away a small area of land currently used for housing, it has the potential to provide services within a short distance of neighboring residential areas.

Recent zoning actions include: (1) Three parcels at the intersection of Tunnel Rd and Grandview Pl (1/3 mile east of this project) were rezoned from HB/RS8 to CBI (Approved December 2004); and (2) In May 2004, requests to have three parcels at 968 Tunnel Road, 966 Tunnel Road, and 441 Governor's View Road (1/3 mile west of this project) rezoned from RM-6 to CBI were denied by the Planning and Zoning Commission.

The subject properties are being considered for a retail and office development with associated parking, located on 1.75 acres on the south side of Tunnel Road (Attachment to City Exhibit 3 – Aerial Photo). The area on which the proposed project would be built consists of four parcels within the City of Asheville's corporate limits (Attachment to City Exhibit 3 – Location Map). Currently two of the four parcels are zoned HB, and two zoned partially HB, partially RS-8. The applicant seeks to rezone the split-zoned parcels to entirely HB. Office and retail use are permitted uses in the HB district. The project has a total building area of 22,549 square feet, placing it within the acceptable structure size standards and exempting it from open space requirements. Sidewalks are shown as required by Sec. 7-11-6 of the Unified Development Ordinance (UDO). The plan includes a Type "C" buffer where the property adjoins residential lots, which is the appropriate buffer between that use and the proposed use (Attachments to City Exhibit 3 – Concept Plan with Elevation Drawings).

At their January 19, 2005, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. Please note that the plans accompanying this report have been revised since the TRC meeting to address a number of the conditions mentioned in the TRC staff report:

1. Nearby streams must be added to plans.
2. Alternative compliance (including extra plantings and open space) must be specified to address parking lot planting strip and other buffer compliance.
3. Topography needs to be included on or with plans.
4. The southern portion of the lot adjacent to Swannanoa River Road must be added to the project as open space.
5. The widths of driveway radii need to be redefined.

At their February 2, 2005, the Planning and Zoning Commission approved the application unanimously.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

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1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Though some grading and site disturbance will be required, the proposed project's design will mostly preserve the existing topographic relationships. Provided the applicant employs proper erosion control measures and the proposed landscaping and mitigation, the nearby streams should not be adversely affected.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed use would provide an upgrade from the existing commercial development along the southern side of Tunnel Road, providing a likely improvement in value for neighboring commercial property. The orientation of the project towards Tunnel Road, as well as its position at a different vertical level than the adjacent residential lots would minimize any effect it would have on those properties' values.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The existing Sonic restaurant to the west and retail complex to the northeast are uses of a similar scale, bulk, and coverage to the proposed development. The residential areas to the south and west are of a different character, but the topography mentioned above arguably puts the two uses in somewhat different plane. Required landscaped buffering will further separate the differing uses. The proposed project would mostly represent a modernization of commercial terrain with a perceptible, though less significant, expansion into the portion of parcel currently zoned residential.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required, complying with another of the plan's goals. While it would take away a small area of land currently used for housing, it has the potential to provide services within a short distance of neighboring residential areas.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project's location on Tunnel Road and near Swannanoa River Road ensures access to major transportation facilities and other services. Transit routes 13 and 28 serve the area. In addition, technical review from other departments has not revealed any problems for serving the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed entrances and exits are similar to those currently in place.

Pros

- Upgrade of existing commercial area
- Furthering of Plan 2025 goals as mentioned above
- Potential to provide services convenient to neighboring residents

Cons

- Loss of one single family residential house lot.
- Commercial presence will be more visible to adjacent residential areas than is currently the case.

Staff concurs with the Planning and Zoning Commission's recommendation of approval of the rezoning request from RS-8 to HB with approval of the associated conditional use permit and conceptual site plan.

Mr. Carroll Hughes, architect and planner representing the owners. Mediterranean Property Management LLC, spoke in support of the project in that he feels it will be a visual and economic improvement to the area.

Mr. Fred English spoke in opposition to this project in that east Asheville has enough traffic and shops and they don't need anymore.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:09 p.m.

In response to Vice-Mayor Mumpower, Mr. Esselstyn said that one person who rents in the area was concerned about construction noise. He has received no other negative feedback.

Upon inquiry of Vice-Mayor Mumpower, using City Exhibit 4 (topographical map) Mr. Esselstyn explained how the topography of the area provides a buffer to the residential area on the south side.

In response to Councilman Newman, using City Exhibit 5 (earlier Concept Plan), Mr. Esselstyn reviewed with Council the parking spaces.

Upon inquiry of Councilman Davis, Planning & Development Director Scott Shuford reviewed with Council what is included in a Type "C" buffer (City Exhibit 6).

Vice-Mayor Mumpower moved to adopt Ordinance No. 3214 to approve the conditional use rezoning of four lots on Tunnel Road from RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Use. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3215 to issue a conditional use permit for four lots on Tunnel Road by adopting the proposed conceptual site plan and uses for the Nova Retail and Office Development, subject to the conditions that all outstanding TRC conditions are met. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 9

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE ADDITION OF THE URBAN PLACE DISTRICT

ORDINANCE NO. 3216 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE ADDITION OF THE URBAN PLACE DISTRICT

Mayor Worley opened the public hearing at 6:20 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance for the addition of the Urban Place District. This public hearing was advertised on February 11 and 18, 2005.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for and provides incentives for mixed use development. Asheville has a number of areas where mixed use development has been proposed as part of neighborhood plans or other planning initiatives. Additionally, this is one of several actions being proposed by staff to simultaneously implement portions of the Urban Riverfront Master Plan and address redevelopment of flooded areas.

The new zoning district would be somewhat similar to the Neighborhood Corridor District (NCD), although it would differ in being oriented more toward node development than to linear development along a corridor. It allows a wider range of uses and has less stringent design standards than those in the NCD.

Mr. Shuford explained changes from the worksession, which include: a 5% cap on open space and how sidewalks can be counted, a revised purpose statement, and minimum width of 10 feet for sidewalks.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment. There was no public comment at the Planning and Zoning Commission meeting.

Pros –

- Several goals and strategies of the 2025 Plan and Urban Riverfront Master Plan will be implemented.
- A wider range of land uses would be available to property owners.

Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. George Keller, resident of downtown, suggested that the ordinance contain a list of non-permitted uses in the district, not permitted uses.

Mr. Shuford responded to Mr. Keller. He said that the Planning & Zoning Commission reviewed in detail the permitted uses. He said that we have a mixed of form-based ordinances and a standard zoning ordinance and in this care they followed the standard ordinance for the permitted uses.

Mayor Worley closed the public hearing at 6:34 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that in order to ensure that different groups receive the ordinances, which City staff e-mail out to them for review and comment, they could include some kind of confirmation that they did receive it.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3216 to include the amendments. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 15

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-57 - RESOLUTION APPOINTING MEMBERS TO THE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Mumpower said that the terms of Leslie Hennessee and Dan Comer, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Hennessee to serve an additional three year term, term to expire December 31, 2007, or until her successor has been appointed.

Also at the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for Barbara Marlowe and Jose Ruiz.

After Council members spoke in support of the candidates interviewed, Barbara Marlowe received no votes and Jose Ruiz received 7 votes. Therefore, Jose Ruiz was appointed as a member to the Community Relations Council to serve a three year term, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 54

B. RESOLUTION NO. 05-58 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Vice-Mayor Mumpower said that a vacancy exists on the Educational Access Channel Commission until June 1, 2006.

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for James Hood, Lewis Isaac and David Bonyun.

After Council members spoke in support of the candidates interviewed, James Hood received no votes, Lewis Isaac received no votes, and David Bonyun received 7 votes. Therefore, David Bonyun was appointed as a member to the Educational Access Channel Commission to serve the unexpired term of Mr. Nat Myers, term to expire June 1, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 55

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 11-17, 2005: Laura Oliver (Civic Center), O'Reilly Auto Parts (Sanitation), Carolyn Ware (Transit Services), Sherwin Pevaroff (Water), Michael Outar (Water), Jonathan Schrier (Water), Patsy Riddle (Police) and Martha Burgess (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, said that there are some very serious deficiencies in education in American in general and in Asheville in particular. He urged City Council to improve the quality of public education.

Ms. Patsy Brison, attorney representing Mr. Fletcher Carter, presented City Council with a letter and pictures outlining their concern that a City-owned street (Stevens Street) was improperly closed. She explained that Mr. Carter previously had access to the rear of his property from Stevens Street. However, the pavement for Stevens Street has been ripped up by River Bend Business Properties and/or Horne Properties and there is no longer adequate access to the rear of Mr. Carter's property from Stevens Street. She asked that the City require Stevens Street to be reopened. In the alternative, they request that Horne Properties and River Bend Business Properties be required to follow the appropriate statutory procedure regarding the closing of Stevens Street and that, before City Council approves the closing of Stevens Street, adequate access to the rear of Mr. Fletcher's property be provided by Horne Properties Inc. and River Bend Business Properties. In addition, she requested that Council investigate whether or not Horne Properties has violated their conditional use permit. City Attorney Oast said that he is currently investigating this concern and will report back to Council as soon as possible.

Mr. Walter Plaue felt it was time the City reviewed the Housing Trust Fund policy to see why the private sector is not responding.

Mr. Fred English felt that east Asheville is being saturated with commercial developments and traffic.

Mr. Mike Fryer spoke about hiring outside attorneys to defend the City in annexation lawsuits.

Closed Session

At 7:02 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to

which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:45 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 8, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Students from the Reynolds High School Army ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

ADDITION TO AGENDA

On behalf of the Housing & Community Development Committee, Councilman Dunn requested that a resolution regarding a Housing Trust Fund loan be added to the agenda under "New Business."

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 22, 2005**

B. **RESOLUTION NO. 05-59- RESOLUTION AMENDING THE 2005 SCHEDULED CITY COUNCIL MEETINGS TO DELETE THE 3:00 P.M., WEDNESDAY, MARCH 16, 2005, WORKSESSION AND RESCHEDULE THAT WORKSESSION TO THE NORMAL MEETING DATE AND TIME OF 3:00 P.M. ON TUESDAY, MARCH 15, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM IN CITY HALL**

RESOLUTION BOOK NO. 29 – PAGE 56

C. **RESOLUTION NO. 05-60 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, THROUGH THE LAND, WATER AND CONSERVATION FUND, TO ASSIST WITH THE CONSTRUCTION OF PHASE II OF AZALEA PARK**

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities.

Azalea Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road. The first phase of the park is currently under construction and includes the John B. Lewis Soccer Complex, restroom and

concession, picnic shelters, playground, disc golf, greenway trails, and parking. If the grant application is successful, the grant funds will be used to support park elements such as picnic areas, shelters, disc golf, trails, river over looks and parking.

The Parks and Recreation Department is requesting $250,000 in grant funds from the Land, Water and Conservation Fund, which requires a dollar for dollar cash or in-kind match. The cash match is available in the Capital Improvement Budget, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

This action complies with the City of Asheville Strategic Operating Plan, Council Focus Area: Natural and Built Environment, Goal 2: Increased greenway benefits equitably throughout Asheville – Continue to implement and develop greenways that enhance quality of life for Asheville.

Pros:

- Continue to make progress on the Parks and Recreation Department's strategic plan to develop Azalea Park.
- Respond to public input for key features at Azalea Park.
- Raise outside funds to support park development and reduce reliability on City funds to support Capital Improvement Plan cost.

Cons: None noted.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the Land, Water and Conservation Fund to assist with the construction of Azalea Park Phase II.

RESOLUTION BOOK NO. 29 – PAGE 57

D. RESOLUTION NO. 05-61 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, TO ASSIST WITH THE PURCHASE OF POLICE EQUIPMENT

Summary: The consideration of (1) a resolution authorizing the City Council to accept a 2005 COPS Law Enforcement Technology Program Grant; (2) a resolution authorizing the City Manager to enter into a contract with Motorola, Inc. to upgrade the City's 800 MHz radio system; and (3) a budget amendment, in the amount of $2,000,000, to appropriate the funds from the 2005 COPS Law Enforcement Technology Program Grant.

The City has applied for federal funding and has been awarded $2,000,000. The grant will be used for a radio system upgrade. The cost of this upgrade, which will significantly improve public safety features of the radio system, is $2,883,807. Buncombe County has agreed to pay for console upgrades at the Police Department, which, by contract, will be $337,025 of the above amount. The balance of the upgrade will be handled by radio infrastructure funds already in the current Capital Improvement Budget. This work will not begin until all funding has been received.

Pros:

- Provide seamless coverage and allow use of the emergency alert feature throughout the three tower area.
- Allow the North Carolina Highway Patrol and several other agencies to continue to use the City's system and to communicate with each other.

Cons: None noted.

These actions support the Council's Strategic Goal of Partnerships to Improve Critical Services/Infrastructure.

City staff recommends City Council adopt (1) a resolution authorizing the City Council to accept a 2005 COPS Law Enforcement Technology Program Grant; (2) a resolution authorizing the City Manager to enter into a contract with Motorola, Inc. to upgrade the City's 800 MHz radio system; and (3) a budget amendment, in the amount of $2,000,000, to appropriate the funds from the 2005 COPS Law Enforcement Technology Program Grant.

RESOLUTION BOOK NO. 29 – PAGE 58

E. RESOLUTION NO. 05-62 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MOTOROLA INC. FOR RADIO SYSTEM UPGRADE

Summary: See Consent Agenda Item "D" above.

RESOLUTION BOOK NO. 29 – PAGE 59

F. ORDINANCE NO. 3217 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM THE 2005 COPS LAW ENFORCEMENT TECHNOLOGY PROGRAM GRANT

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 22 – PAGE 21

G. RESOLUTION NO. 05-63 - RESOLUTION APPROVING A SUBORDINATION AGREEMENT FOR A LOAN TO THE ASHEVILLE AREA ARTS COUNCIL

Summary: The consideration of a resolution approving a subordination agreement for the Deed of Trust held by the City on property owned by the Asheville Area Arts Council.

The Asheville Area Arts Council (AAAC) purchased the property at 9 – 13 Biltmore Avenue from the City in June, 2002. As part of the purchase price, the AAAC executed a promissory note and deed of trust to the City in the amount of $123,500 for a term of 5 years bearing interest at the rate of 6% with monthly interest-only payments until maturity.

The City's loan is in 2nd lien position behind a lien to Asheville Savings Bank with a current balance in the amount of $250,233.70. The current total loan to value ratio is 48%. The AAAC has requested subordination of the City's lien to a refinancing of the Asheville Savings Bank loan in the amount of $340,233. 70.

Community Development staff have reviewed the request along with supporting documentation with regard to standard underwriting guidelines and determined that the loan to value ratio will remain well within acceptable limits at 59%.

The advantages of the subordination are:

- The loan to value ratio remains well within acceptable limits.
- The refinancing will provide needed operating capital for the AAAC.
- The City's loan is better protected by a financially strong and active AAAC.

The disadvantage is:

- The loan to value ratio will be slightly higher than it is now.

City staff recommends City Council adopt the resolution approving the subordination agreement.

RESOLUTION BOOK NO. 29 – PAGE 60

H. RESOLUTION NO. 05-64 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME "SCARLET OAK LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Scarlet Oak Lane."

Sally E. Darling Trustee, owner of lots on Scarlet Oak Lane off of Ballantree Drive has petitioned the City of Asheville to accept the street name "Scarlet Oak Lane." The new street will begin at Ballantree Drive and end at Scarlet Oak Lane.

City staff recommends adoption of the resolution accepting the new proposed street name "Scarlet Oak Lane."

RESOLUTION BOOK NO. 29 – PAGE 61

I. RESOLUTION NO. 05-65 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAMES "WINKWORTH PLACE," "SHEPHERD'S HILL" AND "TRAFALGAR CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street names "Winkworth Place," "Shepherd's Hill," and "Trafalgar Circle."

Silvaplana LLC, owner of lots in Albemarle Reserve off of Water Road, has petitioned the City of Asheville to accept the street names" Winkworth Place," "Shepherd's Hill," and "Trafalgar Circle."

- Winkworth Place will begin at Waters Road and dead-end at cul-de-sac.
- Shepherd's Hill is to begin at Winkworth Place and dead-end at cul-de-sac.
- Trafalgar Circle is to begin at Winkworth Place and end back on Winkworth Place.

City staff recommends adoption of the resolution accepting the new street names "Winkworth Place," "Shepherd's Hill," and "Trafalgar Circle."

RESOLUTION BOOK NO. 29 – PAGE 62

J. ORDINANCE NO. 3218 - BUDGET AMENDMENT TO APPROPRIATE PUBLIC, EDUCATIONAL AND GOVERNMENT FEE FUNDS

Summary: The consideration of budget amendment, in the amount of $425,000, to appropriate PEG fee funds to support the acquisition of capital equipment and facilities for the URTV public access station.

The City of Asheville, as part of its management agreement with URTV, agreed to provide capital funds to support the necessary initial equipment and facility costs associated with establishing a public access cable channel. The estimated equipment and facilities cost is $425,000.

PEG Fee proceeds, in the amount of $425,000, have been earmarked to support this effort, and they are currently being held in the City's fund balance reserve account. The proposed amendment requests an appropriation of $425,000 of PEG Fee proceeds currently being in held in fund balance to support URTV's initial equipment and facilities costs.

City staff recommends City Council appropriate $425,000 from fund balance to acquire the necessary equipment and facilities for URTV.

ORDINANCE BOOK NO. 22 - -PAGE 13

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF THREE LOTS LOCATED AT THE CORNER OF BREVARD AND SARDIS ROADS

ORDINANCE NO. 3219 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THREE LOTS LOCATED AT THE CORNER OF BREVARD AND SARDIS ROADS

Mayor Worley opened the public hearing at 5:07 p.m.

Urban Planner Julia Cogburn said that this is consideration of an ordinance to extend the corporate limits of the City of Asheville to include three lots located at the corner of Brevard and Sardis Roads. This public hearing was advertised on February 25, 2005.

John and Vaso Barlas and Simi, LLC (of which Mr. Barlas is the sole member/owner/ manager) have petitioned the City for the annexation of three lots (totaling 1.26 acres) they own, located at the corner of Brevard and Sardis Roads. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lots currently contain a restaurant, a vacant convenience store and parking areas. The combined assessed valuation for these properties according to the Buncombe County tax records is $1,701,000.00.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation.

The petitioner has requested that the annexation become effective on the date of the adoption of the ordinance, if City Council decides to proceed with this request.

City staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville to include three lots located at the corner of Brevard and Sardis Roads.

Mayor Worley closed the public hearing at 5:10 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3219. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 25

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-66 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION AND CONVEYANCE OF REAL PROPERTY ON GLENN BRIDGE ROAD FROM ROBERT STULTZ

Field Services Coordinator Ed Vess said that this is the consideration of resolutions (1) accepting a donation of real property between the Airport property and Glenn Bridge Road; (2) authorizing the transfer of City-owned land to the Regional Airport Authority; (3) authorizing an amendment to the Airport lease to include three parcels being acquired by the Airport; and (4) authorizing conveyance of a sewer line easement across Airport property to MSD.

By Resolution No. 02-106, City Council authorized a request for proposals (RFP) regarding a 13.08-acre parcel located directly across from the Asheville Regional Airport. Although several private developers have expressed interest in the property, no proposals have been received in respect to the RFP.

The Airport Authority has offered to purchase two tracts from the City on Airport Road. One tract, the 13.08 acre parcel, (a portion of Buncombe County PIN No. 9643.04-51-6384) includes the site where the FAA tower is located (715 Airport Road) and extends from Fanning Bridge Road almost to Hotel Drive on the east side of Airport Road. The other tract, a 0.59 acre parcel, (Henderson County PIN No. 009643-62-9725-15) is considerably smaller, on the east of Airport Road and just north of Hotel Drive in front of J & S Cafeteria. Both parcels have commercial development potential as well as being suitable for airport related facilities.

A nine (9) acre portion of the larger parcel was acquired by the City of Asheville with assistance from FAA. If the offer from the Airport Authority is accepted it will be necessary to reimburse the FAA for their financial participation in the acquisition of the property on a pro-rata basis i.e. 50% of the current value. That reimbursement perhaps could be accomplished by applying the sum due the FAA to an approved Airport improvement project. The smaller parcel was not acquired with FAA assistance.

The offer from the Airport includes a resolution of two other property issues as a part of the financial settlement on the subject property. One is the acquisition of a small parcel along Glenn Bridge Road, thought to be a part of the Airport property but apparently owned by an adjoining property owner, and the second is the provision of a sewer line easement to MSD to serve the South Ridge Shopping Center and Airport Road area.

1. **Acceptance of Donated Property** - A strip of land between the Airport property and Glenn Bridge Road was recently the subject of a claim by Mr. & Mrs. Roy Moede. The Moedes provided documentary evidence to support their claim. South Ridge developer, Bob Stultz, has acquired the Moede property and has offered to donate it to the City to be dedicated to the Airport. That property has an area of 0.12 acre. The first resolution authorizes the Mayor to accept the donation of the Moede property.

2. **Conveyance of Property to Airport** - The Airport Authority does not have the legal ability to own property - its property is held in the name of the City of Asheville. However, dedicating this land to Airport use has the effect of making it unavailable to the City for other uses. The property dedicated to the Airport on Airport Road will carry restrictions to insure maintenance of a green buffer between Airport Road and the warehouse development at the rear of the subject property, and insure that development of the site is done in a manner suitable to its prominence as a regional gateway site. The second resolution authorizes the transfer of City-owned land to the Airport Authority.

3. **Lease Amendment** - There are two properties that have been acquired since the last amendment to the Airport lease that were acquired with Airport funds, but have not yet been incorporated into the Airport lease. Those properties are a 5.9 acre tract at 74 Pinner Road acquired in April, 1999, and a 5 859 acre tract off Pinner Road acquired in October, 2004. The Airport lease needs to be amended to include the three parcels being acquired by the Airport in the current transaction as well as the two parcels previously acquired with Airport funds. The third resolution authorizes an amendment of the City's lease with the Airport Authority.

4. **Sewer Easement** – The sewer line easement requested by MSD for South Ridge Shopping Center crosses Airport property in a curving direction south to west from the Hidden Creek Subdivision to Glenn Bridge Road near its intersection with Pinner Road. The area of the sewer line easement is 0 98 acre (42,614 sq. ft.). The fourth resolution authorizes conveyance of the sewer easement to MSD.

The proposed financial settlement for dedication of the City owned property on Airport Road to the Airport along with the Moede property on Glenn Bridge Road and transfer of the sewer line easement to MSD would be as follows:

	Airport Authority – "Purchaser"		City of Asheville – "Seller"	
1.	Acquire 13.08 Ac	$1,300,000.00	Transfer 13.08 Ac.	$1,300,000.00
	(Airport Road)		(Airport Road)	
	Credit for Portion		Less Obligation due	
	w/ FAA Assistance	($ 447,247.70)	For FAA Assistance	($ 447,247.70)
2.	Acquire 0.59 Ac.	$ 346,000.00	Transfer 0.59 Ac.	$ 346,000.00
	(Airport Road)		(Airport Road)	
3.	Acquire 0.12 Ac.	$ 2,280.00	Transfer 0.12 Ac.	$ 2,280.00
	(Glenn Bridge Road)		(Glenn Bridge Road)	
4.	Transfer 0.98 Sewer	($ 9,310.00)	Acquire 0.98 Sewer	($ 9,310.00)
	Easement to MSD		Easement for MSD	
	Due from Purchaser	$1,191,722.30	Due to Seller	$1,191,722.30

The advantages of this transaction are:

- Substantial revenue will be generated to the City of Asheville by the transaction.
- The sale to the Airport will enhance the improvement and expansion of Airport facilities.
- The property will be incorporated into and utilized in accordance with the Airport Master Plan.
- The sewer line easement will facilitate the development of the South Ridge Shopping Center which has requested voluntary annexation as well as other development along Airport Road.
- The sewer line easement will facilitate the future development of Airport lands in the vicinity of Glenn Bridge Road.

There are no disadvantages to the transaction.

City staff recommends City Council approve the resolutions which will (1) authorize acceptance of donated real property between the Airport property and Glenn Bridge Road; (2) authorize the transfer of City-owned land to the Regional Airport Authority in the net amount of $1,191,722.30; (3) authorize an amendment to the Airport lease to include said properties, along with two other parcels acquired with Airport funds that have not yet been included in the Airport lease; and (4) authorize conveyance of a sewer line easement across Airport property to MSD.

Upon inquiry of Vice-Mayor Mumpower, City Manager Westbrook said that the revenue would go into Fund Balance.

Airport Director David Edwards spoke in support of the actions noting that the City will benefit and also it will benefit the future growth at the Airport.

In response to Vice-Mayor Mumpower, Mr. Edwards said that some identified uses for the property include additional parking and/or some rental car facilities.

Mayor Worley said that members of Council have been previously furnished with copies of these resolutions and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 05-66. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 63

B. RESOLUTION NO. 05-67 - RESOLUTION ACCEPTING A PROPOSAL FROM THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO ACQUIRE CITY-OWNED PROPERTY

Summary: See Consent Agenda Item "A" above.

Councilwoman Jones moved for the adoption of Resolution No. 05-67. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 64

C. RESOLUTION NO. 05-68 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE LEASE AMENDMENT NO. 4 TO THE LEASE WITH THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: See Consent Agenda Item "A" above.

Councilwoman Jones moved for the adoption of Resolution No. 05-68. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 65

D. RESOLUTION NO. 05-69 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT THE ASHEVILLE REGIONAL AIRPORT TO THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

Summary: See Consent Agenda Item "A" above.

Councilwoman Jones moved for the adoption of Resolution No. 05-69. This motion was seconded by Councilman Newman and carried unanimously.

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E. RESOLUTION NO. 05-70 – RESOLUTION APPROVING A LOAN FROM THE HOUSING TRUST FUND

Community Development Director Charlotte Caplan said that this is the consideration of a resolution allocating a $250,000 Housing Trust Fund (HTF) loan for affordable housing development.

On February 22, 2005, City Council allocated $370,000 for three affordable housing projects, leaving $570,000 in unallocated funds. Shortly after this allocation was approved, staff received a further application requesting a $250,000 HTF construction loan for the development of 8 units of affordable housing on Bostic Place in the Shiloh neighborhood.

The development will consist of eight 3-bedroom homes of about 1200 sq ft., built for sale at prices from $132,880 to $134,640. The homes will be of good quality modular construction, similar to those at Meadows of Bradley Branch – a development by the same company.

The application was evaluated by staff and scored well against the HTF criteria, particularly for developer qualifications. The Housing and Community Development Committee reviewed the application on March 7, 2005, and has recommended funding the project as described below:

Carr Swicegood, JCS Investments, LLC – 8 units, Bostic Place $250,000 (2 years at 2%)

This action supports Housing Opportunities Goals 3 and 4 of the Strategic Operating Plan

Advantage:

- Assists the development of 8 units of affordable housing for homeownership

Disadvantage: None

Staff recommends approval of the HTF loan to Carr Swicegood, JCS Investments, LLC, in the amount of $250,000.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-70. This motion was seconded by Councilwoman Jones and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 18-24, 2005: BellSouth (Water), Mary Daniels (Civic Center), Scott Laws (Parking Services), Lajuan Crawford (Streets) and Elizabeth Herrick (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower commended City crews for their speed on the College Street Roadway Project.

Councilman Newman urged the public to visit the USS Asheville Exhibit located in the lobby of the City Hall Building.

Councilman Dunn wished the Asheville High Lady Cougars and Pisgah High School good luck in their state championships.

Mr. Fred English felt the Pack Square Conservancy should stop their project at Pack Square and the streets should be returned to the state they were before the project began.

Mr. Joshua Massey, representing "The Drum Circle," presented City Council with a petition containing approximately 324 signatures which read "We the citizens of Asheville and its surrounding area declare that (1) the Asheville Parks and Recreation Department must stop issuing permits for Pritchard Park on Friday evenings, allowing for the public gathering of citizens in an open forum of free speech and expression that has been in existence for three years; (2) the right to freedom of speech and expression is protected by The Constitution of the United States of America; (3) the rights of the citizens takes priority to the Asheville Parks and Recreation Department's desire to make a profit from our public lands from private groups, organizations, and performances; and (4) we are not a group, organization, or performance. We are tax paying citizens, exercising our constitutional rights, and the Asheville Parks and Recreation Department and The City of Asheville does not have the authority to charge money or require permits for the citizens' use of a public park." In addition to Mr. Massey, Ms. Susan Bloom and Mr. C.J. Randall, explained that The Drum Circle has gathered every Friday night when it's warm at Pritchard Park for the past 3 years. Their concern that if other groups receive a permit for Friday nights at Pritchard Park, they are excluded from performing at the Park that night. Mr. David Mitchell, with the Parks & Recreation Department, asked them to submit a letter on the day the event would be held. The Parks & Recreation Department would in turn wait to see if the someone else applied for a permit and if not, they would be given authority to use the Park. Mr. Mitchell has also limited the number of permits that could be purchased to one permit per month and the permit fees have been raised from $25 to $100 for 3 hours. They attempted to buy all the permits for Friday nights and that was not allowed. They asked that on Friday nights that the Park be opened for public use. After a short discussion, Mayor Worley asked that Mr. Massey contact City Manager Westbrook to see if there are any solutions that might resolve this concern.

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, urged City Council to communicate with the County for a quality water system for all. He requested Council perform a mini-audit of the Asheville Water Maintenance Division and the subject water line replacement, located at Patton Mountain Circle for a "Quality Indicator" of quality management.

At 6:05 p.m., Councilman Newman moved to go into closed session for the following reason: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including possible litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously. At 9:55 p.m., Vice-Mayor Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 15, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower (arrived at 5:30 p.m.); Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: Councilwoman Terry M. Bellamy

CONSENT AGENDA:

Community Meeting vs. Special Meeting – March 29, 2005

Mayor Worley said that March 11, 2005, was the deadline for receiving applications for the City Manager position. We have heard from our executive search firm that approximately 80 applications have been received. They would like to schedule a closed session with City Council to review the applications to bring them to a short-list. It was the consensus of Council that we not hold a community meeting on March 29, 2005, but instead hold a special meeting at 3:00 p.m., in Room 209, for the sole purpose of having a closed session to review the applications and process.

Buncombe County Hazard Mitigation Plan

Summary: The consideration of a resolution adopting the Buncombe County Hazard Mitigation Plan.

The City of Asheville is required to adopt a Hazard Mitigation Plan by State and Federal law. Local governments in Buncombe County have recognized the importance of working cooperatively during emergency situations. Seven governmental entities in Buncombe County have jointly developed a multi-jurisdictional hazard mitigation plan. Each of the local government units have adopted the plan or are in the process of adopting the unified county-wide plan.

Hazard mitigation is defined as "sustained action that reduces or eliminates long term risk to people and property from natural hazards and their effects". The Federal Mitigation Act of 2000 and North Carolina Senate Bill 300 require local jurisdictions to have prepared and adopted a Hazard Mitigation Plan in order to be eligible for certain types of disaster assistance for both Presidential and State-declared disasters occurring after November 1, 2004.

In order to fulfill this requirement for our area, Buncombe County Emergency Management formed a multi-jurisdictional hazard mitigation planning committee that included representatives from the County and each municipal jurisdiction. The committee conducted risk and vulnerability assessments for each jurisdiction and, based upon the results of those assessments, developed hazard mitigation strategies to address the hazards that threaten our area.

The Hazard Mitigation Plan was then submitted to the North Carolina Division of Emergency Management and the U.S. Department of Homeland Security – Federal Emergency Management Agency for their approval in August of 2004. That approval was granted in October of 2004, pending the adoption of all seven governmental entities.

Buncombe County properly advertised and held a public informational session on the Hazard Mitigation Plan for all of the jurisdictions. In addition, Buncombe County properly advertised and held a public hearing on the Hazard Mitigation Plan for all jurisdictions.

This action clearly supports the City of Asheville Strategic Plan in Goal #3 – Strong City and County Partnerships – explore ways for the City and County to work together to meet mutual needs, to gain efficiencies or to share in regional infrastructure investment needs.

PROS:

- Adoption of the plan enables all of the jurisdictions in Buncombe County to better work cooperatively in the event of disaster and emergency situations by working from the same plan.
- Adoption of the plan enables the city to potentially receive grant funding in the future as well as enables some types of disaster assistance to city residents in the future if the need arises.
- Adoption of the plan better enables the City Manager through city staff to develop and coordinate operational procedures in a unified manner.

CONS:

- None have been identified or known at this time.

City staff recommends City Council adopt the Buncombe County Hazard Mitigation Plan.

Fire Chief Greg Grayson responded to questions from Council regarding the Plan.

Acceptance of Tiverton Lane, Clovelly Way and Bideford Row

Summary: The consideration of a resolution to accept Tiverton Lane, Clovelly Way and Bideford Row, in Devonshire Subdivision, as City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Tiverton Lane, Clovelly Way and Bideford Row are developer-constructed streets that have an average paved width of 26 feet and a length of 0.35, 0.23 and 0.25 miles respectively for a total length of 0.83 miles. Inspection reports were provided to the City indicating these streets have been constructed in accordance with the approved standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council accept Tiverton Lane, Clovelly Way and Bideford Row in Devonshire Subdivision as City-maintained streets.

Amendment to Civic Center Independent Contractor Agreement

Summary: The consideration of a resolution authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

IATSE personnel are independent contractors engaged by the Center to install and remove the ice rink as well as do a number of specialized tasks on behalf of the Civic Center. Because of the number of well-trained and available personnel, it is necessary for the Civic Center to continue to employ them in the future. No other staffing procedure would allow the Center the flexibility in staffing as using IATSE members.

The original amount of the contract was $49,000. However, with the addition of hockey, the Civic Center needs to increase the contract amount by an additional $40,000. There is currently money in the Center's budget and no new funds are required.

Pro: This contract allows the Civic Center to use experienced independent contractors to setup, take down and change over different events without having to hire a full time staff.

Con: None noted.

City staff recommends authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

N.C. Dept. of Transportation Agreement for Long Shoals Road

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Utility Agreement with the North Carolina Department of Transportation (NCDOT) for widening NC 146 (Long Shoals Road) from east of I-26 to US 25 (Hendersonville Road), including replacing the current 16 inch plastic water line along Long Shoals Road with a new 24 inch ductile iron line.

The current water line on Long Shoals Road is a 16-inch plastic line that has numerous emergency breaks during winter months. The NCDOT betterment project will be the first phase of placing a 24-inch ductile iron pipe line along Long Shoals Road, including crossing the French Broad River and replacing the 16-inch plastic line and an old 8-inch cast iron line on the other side of the interstate. The project cost from US 25 to I-26 is $1,805,799.61 which will be paid in three (3) equal annual installments to the NCDOT.

The annual budget ordinance to be adopted in late May will provide funding for the first installment payment. The funds will come out of the Water Revenue Fund.

Pro:

- This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west and south regions of the system.

Con:

- The final construction cost of this project is $600,000 above the original engineer estimate due to dramatic increases in material cost in the past 18 months.

City staff recommends approval of the Municipal Utility Agreement with NCDOT for the NC 146 (Long Shoals Road) Project: R2813 C.

A short discussion was held about non-betterment costs.

Interim Water Resources Director David Hanks responded to questions from Councilman Dunn regarding plastic waterline pipes.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on March 22, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

On-Street Parking

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the Unified Development Ordinance to allow for on-street parking to be used to meet the parking requirements for a development.

This ordinance amendment is proposed to provide a development option for meeting UDO parking requirements with the use of on-street parking. The City of Asheville's Unified Development Ordinance does not currently provide for the use of on-street parking to meet the stipulated minimum parking requirements for a development, except in a few use districts where on-street parking is allowed. Staff has been presented with some development options where on-street parking provides an appropriate parking solution with additional beneficial development aspects such as buffering the sidewalk from traffic.

This ordinance amendment sets forth that on-street parking may be counted toward the fulfillment of parking requirements if meeting certain standards. Those standards include: that the on-street parking must be newly constructed; that there shall be a minimum of four (4) contiguous on-street parking spaces constructed; that these spaces must typically be parallel parking spaces; that these spaces be located within five hundred (500) feet of the development and be appropriately zoned; that these spaces must connect with adjoining sidewalks that lead to the entrances of the buildings within the development; that these spaces will be public spaces with any easements or rights-of-way conveyed to the City; and that the City Traffic Engineer approve the overall design of the spaces being provided. Any approved parking space meeting these standards shall count as 0.75 of a required off-street parking space.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment provides for a parking design option not currently provided for in the UDO.
- Allowance for on-street parking might open up additional possibilities for adaptive reuse of existing properties where providing on-site parking is difficult.

Cons-

- On- street parking may be seen as disruptive to the flow of traffic on the streets where it is located.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0 and City staff recommends approval as well.

Ms. Cogburn also explained two additional amendments to the ordinance before Council and she would have the revised ordinance before Council at their public hearing on March 22, 2005.

Ms. Cogburn responded to various questions from Council.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

CONSOLIDATED STRATEGIC HOUSING & COMMUNITY DEVELOPMENT PLAN FOR 2005-2010

Community Development Director Charlotte Caplan presented the key features of the draft Consolidated Strategic Housing and Community Development Plan for 2005-2010.

Every five years, the City is required to prepare a Consolidated Strategic Housing and Community Development Plan to set out broad priorities, strategies, and targets for the use of Community Development Block Grant (CDBG) and HOME funds. This Strategic Plan covers not just the City of Asheville, but also the four-county Asheville Regional Housing Consortium (Buncombe, Henderson, Madison, and Transylvania counties) within which HOME funds are used.

Under the direction of the Consortium Board, staff has commissioned a detailed Housing Needs Assessment for the entire Consortium, and prepared a more limited assessment of non-housing community development needs for Asheville. We have held fifteen public meetings to gather community input on priorities and strategies, and have drafted realistic, measurable targets for each area of activity.

She explained that resale prices are up by 39% in five years; that the median sales price is $170,000; and the minority homeownership rate has decreased from 58% in 1990 to 45% in 2000.

She reviewed the affordable housing priorities as follows: (1) Provide housing for people near minimum wage; (2) Help those with special needs – homeless, elderly, disabled; (3) Make efficient use of land and infrastructure; (4) Preserve existing housing stock through rehabilitation; (5) Coordinate housing with transportation, jobs, and services; (6) Increase affordable housing stock through new construction; (7) Emphasize energy efficient, neighborhood-compatible designs; (8) Help people succeed through housing support services; (9) Build and preserve affordable multifamily rental housing; (10) Use local resources - local contractors and locally-made supplies; (11) Promote homeownership; and (12) Preserve long-term affordability.

She then reviewed the performance targets for housing as follows:

Production Type	5-Year Target
New construction for homeownership	200
New construction for rental	300
Homeowner rehab or repair	200
Rental rehab	75
Downpayment assistance	50
Rent assistance	175
Total	1,000

Ms. Caplan explained that homeless priorities being (1) to maintain existing Continuum of Care; and (2) implementation of the 10-Year Plan to End Homelessness. She reviewed the performance targets for homelessness.

She outlined the non-housing community development priorities being (1) develop living wage employment and job training; (2) provide services that support affordable housing, public transportation, youth and employment; (3) provide infrastructure to facilitate affordable housing,

multi-modal transportation, and economic development; (4) help people improve credit and avoid predatory lending; (5) support start-up and growth of small businesses; and (6) support plan to eradicate homelessness. She then reviewed the performance targets for non-housing activities.

The entire draft Plan will be published on or before March 30, to allow for a 30-day public comment period. A final public hearing is scheduled for the April 12 Council meeting, and staff will seek Council's approval of the Plan on April 26. The Plan is due to be submitted to HUD by May 15.

Concurrently with these stages, the Consolidated Annual Action Plan for 2005, which will allocate CDBG and HOME funds to specific activities, will also be published, discussed at a public hearing, and approved.

Ms. Caplan responded to various questions from Council regarding the Plan.

LOCAL HISTORIC LANDMARK – SAWYER MOTOR COMPANY BUILDING – 100 COXE AVENUE

Historic Resources Director Stacy Merten said that this is the consideration of a motion setting a public hearing on April 12, 2005, to consider designating the Sawyer Motor Company Building, located at 100 Coxe Avenue, as a local historic landmark.

The 2025 Plan calls for continued efforts involving the preservation and enhancement, of historic properties. The Sawyer Motor Company Building has been recommended by the HRC for landmark designation.

The Sawyer Motor Company Building was found to be historically significant in the areas of commerce and architecture. The Sawyer Motor Company was the first automobile dealer to announce plans to build a new showroom on Coxe Avenue in the newly created automotive business district which was developed by E. W. Grove when he filled the deep ravine that existed between Patton and Southside Avenues with the earth obtained from the leveling of the hill where the old Battery Park hotel had stood. The Sawyer Motor Company was founded by Eugene Sawyer who was the first automobile dealer in Asheville, selling his first automobile in 1903.

The structure was completed in 1926 and was built as a grand four-story concrete and steel framed auto showroom and garage. The structure is faced with dark red brick and ornamented with cast concrete trim. Cast concrete names plaques are located at both the corner and at the center of the front entrance as part of an ornamented parapet. The exterior of the building provides a strong example of the streetscape of Asheville as it would have existed on Coxe Avenue in the late 1920's. One of the most interesting features of the 60,000 sq. ft. building was the use of the roof, accessed by an interior ramp to an additional 15,000 sq. ft. of parking.

The Sawyer Motor Company Buildings is a contributing structure in the Downtown Asheville National Register District and is part of a cluster of three automobile showrooms that remain standing on Coxe Avenue, including the B& B Motor Company Building and the Conabeer Motors Building located at 162-164 Coxe Avenue.

The Sawyer Motor Company Building has been rehabilitated and developed as condominiums and commercial space. The garage level on the second floor remains relatively intact with the original concrete framing, beams, pipes, electrical conduit and ductwork all exposed. The commercial area on the first floor has been designed to allow the concrete structure of the building and mechanical systems to remain visible overhead and the exterior walls and windows to remain visible.

The ordinance designates the Sawyer Motor Company Building as a local historic landmark. The property included in the designation consists of Sawyer Motor Company Building and the .63 acre parcel on which it is located as identified on the survey. The designation does not include any interior features.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $6,066,600.00. If the property is designated as a local landmark the potential tax savings for the property owners, including city, county and school taxes would be $40,039.56.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the economic and industrial history of the area.

Cons:

- If approved, the tax deferral will result in a loss of revenue to the city and county.
- This property has been recognized as part of the downtown National Register district and currently is under no threat of being lost.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the Sawyer Motor Company Building as a local historic landmark.

Staff recommends that the City Council deny the request for landmark designation. Staff is concerned that although the HRC found that the property met the minimum requirement for local significance that overall the structure is not a leading candidate for landmark designation and as such, the potential loss of revenue to the City & County does not outweigh this concern, given that the structure has been recognized as a contributing structure in the Downtown National Historic District and is currently under no threat.

At this time, City staff recommends City Council set a public hearing for April 12, 2005.

Upon inquiry of Councilwoman Jones, Ms. Merten said that each individual owner would have to apply for the exemption. There is a question as to the eligibility of this property for tax deferral as the significant features are exterior only and the property is owned in common as a condominium. Eligibility will be determined by the Buncombe County Tax Assessor.

In response to Councilwoman Jones, Ms. Merten said that the average cost of a condominium ranges from $180,000-$300,000 and there are 20 condominiums.

Ms. Merten then responded to various questions from Council regarding this local historic designation request.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the April 12, 2005, formal City Council agenda.

DOWNTOWN SOCIAL ISSUES TASK FORCE IMPLEMENTATION

City Development Director Sasha Vrtunski said that this is the consideration of implementing two recommendations of the Downtown Social Issues Task Force.

On September 28, 2004, the Downtown Social Issues Task Force (DSITF) made recommendations to City Council concerning panhandling, public drunkenness, and graffiti. City Council asked staff to prepare a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations and a resolution supporting the Asheville Mural project.

Pursuant to this direction, staff has prepared two resolutions for Council's consideration. Staff will be coming forward with other actions intended to implement other DSITF recommendations throughout the coming year.

City staff recommends City Council adopt (1) a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations; and (2) a resolution supporting the Asheville Mural Project.

Councilwoman Jones felt that, in particular the resolution supporting more vigorous enforcement of panhandling, etc., loses a lot of the history of what Council charged the DSITF to do approximately 2 years ago.

Councilman Davis explained that these resolutions are probably the most doable things from the staff's point of view. However, he noted that other action is going on that does not require Council action, e.g., the spare change for change program being implemented.

Ms. Vrtunski said that the first recommendation by the DSITF was the 10-Year Plan to End Homelessness. She explained staff is not asking for any more stringent regulations, but just more enforcement on the existing ones.

Councilwoman Jones understands the strategy of starting to work on these and then move onto others, however, the City Manager could direct the Police Chief to enforce existing laws. She felt the resolution is a weak response to a lot of efforts and work. She felt the DSITF wanted more community based integrated efforts and she felt we are taking the easy way out by just adopting resolutions.

Councilman Newman felt that the 10-Year Plan to End Homelessness was very substantive document even though we haven't gotten to the implementation phase yet. He felt we are making a commitment in terms of the long-term approach on the homelessness issues. In fact, some of the other ideas the DSITF presented to Council we weren't sure we were going to do at all.

Mayor Worley saw a potential relationship in the sense of the 10-Year Plan requires homeless people to become a part of the Plan and not part of the problem. By occupying the housing to be provided through Housing First and in some ways a more aggressive enforcement of the panhandling ordinance, etc., is an extra incentive to move into the program.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

2006 CONGRESSIONAL PRIORITIES

Mayor Worley said that on February 15, 2005, City Council discussed the 2006 congressional priorities and at that time Council felt it would be appropriate to postpone taking action on this matter until all seven members of Council were present. Unfortunately, at this time we are short two Council Members.

Based on the recommendations from Ball Janik, staff recommends City Council adopt the following congressional priorities for 2006:

Appropriations bills:

1. Methamphetamine interdiction: $300,000-$1 million – Commerce, Justice, State bill

   Methamphetamine Enforcement and Clean-Up. This Department of Justice program funds over $52 million in methamphetamine projects, much of it earmarked to specific state and local governmental entities. These funds help combat methamphetamine production and distribution, along with clean-up and disposal of hazardous materials. Ball Janik recommends that the Asheville Police Department work with the State Bureau of Investigation to develop a methamphetamine project for interested Western North Carolina law enforcement agencies. The project could entail methamphetamine education, training, equipment, or increased personnel for enforcement or clean-up. Rep. Taylor is very interested in enhancing methamphetamine response in Western North Carolina and would support a strong multi-jurisdictional project. Depending on the scope of the project and the entities involved, this request could be as high as $1 million or as low as $300,000.

2. Thomas Wolfe Cabin: $300,000 – Interior bill

   Thomas Wolfe Cabin. An amount of $300,000 is needed to stabilize and refurbish the Thomas Wolfe Cabin located within the Azalea Park. This project is recommended because of an excellent funding source – America's Treasures in the Interior Appropriations bill.

3. Veteran's Memorial: $750,000 – VA/HUD bill, EDI Account

   Veterans' Memorial at Memorial Stadium. The fact that $800,000 has already been raised for this project will set well with federal appropriators. Privately, Rep. Taylor has indicated support for the Memorial. Strategically, the City may want to request $750,000, but should realize that, even if successful, the amount may be reduced by appropriators.

4. Bus replacement: $300,000 – Transportation bill

   City Bus Replacement. Although $300,000 was obtained for a bus in Fiscal Year 2005, this is likely a viable transit funding request for Fiscal Year 2006.

Authorizing legislation:

1. Pack Square: $2-4 million – potentially the TEA-21 Reauthorization bill (with the City supporting the request of the Conservancy)

   Pack Square. The Conservancy has requested $4 million for the Renaissance project. It is recommend that the City support the Conservancy's funding request and assist the

effort on Capitol Hill. Since the Conservancy will be taking the lead on the project, any funds obtained will flow to it. Nonetheless, all funds obtained will benefit the City.

2. UZA/transit funding issue – TEA-21 Reauthorization bill

A major piece of legislation unfinished in the last Congress is the Transportation Equity Act for the 21st Century (TEA-21) reauthorization. Ball Janik worked on the bill to include language that would permanently or at least temporarily exempt Asheville from the "over 200,000 population" urbanized area (UZA) threshold that jeopardizes the City's use of federal dollars for transit operations. Language included in the temporary extension bill provided Asheville Transit with 100% flexibility on the use of transit operating funds through September 2005, our lobbyist will continue to pursue a permanent fix.

Since the 108th Congress adjourned without finishing the TEA reauthorization, the entire legislative process starts over again. That means the City has the opportunity to request a funding project through this major bill that it did not participate in last year. Ball Janik suggests that this account be explored for funding Pack Square. Should that coincide with the goals of our Congressional delegation, it would be a good source of money that does not compete with any of the City's "appropriations" requests. It could be in the range of $2-4 million.

Councilman Davis felt we should try to obtain these funds if we can.

Councilman Newman would defer to Vice-Mayor Mumpower's request and not support the Veteran's Memorial earmarking. He would support the (1) methamphetamine interdiction; (2) City bus replacement; (3) making a top priority of having our lobbyist work on the census area problem that is creating the transit funding problem for Asheville; and (4) the Pack Square legislation. He also supported the funds for the restoration of the Thomas Wolfe Cabin in that it is not so much about the building, but what happened in the building – it's a part of Asheville's history.

Councilwoman Jones did not support asking for funding for the Thomas Wolfe Cabin.

In response to Councilman Newman, City Manager Westbrook said the cabin restoration is a part of the Azalea Road Park. The City purchased the cabin along with the property. The amount requested in the earmarking is only a part of the funding needed to restore the overall cabin itself and the area around it. It's meant to be a part of the overall larger Park that people can visit, which will be connected by walking trails from Azalea Road and accessible by vehicle from Oteen Church Road.

Councilman Dunn has not heard any public outcry for the Thomas Wolfe Cabin restoration.

City Manager Westbrook said that Vice-Mayor Mumpower had a meeting with the Memorial Stadium Committee and they had all voted to support (at some level) earmarking. He wasn't sure if Vice-Mayor Mumpower's decision to not support earmarking changed or not.

Mayor Worley suggested we recess the meeting, reconvene in the Council Chamber for the School Board interviews, and then resume this topic after the School Board interviews. Vice-Mayor Mumpower is expected to return shortly from Washington, D.C.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to arrange interviews for W.E. Lack, Robert Middlemas, Scott Shealy and Starr Silvis for a vacancy on the Board of Adjustment.

BATTERY HILL PARKING DECK

In response to Councilman Newman, City Engineer Cathy Ball said that she has met with the consultants and are moving forward on the design of the parking deck. If the design is going to change, they will need to know as soon as possible. City Manager Westbrook also noted that if the design changes, there will be a financial impact too. It was the consensus of Council to instruct the City Manager to place the parking deck discussion on the next formal meeting agenda to decide whether or not we want to have the west side of the project include some residential component.

At 4:40 p.m., Mayor Worley recessed the meeting to the Council Chamber to conduct School Board interviews. After said interviews, City Council will reconvene the worksession in order to continue discussion on the 2006 Congressional Priorities.

ASHEVILLE SCHOOL BOARD INTERVIEWS

At 5:00 p.m., City Council interviewed Elizabeth Hubbell, Gene Bell, Alfred Whitesides Jr., Keith Thomson and Jim Taylor. At approximately 5:30 p.m., Vice-Mayor Mumpower arrived for the interviews from a meeting in Washington, D.C.

At 7:30 p.m., Mayor Worley reconvened the worksession in order to continue discussion on the 2006 Congressional Priorities. Councilwoman Bellamy was the only Council Member not present.

CONTINUATION OF 2006 CONGRESSIONAL PRIORITIES

Historic Resources Director Stacy Merten reviewed with Council the significance of the Thomas Wolfe Cabin, which was constructed in 1923-1924.

Councilwoman Jones had concerns about $300,000 to stabilize and refurbish the Thomas Wolfe Cabin.

Councilman Davis spoke in support of earmarking funds for the Thomas Wolfe Cabin refurbishment.

Vice-Mayor Mumpower said that in Washington, D.C., he tried to honor the role and speak for City Council with our lobbyist. The amount the lobbyist had for the Thomas Wolfe Cabin was $237,000. (City Manager Westbrook said that the $300,000 was reduced to try to go with the funding that might be available.). Vice-Mayor Mumpower said that the lobbyist is seeking money through the American Treasures Program, which is a dedicated fund. The money will be spent and the lobbyist's argument is let's try to see if there is something we can get to put towards a practical use. He felt the Cabin is worth salvaging.

Vice-Mayor Mumpower said that in his recent meeting with our two representatives and senator he provided bullet points of advocacy on each of these issues. Two issues that resonated with our representatives were the methamphetamine interdiction and the Veteran's Memorial. He felt that everyone was on board with the bus replacement issue. Personally, the two he is most comfortable with reaching for federal dollars are the methamphetamine interdiction

and the bus replacement. The Veteran's Memorial request has been reduced from $750,000 to around $300-350,000 for various reasons. All three of the representatives he met with felt very strongly about the Veteran's Memorial and what the Memorial Stadium Action Committee and our Parks & Recreation Department is trying to do with the help of a lot of people in the community. He personally has trouble going after this money philosophically during the time of real deficit. However, he did talk with the Memorial Stadium Action Committee about it and it was their majority opinion that Council support and seek the funds. Another issue was the water system infrastructure upgrade for a number of neighborhoods, including The Block. That was between $200-300,000. Bullet points included safety, water pressure, areas that needed revitalization, economic development, etc.

Mayor Worley said we most certainly can include the water system upgrade as another congressional priority.

Councilman Newman moved to waive the rules and take formal action on the congressional and legislative issues. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Mumpower said that our lobbyist seemed to have an interest in having the issues prioritized, but the point of stronger weight is to say that we have these 4-5 issues that are priorities because they all come out of different pots.

Councilman Dunn said that after hearing about the Thomas Wolfe Cabin he could support that issue. With the Veteran's Memorial, he felt that $350,000 was more in line with what he could support.

Councilman Newman moved to support water infrastructure funding (funding level to be determined), the methamphetamine interdiction funding ($300,000-$1 Million), the bus replacement funding ($300,00), and the support for the Pack Square project ($2-4 Million). This motion was seconded by Councilman Davis.

Councilman Davis moved to amend Councilman Newman's motion to include the Thomas Wolfe Cabin funding. This motion died for a lack of a second.

Councilwoman Jones said she would vote against the amendment of including the Thomas Wolfe Cabin.

Councilman Newman moved to amend his original motion to include their efforts to fix the census tract problem that is affecting our transit funding formula. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower said that he has been in Washington, D.C., meeting with folks advocating for an agenda. To some extent the die is cast. He followed what was asked of him and he advocated very enthusiastically for the five areas that were on the congressional priority list for 2006, which included the Thomas Wolfe Cabin. He felt our legislators have embraced those areas. He said the Pack Square legislation for $4 Million is a given as much as anything is and he relayed the Mayor and Council's appreciation for that effort on Congressman Taylor's part.

The motion made by Councilman Newman to support water infrastructure funding (funding level to be determined), the methamphetamine interdiction funding ($300,000-$1 Million), the bus replacement funding ($300,00), the support for the Pack Square project ($2-4 Million), and their efforts to fix the census tract problem that is affecting our transit funding formula, and seconded by Councilwoman Jones failed on a 3-3 vote, with Mayor Worley, Councilwoman Jones

and Councilman Newman voting "yes", and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Councilman Dunn moved that Council vote separately on each congressional issue. This motion was seconded by Councilwoman Jones and carried unanimously.

(1) The methamphetamine interdiction funding ($300,000-$1 Million) was unanimously supported by City Council.

(2) The Thomas Wolfe Cabin ($300,000) vote failed on a 3-3 vote, with Mayor Worley, Councilman Davis and Councilman Dunn voting "yes" and Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "no."

Vice-Mayor Mumpower was concerned that the City spent a lot of money on lobbyist and a lot of money sending him to Washington to work with the lobbyist to advocate for these issues. The issues have already been tossed into the pot. Our representatives are working these issues. He wondered if Council is doing something productive now. He wondered how it would be if Council didn't take a formal position on these issues and just let the lobbyist do what they can.

Councilman Newman felt this discussion should have happened earlier and it's unfortunate that it didn't. He felt that if there is an issue that they do not believe should be funded with taxpayers dollars, then it should be taken off the list.

Councilwoman Jones explained that we have community needs and she feels that asking for $300,000 for the Thomas Wolfe Cabin sends a mixed message of our community's priorities (e.g., community development funds that could be invested in infrastructure and housing).

Mayor Worley said that the process is already in motion due to Council's inability to reach a decision earlier than this. We started down this road because we know we have opportunities that we have not been able to take advantage of in the past for a number of reasons. We have now made an effort (we have hired a lobbyist) and we have representatives that are in a position to help us. Our lobbyist has met with City staff and City Council to determine where we have needs in our organization and then the lobbyist looked at the availability in Washington of sources of funds to fill those needs. For instance, the Thomas Wolfe Cabin funding will come from the American Treasures funding – there is not a choice to put it towards housing or another priority.

(3) The Veteran's Memorial at Memorial Stadium ($350,000) vote failed on a 2-4 vote with Mayor Worley and Councilman Davis voting "yes" and Vice-Mayor Mumpower, Councilman Dunn, Councilwoman Jones and Councilman Newman voting "no."

Vice-Mayor Mumpower said that voted against the Veteran's Memorial funding because at this time of record deficits anything we get from the federal government should be very targeted to very specific needs and the community was told that there would be no City taxpayer money used to fund the Memorial aspect of the project.

(4) The bus replacement ($300,000), the water infrastructure funding (level to be determined), the support of the Pack Square project ($2-4 Million) and efforts to fix the census tract problem that is affecting our transit funding formula was unanimously supported by City Council.

N.C. LEGISLATIVE PRIORITIES

City Attorney Oast said that he received a letter from Senator Nesbitt indicating that he had introduced 4 blank bills on our behalf, as Council asked him to do. We are still waiting to fill in the content of those bills, which can be determined at a later time.

MISCELLANEOUS

Councilman Davis suggested that RiverLink volunteers to participated in the Swannanoa River clean-up this past weekend should be recognized in some way.

ADJOURNMENT:

At 8:29 p.m., Councilwoman Jones moved to adjourn. This motion was seconded by Councilman Dunn and carried unanimously.

Magdalen Bowlison
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 22, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

Councilwoman Bellamy proudly showed a picture of her new beautiful baby girl "Imani Bellamy".

A. RECOGNITION OF CITY OF ASHEVILLE RESERVISTS JAMES WRIGHT, DAVID SAUER AND PATRICK CRUDUP

On behalf of City Council, Mayor Worley recognized James Wright from the 210th Military Police Unit of the Army National Guard, employee with the Asheville Police Department; David Sauer, part of a Medical Unit of the Naval Reserves, employee with the Asheville Fire Department; and Patrick Crudup from the 854th Heavy Combat Engineers Unit of the Army Reserves, employee with the Asheville Parks & Recreation Department. He welcomed them home from their lengthy tour of duty.

B. PROCLAMATION PROCLAIMING MARCH 28-APRIL 3, 2005, AS "NATIONAL COMMUNITY DEVELOPMENT WEEK"

Mayor Worley read the proclamation proclaiming March 28-April 3, 2005, as "National Community Development Week" in the City of Asheville. He presented the proclamation to Councilman Dunn, Chair of the Housing and Community Development Committee, and Community Development Director Charlotte Caplan. They briefed Council on some statistics of the Community Development Block Grant Program.

II. CONSENT AGENDA:

Mayor Worley announced that Consent Agenda "H" will be removed from the Consent Agenda and from Council consideration.

Mayor Worley asked that a resolution amending the 2005 scheduled City Council meetings be added to the end of the Consent Agenda.

Councilwoman Jones asked that Consent Agenda items "F" and "G" be removed from the Consent Agenda for individual discussion.

Councilwoman Bellamy asked that Consent Agenda Item "A" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 8, 2005

This item was removed from the Consent Agenda for an individual vote.

B. RESOLUTION NO. 05-71 - RESOLUTION ADOPTING THE BUNCOMBE COUNTY HAZARD MITIGATION PLAN

Summary: The consideration of a resolution adopting the Buncombe County Hazard Mitigation Plan.

The City of Asheville is required to adopt a Hazard Mitigation Plan by State and Federal law. Local governments in Buncombe County have recognized the importance of working cooperatively during emergency situations. Seven governmental entities in Buncombe County have jointly developed a multi-jurisdictional hazard mitigation plan. Each of the local government units have adopted the plan or are in the process of adopting the unified county-wide plan.

Hazard mitigation is defined as "sustained action that reduces or eliminates long term risk to people and property from natural hazards and their effects". The Federal Mitigation Act of 2000 and North Carolina Senate Bill 300 require local jurisdictions to have prepared and adopted a Hazard Mitigation Plan in order to be eligible for certain types of disaster assistance for both Presidential and State-declared disasters occurring after November 1, 2004.

In order to fulfill this requirement for our area, Buncombe County Emergency Management formed a multi-jurisdictional hazard mitigation planning committee that included representatives from the County and each municipal jurisdiction. The committee conducted risk and vulnerability assessments for each jurisdiction and, based upon the results of those assessments, developed hazard mitigation strategies to address the hazards that threaten our area.

The Hazard Mitigation Plan was then submitted to the North Carolina Division of Emergency Management and the U.S. Department of Homeland Security – Federal Emergency Management Agency for their approval in August of 2004. That approval was granted in October of 2004, pending the adoption of all seven governmental entities.

Buncombe County properly advertised and held a public informational session on the Hazard Mitigation Plan for all of the jurisdictions. In addition, Buncombe County properly advertised and held a public hearing on the Hazard Mitigation Plan for all jurisdictions.

This action clearly supports the City of Asheville Strategic Plan in Goal #3 – Strong City and County Partnerships – explore ways for the City and County to work together to meet mutual needs, to gain efficiencies or to share in regional infrastructure investment needs.

PROS:

- Adoption of the plan enables all of the jurisdictions in Buncombe County to better work cooperatively in the event of disaster and emergency situations by working from the same plan.
- Adoption of the plan enables the city to potentially receive grant funding in the future as well as enables some types of disaster assistance to city residents in the future if the need arises.

- Adoption of the plan better enables the City Manager through city staff to develop and coordinate operational procedures in a unified manner.

CONS:

- None have been identified or known at this time.

City staff recommends City Council adopt the Buncombe County Hazard Mitigation Plan.

RESOLUTION BOOK NO. 29 – PAGE 74

C. RESOLUTION NO. 05-72 - RESOLUTION ACCEPTING TIVERTON LANE, CLOVELLY WAY AND BIDEFORD ROW AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept Tiverton Lane, Clovelly Way and Bideford Row, in Devonshire Subdivision, as City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Tiverton Lane, Clovelly Way and Bideford Row are developer-constructed streets that have an average paved width of 26 feet and a length of 0.35, 0.23 and 0.25 miles respectively for a total length of 0.83 miles. Inspection reports were provided to the City indicating these streets have been constructed in accordance with the approved standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council accept Tiverton Lane, Clovelly Way and Bideford Row in Devonshire Subdivision as City-maintained streets.

RESOLUTION BOOK NO. 29 – PAGE 75

D. RESOLUTION NO. 05-73 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT WITH THE INTERNATIONAL ALLIANCE OF THEATRICAL STATE EMPLOYEES MOVING PICTURE TECHNICIANS AT THE CIVIC CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

IATSE personnel are independent contractors engaged by the Center to install and remove the ice rink as well as do a number of specialized tasks on behalf of the Civic Center. Because of the number of well-trained and available personnel, it is necessary for the Civic Center to continue to employ them in the future. No other staffing procedure would allow the Center the flexibility in staffing as using IATSE members.

The original amount of the contract was $49,000. However, with the addition of hockey, the Civic Center needs to increase the contract amount by an additional $40,000. There is currently money in the Center's budget and no new funds are required.

Pro: This contract allows the Civic Center to use experienced independent contractors to setup, take down and change over different events without having to hire a full time staff.

Con: None noted.

City staff recommends authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

RESOLUTION BOOK NO. 29 – PAGE 77

E. RESOLUTION NO. 05-74 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE LONG SHOALS ROAD PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Utility Agreement with the North Carolina Department of Transportation (NCDOT) for widening NC 146 (Long Shoals Road) from east of I-26 to US 25 (Hendersonville Road), including replacing the current 16 inch plastic water line along Long Shoals Road with a new 24 inch ductile iron line.

The current water line on Long Shoals Road is a 16-inch plastic line that has numerous emergency breaks during winter months. The NCDOT betterment project will be the first phase of placing a 24-inch ductile iron pipe line along Long Shoals Road, including crossing the French Broad River and replacing the 16-inch plastic line and an old 8-inch cast iron line on the other side of the interstate. The project cost from US 25 to I-26 is $1,805,799.61 which will be paid in three (3) equal annual installments to the NCDOT.

The annual budget ordinance to be adopted in late May will provide funding for the first installment payment.

Pro:

- This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west and south regions of the system.

Con:

- The final construction cost of this project is $600,000 above the original engineer estimate due to dramatic increases in material cost in the past 18 months.

City staff recommends approval of the Municipal Utility Agreement with NCDOT for the NC 146 (Long Shoals Road) Project: R2813 C.

RESOLUTION BOOK NO. 29 – PAGE 78

F. RESOLUTION SUPPORTING THE ASHEVILLE MURAL PROJECT

This item was removed from the Consent Agenda for discussion.

G. RESOLUTION SUPPORTING MORE VIGOROUS ENFORCEMENT OF PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI VIOLATIONS

This item was removed from the Consent Agenda for discussion.

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT INVOLVING THE FEDERAL CLEAN WATER ACT AND THE NORTH CAROLINA CLEAN WATER REVOLVING LOAN AND GRANT ACT OF 1987 FOR WATER LINE IMPROVEMENTS

This matter was pulled from consideration by City Council.

I. RESOLUTION NO. 05-75 – RESOLUTION AMENDING THE 2005 SCHEDULED CITY COUNCIL MEETINGS TO ADD A SPECIAL MEETING ON MARCH 29, 2005

RESOLUTION BOOK NO. 29 – PAGE 79

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEMS REMOVED FROM THE AGENDA FOR DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 8, 2005

Councilman Dunn moved to excuse Councilwoman Bellamy from voting on this matter since she was not at the March 8, 2005, Council meeting. This motion was seconded by Councilman Newman and carried unanimously.

Councilman Dunn moved to approve the minutes of the regular meeting held on March 8, 2005. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION NO. 05-76- RESOLUTION SUPPORTING THE ASHEVILLE MURAL PROJECT

Summary: The consideration of implementing two recommendations of the Downtown Social Issues Task Force.

On September 28, 2004, the Downtown Social Issues Task Force (DSITF) made recommendations to City Council concerning panhandling, public drunkenness, and graffiti. City Council asked staff to prepare a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations and a resolution supporting the Asheville Mural project.

Pursuant to this direction, staff has prepared two resolutions for Council's consideration. Staff will be coming forward with other actions intended to implement other DSITF recommendations throughout the coming year.

City staff recommends City Council adopt (1) a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations; and (2) a resolution supporting the Asheville Mural Project.

Councilwoman Jones voiced concern that a "resolution of support" is an easy thing for Council to do but it doesn't have any substance. She felt the Asheville Mural Project is a good project but would like to support it in a more meaningful way.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-76. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 80

RESOLUTION NO. 05-77- RESOLUTION SUPPORTING MORE VIGOROUS ENFORCEMENT OF PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI VIOLATIONS

Summary: See Resolution No. 05-76 above.

Councilwoman Jones would not be able to support this resolution. She explained that she is not interested in supporting enforcement of resolutions already on the books when we could be doing other things simultaneously with our community that could make a bigger difference.

Councilman Davis explained that there is other work and programs being implemented by other groups that don't need any action by City Council.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-77. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote, with Councilwoman Jones voting "no."

RESOLUTION BOOK NO. 29 – PAGE 81

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 335 DEAVERVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3220 - ORDINANCE TO REZONE 335 DEAVERVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:34 p.m.

Ms. Kim Hamel, Urban Planner, said that this is the consideration of an ordinance to rezone 335 Deaverview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on March 11 and 18, 2005.

Ms. Hamel said that the subject site is located in West Asheville approximately ¾ miles off of Patton Avenue on Deaverview Road. The property is vacant and consists of 6.12 acres and is currently zoned CI Commercial Industrial District. The owners are James and Helen Beck.

Surrounding land uses and zoning include a single-family dwelling and vacant residential property zoned RS-8 and 1-2 mobile home units zoned RM-16 to the north; vacant property zoned CI to the west; multi-family and single-family units, zoned RM-8 to the South; and a large apartment complex, zoned RM-16 to the east of the site.

The subject site is located within a fairly dense residential neighborhood that consists of a mixture of single-family dwelling and multi-family units. The majority of the property surrounding the site is zoned RM-8 and RM-16. Just east of the property a section of Commercial Industrial (CI) zoned properties exists consisting of the Milkco Manufacturing plant, the MB Haynes Corp.,

and several other medium sized commercial businesses. The site is serviced directly off of Deaverview Road, a 2-lane road, located approximately ¾ mile from Patton Avenue.

The owners of the property, James and Helen Beck, have requested a rezoning of the lot to RM-16 with the intention of developing the property for residential purposes. Although, the Commercial Industrial district permits a density of 16-units per acre, the same density permitted under the RM-16 zoning district, it does not permit single-family development. Accessory apartments and multi-family uses are the only residential uses permitted in the Commercial Industrial zoning district.

Prior to the adoption of the Unified Development Ordinance (UDO) in 1997, the majority of the area, including the subject site, was zoned R-3. This zoning district permitted 16-units per acre, the same as what is being requested by the applicant. It was at the request of the owner, during the zoning discussions associated with the UDO process, that the subject property along with the two adjoining lots to the west of the subject site (also under the same ownership) be zoned Commercial Industrial. It was his intent to attract some commercial-type development similar in nature to the commercial uses that exist east of the site.

The RM-16 District was intended to permit a full range of high density multi-family housing types in area that would be close to shopping facilities, potential employment centers, road and other urban infrastructure capable of handling the demand generated by high density developments.

The Commercial Industrial District was created to provide areas for a wide range of commercial and industrial uses including: light manufacturing, warehousing, retail sales, offices and residential uses, all to be located in an area where existing urban infrastructure is adequate to support such uses.

Pros:

- The rezoning of the lot to RM-16 would be compatible with the density and character of surrounding and adjoining uses.
- Adequate infrastructure capable of handling a residential development exists in the area.
- The site is located in close proximity of potential employment centers, shopping venues and public transportation.
- The gentle-sloping topography of the land makes is suitable for residential or commercial development of the land.

Cons:

- The rezoning of the property to RM-16 would result in the loss of land suitable for the development of light industrial type uses permitted under the current CI zoning designation.
- Adequate infrastructure capable of handling the uses permitted under CI zoning designation exists in the area.

On Wednesday, March 2, 2005, the Planning and Zoning Commission made a unanimous recommendation to approve the rezoning, as requested by the applicant.

Although staff realizes the importance of maintaining the zoning of property that permits industrial type uses, we feel that the request to rezone the property to RM-16 would be compatible with the character and density of the adjoining properties and the surrounding area. The rezoning of the lot to RM-16 also has the capability of providing a high-density infill development within the City Limits in an area where utilities and other infrastructure currently

exists. Based on the above and given that the property was zoned Commercial Industrial District at the request of the owner, staff supports the rezoning of the lot, as requested.

Mayor Worley closed the public hearing at 5:38 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3220. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 27

B. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF THREE LOTS ON BILTMORE AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE CONVERTED INTO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY**

ORDINANCE NO. 3221 - ORDINANCE REZONING THREE LOTS ON BILTMORE AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3222 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS ON BILTMORE AVENUE FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE CONVERTED INTO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:39 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone 3 lots on Biltmore Avenue from RM-16 Residential Multi-Family High Density District and RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use, and a request to issue a conditional use permit for a proposed mixed-use development with existing apartments to be converted into condominiums and short-term rental units with a proposed retail office space and food service facility.

The applicant, David Payne, is requesting a conditional use rezoning of 6.6 acres from RM-16/RS-8 to Institutional District/Conditional Use to allow for the addition of non-residential uses to the property and to allow for the renovation of 114 existing rental apartments (10 buildings) to condominium units where some of the units may be occupied under short term leases not normally permitted in residential districts (Attachments to City Exhibit 3 – Aerial Map and Location Map).

The proposed Master Plan shows the addition of 4 new buildings that vary in size. Building #1 is the largest at 6,960 s.f. with a mix of office and restaurant use. Building #2 shows 4800 s.f. evenly split between office and retail. Buildings #3 and #4 are considerably smaller, between 1500 and1800 s.f. dedicated exclusively to office uses. All four buildings totaled together result in 15,060 square feet with 8,460 s.f. of office, 4200 s.f. of restaurant, and 2400 s.f. of retail. Also associated with the project are 27 additional surface parking spaces along with 39 underground parking spaces strategically planned to take advantage of the existing change in topography. In addition, courtyards, pedestrian connections, amenity improvements, open space, and additional landscaping are also detailed on the Master Plan (Attachments to City Exhibit 3 – Master Plan; Section View; Village View from Biltmore Avenue; Village Interior View; Residential Condominium View; and Pool and Amenity Area).

The subject properties are located in the Asheville city limits on the corner of Biltmore Avenue and Caledonia Road, with additional frontage on Kenilwood Place and Bowling Park Road, which serve as entrances into the Kenilworth neighborhood. The subject properties are directly across from the Marriot Residence Inn, zoned Institutional, and are bordered to the northwest by more Institutional zoned property supporting a Bed & Breakfast Inn, as well as some small business uses zoned CBII to the southwest. The remaining property boundary is surrounded by single family homes all zoned RS-8 (Attachment to City Exhibit 3 – Location Map).

The largest of the three lots is currently zoned RM-16 with the two smaller lots being zoned RS-8. One of the two single family lots is already developed as an accessory use to the apartments (swimming pool) and the other lot located along Bowling Park Road will remain undeveloped and preserved as open space for the project. Other than minor improvements to the pool amenity area, there will be no site plan changes to the existing residential component of the project and the three existing access points will remain open. Two new entrances will be added to access the new mixed use development area, one off of Kenilwood Place across from Finalee Avenue, and the other off of Caledonia Road.

The site supports some impressive mature large hemlock trees located along the bank behind the open green lawn, which effectively shields the traffic on Biltmore Avenue from the residential property. As a result of this project, many, or maybe even most, of those hemlock trees will come down. The designers for the project have stated that it is their intention to preserve as many of these trees as they can, recognizing that the trees are an amenity to the project. It is difficult to predict exactly how many of the trees can be saved or which ones will be saved until the detailed plans are completed. The trees highlighted on the Conceptual Master Plan (Attached to City Exhibit 3) are those that the developer and the site designers are confident that they will be able to preserve. There may be more than this that can be saved, but again, we won't know exactly which ones until more information is gained. She felt that what is shown on the Conceptual Master Plan is the worst-case scenario, as far as tree preservation goes. She also pointed out that there is a significant amount of additional existing vegetation that is not shown on the Master Plan located around the existing residential areas. This vegetation is not expected to be impacted in any way. The one exception is that there may be some impact to the existing vegetation located along the southern edge along Kenilwood Place, but only where the proposed entrance is located.

Normally there is a sidewalk required on all road frontages for projects such as this. We would normally require a sidewalk along Kenilwood Place; however, a fee in lieu option has been afforded to the developer, primarily because there is a pretty steep bank along Kenilwood Place. It is possible to install sidewalks, but it would be more than likely at the expense of removing a significant amount of the trees.

At their March 3, 2005, meeting, the Planning & Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and made a positive recommendation that the project be forwarded to the Asheville City Council, stipulating that the applicant meet all outstanding Technical Review Committee (TRC) conditions and other conditions outlined in the staff's report and presentation before final zoning approval. In addition, after public comment and deliberation, the Planning & Zoning Commission added a number of conditions summarized as follows:

1. The southern entrance along Kenilwood Place be eliminated if approved by the Fire Department and other City departments. If elimination of the entrance is not possible, then pursue option of limiting access to emergency vehicles only or other suitable alternative addressing emergency access requirements (excluding any alternative that accessed Biltmore Avenue).
2. Provide a pedestrian sidewalk from the village area to Kenilwood Place.
3. Traffic light study and construction of light (if approved by DOT) to be funded by the developer.
4. Trees identified on the Master Plan as "existing" must be preserved with other mature trees preserved where possible.
5. Height and character of buildings to reflect the conceptual drawings submitted by the applicant.
6. Provide preliminary sign package addressing neighborhood compatibility.
7. The developer is to hold another meeting with the neighborhood prior to the City Council hearing to:

- explore the possibility of eliminating the parking spaces behind building #2 (drive access to remain open), and
- further explore and address concerns centered on tree preservation and signage.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The proposed development is designed to capitalize on existing topography in order to place parking underneath the building thereby reducing surface parking and impermeable area. In addition, the applicant will be preserving the open lawn area at the front of the property and will be gamering additional information to better address possible tree preservation throughout the site. No significant site work is proposed for the rear of the property adjacent to the residential neighborhood and is not expected to have a significant impact on those areas.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed development will be an attractive mixed-use development that is relatively modest in scale designed to primarily serve the existing neighborhood. The non-residential buildings and uses will be oriented towards the major thoroughfare of Biltmore Avenue and access will be from commercially zoned rights-of-way. In addition to orientation and distance serving to buffer the use against the adjacent residential properties, there is some additional separation and buffering through topography change and proposed landscape buffers. Lastly, renovation and improvement of the ten existing apartment buildings is proposed as a component of this application and, in conjunction with the new development, is not expected to negatively affect the value of adjacent properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed new development is located on the front portion of the property closest to the existing commercial corridor and in total, is perfectly in scale with the existing commercial uses. Similarly the new buildings will be in character with scale of the large, high density, multi-family uses already existing on site.

   Single family homes of the neighborhood are separated somewhat by the existing multi-family development, rights-of-way, and topography and are not expected to be heavily impacted by the proposed development. In addition, the new development will be broken into multiple (4) new buildings that will be in keeping with the bulk and coverage of the neighborhood - particularly the two smallest buildings located in closest proximity to single family homes of the area will be no larger than the average home in the neighborhood. Lastly, the conceptual architectural style proposed is intended to reflect the mixed and eclectic architectural styles of the Kenilworth neighborhood with elements of Craftsman and Mediterranean styles combined in a village layout.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The Asheville City Development Plan 2025 is very clear in its support of quality infill development as another method of implementing the City's Smart Growth vision. It goes on to describe one of the reasons for the underdevelopment of property being due to "suburban zoning requirements that do not maximize use of the property for urban purposes" and asks that opportunities for infill development be considered on a case-by-case basis where special regulatory tools, such as conditional use zoning, may be used to encourage compatible development of these properties. This position is further supported by the Smart Growth Land Use Policies adopted by the Asheville City Council in 2000.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed mixed-use project is extremely well positioned to take advantage of existing transportation facilities including alternative transportation options with multiple bus routes running down Biltmore Avenue and through the Kenilworth neighborhood, in addition to an extensive network of pedestrian paths linking the neighborhood to a number of services and employment centers. In addition, the proposed development has been reviewed by the TRC, which did not reveal any problems with providing service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed development is not designed to be a destination center and is intended to primarily serve the residents of Kenilworth and others in relative proximity to the site. The proposed mix of use is not expected to generate a large amount of traffic and this traffic is expected to utilize the main thoroughfare of Biltmore Avenue. The three existing access points to the residential component of the project will remain open while two new access points on either side of the proposed development will help disburse new traffic back to Biltmore Avenue. Lastly, although not a part of this application, the property owner is investigating with N.C. Dept. of Transportation ("NCDOT") the possibility of placing a new traffic light at the corner of Biltmore Avenue and Caledonia Road to help safely control turning movements onto Biltmore Avenue.

Pros

- Promotes quality infill development while retaining open space for the neighborhood
- Provides neighborhood services to the immediate community
- Promotes the renovation and improvement of well positioned residential units

Cons

- Will result in the loss of existing vegetation (extent of loss is undetermined)
- Will result in a modest increase in traffic at intersections with Biltmore Avenue

In the weeks since the Planning & Zoning Commission meeting, discussions between the Planning, Engineering, and Fire Departments resulted in the preference to keep the southern drive entrance along Kenilwood Place open to all traffic. The Fire Department did clarify that a drive that was more residential in character could be substituted or a turn-around alternative could be explored if topographically feasible. The Traffic Engineer also supported moving the entrance closer to Biltmore Avenue, if possible as it related to the parking layout. In addition, the applicant has coordinated with the NCDOT regarding the proposed traffic light and has initiated

the process for formally requesting a traffic light at the intersection of Caledonia and Biltmore, which includes contracting professionals to complete a traffic study. The applicant has also ordered a detailed tree and topographical survey to better assess impacts to the existing vegetation and possible changes to the southern entrance, and it is hoped that this work will be completed prior to the City Council hearing. Lastly, the applicant held a second neighborhood meeting to discuss the primary issues and concerns voiced during public comment by the Kenilworth neighborhood.

The applicant has attended three meetings -- one with the representatives of the Coalition of Asheville Neighborhoods, one with representatives of the Kenilworth neighborhood, and another one with the neighborhood as requested by the Planning & Zoning Commission. In preparation for the last meeting, the designers for the project worked out some alternatives that would better address the neighborhoods concerns and presented Alternative Concept A (City Exhibit 4). Some of the main differences include: (1) Building No. 3 has been relocated to front on Caledonia Road and will utilize an existing parking area; (2) The parking formerly located in the front of Building No. 2 has been eliminated with the proposed parking being redistributed and reduced by 9 spaces. This will drop the number of parking spaces below the minimum for the project for the development. However, given that the existing parking area for the residential component exceeds their minimum, there is enough parking to satisfy all the requirements when looked together in total; and (3) The designers are showing the entrance on Kenilwood Place as an emergency access only. She pointed out that this Alternative Concept A has not been thoroughly reviewed by all technical departments since they only received it late yesterday. However, some City staff have had the opportunity to quickly look over this alternative and do not have any heavy concerns with the proposed changes, with the exception of the emergency access only. In the intervening weeks since the Planning & Zoning Commission meeting, discussions between Planning, Engineering and Fire Departments have resulted in a strong preference to keep the southern drive entrance along Kenilwood Place open and to keep it open to all traffic. The reasons for the preference are numerous, but most notably the preference to keep it open was desired to (1) decrease response time and better serve emergency situations; and (2) help mitigate the flow and disbursement of traffic through better access and connectivity.

In summary, City staff has reviewed the project, and it's Alternative Concept A, and has determined that it does meet technical standards and the seven conditional standards outlined in the UDO.

Mr. Chuck Tessier, consultant representing Power Development, LLC, said they have been working on a plan to fully integrate the new development in an existing lovely property. They are asking that the property be rezoned for two reasons: One reason is to allow the creation of a Village in the front for a public gathering space - for not only our property, but also the residents of Kenilworth. (City Exhibit 3 – Master Plan). Their studies have shown that people are looking for walkability. There will be a restaurant, club area, and private dining room area with some outside seating. The retail component consists of two small shops and there are some office components. The second reason for the rezoning request is to allow for short-term rentals or rentals under one-month. One of the primary motivations of the developer was to provide some housing opportunities for the medical and hospital communities. This could be for families, physicians who are in and out on a short-term basis, or other short-term kinds of needs, both locally with the medical community and seasonal people.

Mr. Tessier said that their meetings with the community were an attempt to listen and respond. They think they have done that. The community was concerned with traffic. We are familiar with the traffic problem at the corner of Caledonia and Biltmore and know others have tried to get the NCDOT to put a traffic light at that location. The developers are have already contracted with a traffic engineer to prepare a traffic study in this area to justify the light. We will pay for the cost of that, which is in excess of $100,000. They will need the City's and the

community's support and help to encourage NCDOT to do this. Another concern of the residents primarily on Kenilwood Place was that they did not want an entry from the project onto Kenilwood Place. The original entry was there for two reasons: (1) to allow the people from the Kenilwood area to have an entry into the restaurant without going out onto Biltmore Avenue and then coming back; and (2) for emergency access. However, the community did not want that exit. Therefore, they have spent a lot of time developing 3 different options, which were presented to the community at their meeting last night. He felt there was a consensus around the Alternative Concept A (City Exhibit 4). He urged City Council approve the Alternative Concept A. Tree protection was another big concern for the neighborhood. Part of their program is to not only protect, but enhance the landscaping of the community. To put the Village in on the only piece of property that we had requires the cutting of some trees and we have done everything possible to minimize that. We have relocated the Village back off of the existing hemlocks to preserve them and made changes to protect as much of the tree cover as possible. We have a complete tree survey of all the trees on the property and will, prior to any construction, mark those trees which are to stay and have that clearly delineated so there would be no misconception of that in the future. The neighborhood had concerns about the parking lot on the south side and concerns about retaining walls. The original design has a series of terraces, but we have changed our plan and reduced the number of parking spaces and made modifications to that in an effort to respond to the community's concern. Regarding the sidewalk all the way up Kenilwood Place, the community said they would rather have trees than sidewalks. The neighborhood was concerned about short-term rentals. Some fears were competition with existing business, deterioration of property values in the area, and how the short-term rentals would be managed. It is real important to understand the economic viability of this project and where the target market is. He explained they had two options for the property when they began – fix up or completely renovate the property. The developers have made the decision to completely rehab the project. The cost of this project, with the acquisition of the existing property and the development of just the existing residential units, without the Village itself, is over $18 Million. Their first priority in terms of target markets was the protection of existing residents. There were about 20 vacant units. Before it was offered at all on the open market it was offered to the existing residents at a price of over $40 a square foot under our initial offering price to the public. We also agreed to pay moving costs, provide financing, and provide free rent while they were dislocated from their units. It was a very advantageous package offered to provide affordable units to the existing residents. In fact, over 15 have bought into the program. The second priority has been to the medical community. All our marketing is designed for walk to work and to provide long and short-term housing needs to the medical community. The third market will be to permanent residents or seasonal investment markets. Those are some of the reasons why we feel the short-term rental program is important. The costs that are going into these and the nature of the rehab will increase the values of these units and the property around it significantly. As to proper management, there were some concerns about how the short-term rentals would be used. We will put in our covenants that any short-term rentals under a month will be done only through a management agency. There are very stiff restrictions in terms of how the units must be maintained.

Mr. Matt Sprouse, landscape architect for Power Development, LLC, said the spirit of the development is one of a walkable, pedestrian oriented design. They have strived to create a plan that meets the needs of our clients, but also has the least amount of impact on the site and its surrounding properties. They have reduced the impervious surface of the new construction of the Village, trying to fit within the natural contours of the land using the existing infrastructure. They are saving greenspace, preserving trees, and they want to keep within the architectural character of the neighborhood. They have acquired a full tree survey of the property of any tree over 10-inches in diameter. Mr. Sprouse then reviewed the original Master Plan (Attachment to City Exhibit 3). There are 4 buildings. The total parking on the original scheme is 66 spaces, 39 of which are underground. The main entrance would be from Caledonia Road. He showed the Village Interior View (Attached to City Exhibit 3), noting the intent is more of a pedestrian oriented plaza. An elevator accesses the parking deck underground. On the Biltmore Avenue side

there is a series of terrace gardens what will cascade themselves down into the green lawn. He also reiterated the concerns of the neighborhood as stated by Mr. Tessier. He showed the tree survey of trees 10-inches and larger (Applicant Exhibit 1), noting the line of hemlocks. When we overlaid the original concept of the Village onto the tree survey, you can see where the line of hemlocks are and that was their first indication to start the Alternate Concept A (City Exhibit 4) (Applicant Exhibit 2 – Original Survey). They have rotated the entire Village around to get Building No. 1 off the line of hemlocks entirely. That shift removed parking spaces and reduced them from 66 spaces to 53 spaces (with approximately 39 spaces being underground).

The following individuals spoke not so much in opposition of the conditional use permit, but wanted the following concerns/thoughts considered and addressed: zoning signs did not specify the complexity of the project; no Kenilwood Road entrance; need for traffic signal at Caledonia Road and Biltmore Avenue, with or without this development; request for postponement to enable the neighbors and developers time to work more on the concerns; tree preservation; severely limit short-term rentals and stipulate the management, number of units and strong covenants; need to keep Kenilworth residential; process is moving too fast; be sure the 11% occupancy tax is collected from the short-term rentals; and request for pedestrian walkway at corner of Biltmore Avenue and Caledonia Road:

Ms. Mary Evers, resident on Finalee Avenue,
Mr. David Herbert, Kenilworth community resident
Ms. Jan Howard, Kenilworth community resident
Ms. Rita Whiteman, owner of Cedar Crest Victorian Inn at corner of Caledonia and Biltmore Avenue
Ms. Miller Graves, resident on Caledonia Road
Mr. Tayo Shapel, resident on Castle Street

The following individuals spoke in support of the conditional use rezoning and permit for various reasons, some being, but are not limited to: the Village will be an asset to the condominium owners and the entire community; renovation of the area will eliminate the trash in the park, junked cars in the lower parking area and disorderly conduct; developers will be investing a lot of money on the project; underground parking costs more and will eliminate a lot of asphalt for above-ground parking; good urban infill project; and revitalization of older buildings:

Ms. Elizabeth Brunsman, resident at Biltmore Gardens,
Mr. Kevin Gentry, Kenilworth community resident
Mr. Joshua Vandergrift, area resident and property owner

In response to Councilwoman Bellamy, Mr. Tessier said that there are two houses immediately behind the pool and four lots adjacent to that which have been purchased by the developer. He has no plans at this time, in terms of what he intends to do with those. It is not part of this rezoning request and basically purchased as a buffer to the project from the community and from other uses.

Upon inquiry of Councilwoman Bellamy, Mr. Tessier said that they have hired Mr. Ken Putnam as their traffic engineer to do a study on the intersection of Caledonia Road and Biltmore Avenue to see if the intersection warrants a traffic signal. At a cursory review, Mr. Putnam felt the traffic counts will be reduced with the condominium project, however, it is their hope that through the combined support forces of the community, City Council and the developer (and the developer's willingness to pay the costs), the NC DOT will install a traffic light.

In response to Councilwoman Bellamy regarding the preservation of trees, Mr. Tessier said that the developer is committed to preserving the trees along Kenilwood Place. He said they have done a complete tree survey of all of the large trees and said that when they do the detailed

design of the project, they will clearly mark those trees that are to remain. Without detailed designs, they can't 100% mark every tree, but before construction, we certainly will have those clearly identified. He assured Council that they will do everything possible to maintain as many trees as they can. He also said we may lose some trees, but we will also gain a great deal in terms of additional landscaping on this property.

When Councilwoman Bellamy asked about the short-term rentals, Mr. Tessier said that the number of units that would be available for short-term rentals will be market driven. In their initial marketing of this property, probably 4 or 5 to one of people are interested in living there as a permanent residence vs. buying it as an investment to rent, either on the regular rental market or for a short-term rental. If the units all sell out to permanent residents, that would be great. We know there is a demand for short-term rentals with services in Asheville and we want the ability for that to happen under strict guidelines. We want this to be a very high grade property and any rentals that happen under a month would be only done through the management company.

Upon inquiry of Councilwoman Bellamy, Mr. Tessier said that there is a bus stop on Biltmore Avenue. He also said there is a school bus stop at the corner of Caledonia and Bowling Park. If they have a significant number of residential, they might offer transportation as part of property's services. The covenants have not yet been written. He explained that until they got through the City Council process and knew that they could even offer rental under a month, or offer a Village, they haven't been able to move forward on the design details. He did say, however, that they would be willing to look at a covered bus stop.

In response to Councilwoman Bellamy, Mr. Sprouse responded to the stormwater mitigation measures.

Councilman Davis asked if our UDO has a definition for short-term rentals. Planning & Development Director Scott Shuford said that the only provision in the UDO is for vacation rentals, and that it would not apply to this parcel because of the zoning being changed from a residential classification. Even if would remain residential, it would not be large enough to have it apply.

In response to Vice-Mayor Mumpower, Ms. Tuch said that the neighborhood was first notified of this project 10 days prior to the TRC meeting, which notices would have been sent out on February 11, 2005.

In response to Vice-Mayor Mumpower regarding a traffic signal at Caledonia and Biltmore, Traffic Engineer Anthony Butzek said that it would be beneficial to the neighborhood in terms of provide access to get out onto Biltmore Avenue safety. It would also provide more of a safe pedestrian crossings at that location. He explained that traffic engineering professionals are bound by a fairly strict set of codes on when traffic signals can be installed. We have, and the NC DOT has, done reviews at this location in the past and based on the number of left turns coming out of Caledonia Road it was no where close to meeting the warrants. He didn't think a traffic signal will be a particularly likely outcome. That is one of the reasons that they recommend keeping the south access point on Kenilwood Road open for all traffic, so traffic can distribute between both intersections on Biltmore Avenue. Another reason is from an emergency response standpoint. If the single point of entrance were closed or blocked, then the emergency vehicles would have no way of reaching the site. Also, for emergency vehicles needing to turn around on the site, having two access points allows them to enter and exit the site without having to find a spot on the site to back up and make that turn. If Council does choose to go with the emergency access route only, he would recommend two conditions: (1) That it would be a paved surface so that pedestrians could utilize it; and (2) that an easement be provided to the City so that if problems did arise in the future the City could reopen that access.

Upon inquiry of Vice-Mayor Mumpower about perhaps restricting no left turns from Caledonia onto Biltmore Avenue, Mr. Butzek said that left turns are fairly typical throughout the corridor to have left turns, although it does create some delay and annoyance to drivers. But in terms of a capacity standpoint, the signal down at Meadow Road will control the capacity, so anything we do for left-turns would be for safety purposes. From a safety standpoint, if a review determined that there was a particularly high crash rate, we may look at some turn prohibitions in the future, but he doesn't recommend that in the current situation.

In response to Vice-Mayor Mumpower, Mr. Butzek said that he does not see any significant traffic increases from this project. The project will generate about 50 new trips (from the commercial aspect) in the pm peak hour (basically the one hour during rush hour), which is half of what it takes to trigger a traffic study. During that time he would expect about 8-10 of those trips to actually be going into the neighborhoods, via Caledonia or Kenilwood Place.

Responding to Councilman Newman, Mr. Butzek said that the basic formula of NC DOT on a traffic signal is that there needs to be enough of a benefit to the side street to justify the additional delay drivers on Biltmore Avenue would see with the light there.

After hearing no rebuttal, Mayor Worley closed the public hearing at 7:15 p.m.

Councilman Dunn moved to approve the conditional use rezoning of 3 lots on Biltmore Avenue from RM-16 Residential Multi-Family High Density District and RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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Mr. Shuford said that if Council is considering not allowing the driveway access onto Kenilwood Road to be open for all traffic and that it be limited to the emergency access only, the Fire Department has requested that the buildings near that exit be sprinkled to allow them to be better protected from a fire standpoint. The developer is acceptable to that.

Mr. Butzek clarified one point on the sidewalks vs. the fee in lieu of option. Staff's recommendation on Kenilwood Place is to require a sidewalk between Biltmore Avenue and the project access on Kenilwood Place and the fee in lieu of option above that on Kenilwood Place. The reason is that is a pedestrian route and it also does not have any large trees along that section.

Councilwoman Bellamy asked a condition be added that as many mature trees as possible along Kenilwood Place from the access point on Kenilwood Road up the hill would be saved. Mr. Shuford said we all want to make sure there is some form of fairly quantifiable way to identify the trees that can be preserved under Alternate Concept A. He suggested Council give staff direction to go back and take the reasonably produced tree survey (Applicant Exhibit 1) and have the developer better identify the trees that they would be able to save. Then staff will bring the conditional use permit back to Council at their next meeting for you to have an opportunity to actually see what trees are being talked about, in what areas and with greater specificity. That will give staff a chance to tailor the condition so that there will be no vagueness with regard to what is meant by the condition.

Mr. Tessier said they have a specific site plan that shows where the buildings are going to go, in terms of the distance from Kenilwood Place, and they we have a tree survey. They have talked to two members of the Tree Commission and they are perfectly willing to work with them in terms of a determination of exactly which trees can be saved to accommodate the development.

We do ask that this, however, be done at the time of detailed design and that is a pretty detailed process and will take longer than a couple of weeks.

Mayor Worley asked what would happen if there was a disagreement with the Tree Commission. Mr. Tessier said that if the Tree Commission says a tree can be saved, within the confines of the design that we have done, then they will accept their decision. Again, he would much rather do that with a detailed design, as opposed to making guesses just to expedite a process. When we submit our building permit, we will mark the trees and protect them during the construction process.

Mr. Tessier said that if a question arose whether a tree can or cannot be saved, he would have no problem with the City adding into a condition that the Tree Commission is the arbitrator.

Using the Alternate Concept A (City Exhibit 4), which is the developer's preferred alternative, Ms. Tuch said the trees identified on that plan are trees that were identified on that tree survey. After consultation with the site designers, she said these are the trees that they are confident and committed to preserving. She also noted that the tree survey and the Alternate Concept A only reflects the trees 10-inches and greater. There are more trees on that site that will more than likely be preserved.

City Attorney Oast suggested a condition be that existing trees greater than 2-inches in diameter uphill from the project east access on Kenilwood Place (shown on Alternate Concept A – City Exhibit 4) be preserved and that no sidewalk be required in that area. In addition, the project must be developed within the dimensions as shown on Alternate Concept A and that any removal of the existing trees must be approved by the Tree Commission prior to the issuance of any permits.

Ms. Shannon noted one concern that more than likely, as a result of the creation the Kenilwood Road access, there will be some trees removed. However we won't know the extent of that removal until the site designers do the grading for it.

Councilman Newman asked what would happen if when they are grading the site and some of the existing trees on Alternate Concept A have to be cut. City Attorney Oast said that if that happens, the developer will need to come back to City Council for a modification of the conditional use permit and he can write that in this conditional use permit, if Council chooses.

Ms. Tuch suggested the option that once the designer prepares the detailed drawings that we get detailed plans showing the existing trees to be preserved. Council might word a condition that the plan needs to be reviewed and approved by City Council prior to final zoning approval.

Mr. Shuford said that we have some complicated wording on this condition and staff doesn't want to make a mistake and have an element of vagueness that precludes enforcement of Council's intent. While Council may approve the conditional use permit tonight, he asked that the wording on the conditions come back for a final vote.

Vice-Mayor Mumpower asked for staff to have specific language regarding tree preservation in conditional use permits.

Councilwoman Bellamy also felt that when the neighborhood and developers agree on items, Council should have those agreements as a condition in the conditional use permit as well.

Councilwoman Bellamy asked for a condition that the developer be required to cover the bus stop adjacent to the development.

Councilwoman Bellamy felt a condition regarding short-term rentals would be appropriate. Based on Mr. Tessler's statement, she suggested a condition that the short-term rentals be limited to 25%.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford explained the rental vs. homeownership issue surrounding this project vs. the Appeldoorn Condominium Project. Councilwoman Bellamy used that example to show that it is not unprecedented for Council to put a percentage requirement on how much can be short-term rental or homeownership.

Councilwoman Jones suggested a condition to limit the short-term rentals from 7-30 days opposed to daily rental. After a brief discussion about no enforcement mechanism in the UDO, City Attorney Oast felt that Council can define short-term rentals in this conditional use permit.

Councilman Newman stressed that this development is currently all rental and now it's being rehabbed to condominiums, which will probably be mostly owner-occupied. The close location to the hospitals might bring in medical staff from other parts in the county to stay in Asheville, which is important to our quality of health care and important to the economy. He doesn't think a big percentage of the property will be used for short-rental, but he hoped if Council does put some cap on it, it will have flexibility. He felt this is a legitimate need in our community.

In response to Mayor Worley, Mr. Tessler said that the developer wants the flexibility in the management and occupancy of this property. When you spend $18 Million, that is a lot of money at risk in the market, and they want to be able to allow the market forces to have flexibility in that, because that increases the probability of success of the project.

Mayor Worley said that there will be condominium documents which set forth restrictions and covenants. This is a similar type of concept of a vacation rental where you have high-end condos that are rented on a regular basis through a management company with a lot of restrictions on the type of usage, the upkeep, and the services that are provided. He felt it sounds like what Council is really talking about is less a percentage restriction but more a restriction on the type of rental. He felt that would be a reasonable restriction to impose on the developer.

Councilman Dunn felt that when a developer invests that much money, they would want to rent longer than 30-60 days. He didn't think it was appropriate for Council to put percentage restrictions on the developer. Condominium covenants are very strict.

When Vice-Mayor Mumpower asked Mr. Shuford if he had enough guidance to draft a condition, Mr. Shuford said that he is hearing there is a desire to allow the management company approach to serve as the arbitrator and let that determine basically the standard for the short-term rental process.

Regarding the short-term rental percentage, Councilwoman Bellamy just wants to make sure that we protect the quality of life for the residents surrounding this development. If that can be addressed in a covenant and we can be assured of that, she will be satisfied. She would, however, prefer a percentage. She just wants to make sure that the development is not all rental and if that occurs, what kind of accountability in the covenant documents does the condominium owner have.

Mayor Worley suggested a condition that the condominium declarations require a management company for short-term rentals.

Upon inquiry of Councilwoman Jones, Mr. Tessler said the prices of the units will range from $139,000 for an efficiency up to a 3-bedroom unit for $399,000.

Councilman Dunn moved to adopt Ordinance No. 3222 to issue a conditional use permit by adopting the proposed master plan for the Biltmore Gardens project, subject to the following conditions recommended by City staff and the Planning and Zoning Commission: (1) The applicant to address all outstanding TRC conditions before final zoning approval; (2) That all outdoor lighting be equipped with 90 degree cutoff features and directed away from residences; (3) Where significant hardship does not exist, sidewalk shall be provided for all road frontages with no fee in lieu option provided; (4) The applicant to work with address coordinating to provide new street addressing to most effectively meet emergency access needs; (5) The southern entrance along Kenilwood Place remain open with location and design to be adjusted, if possible, to better address neighborhood compatibility; (6) Provide a pedestrian sidewalk from the village area to Kenilwood Place; (7) Traffic light study and construction of light to be funded by the developer (if approved by NCDOT); (8) Trees identified on the Master Plan as "existing" must be preserved with other mature trees preserved where possible. More detailed tree preservation plans shall be required before final approval, including tree protection plans during construction; these plans shall be shared with the neighborhood prior to construction and protected trees shall be field verified and clearly identified for construction crews and City inspectors; (9) Height and character of buildings to reflect the conceptual drawings submitted by the applicant; (10) Sign package addressing neighborhood compatibility shall be provided by the applicant; (11) The developer be required to cover the bus stop adjacent to the development; (12) That the southern drive entrance along Kenilwood Place be open for full access to all traffic; (13) That Village Alternate Concept A be used in the Master Plan; (14) The condominium declarations require a management company for short-term rentals; (15) That existing trees greater than 2-inches in diameter uphill from the project east access on Kenilwood Place (shown on Alternate Concept A – City Exhibit 4) be preserved and that no sidewalk be required in that area. In addition, the project must be developed within the dimensions as shown on Alternate Concept A and that any removal of the existing trees must be approved by the Tree Commission prior to the issuance of any permits; and (16) The developer is required to install a sidewalk between Biltmore Avenue and the process access on Kenilwood Place; and the fee in lieu of option above that on Kenilwood Place. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

City Attorney Oast said that he would prepare the Order and bring it back for wording approval at Council's next formal meeting on April 12, 2005.

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At 8:20 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW FOR ON-STREET PARKING TO BE USED TO MEET THE PARKING REQUIREMENTS FOR A DEVELOPMENT

ORDINANCE NO. 3223 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW FOR ON-STREET PARKING TO BE USED TO MEET THE PARKING REQUIREMENTS FOR A DEVELOPMENT

Mayor Worley opened the public hearing at 8:45 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to allow for on-street parking to be used to meet the parking requirements for a development. This public hearing was advertised on March 11 and 18, 2005.

This ordinance amendment is proposed to provide a development option for meeting UDO parking requirements with the use of on-street parking. The City of Asheville's Unified Development Ordinance does not currently provide for the use of on-street parking to meet the stipulated minimum parking requirements for a development, except in a few use districts where on-street parking is allowed. Staff has been presented with some development options where on-street parking provides an appropriate parking solution with additional beneficial development aspects such as buffering the sidewalk from traffic.

This ordinance amendment sets forth that on-street parking may be counted toward the fulfillment of parking requirements if meeting certain standards. Those standards include: that the on-street parking must be newly constructed; that there shall be a minimum of four (4) contiguous on-street parking spaces constructed; that these spaces must typically be parallel parking spaces; that these spaces be located within five hundred (500) feet of the development and be appropriately zoned if located farther than one hundred and fifty feet (150) from the development; that these spaces must connect with adjoining sidewalks that lead to the entrances of the buildings within the development; that these spaces will be public spaces with any easements or rights-of-way conveyed to the City; and that the City Traffic Engineer approve the overall design of the spaces being provided. Any approved parking space meeting these standards shall count as 0.75 of a required off-street parking space.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment provides for a parking design option not currently provided for in the UDO.
- Allowance for on-street parking might open up additional possibilities for adaptive reuse of existing properties where providing on-site parking is difficult.

Cons-

- On- street parking may be seen as disruptive to the flow of traffic on the streets where it is located.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 8:47 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3223. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. HAYWOOD STREET PARKING DECK

Councilman Newman said that when Council discussed proceeding with the development of the new parking facility, there were discussions about the design and scale of the project and whether or not it was possible to include more residential development on other parts of the

project. He understood the vote by Council was to go ahead and approve the budget amendment and allow City staff to proceed, without any particular conditions on them to modify the project, nor did we preclude them from looking at different ideas. Staff heard interest in these ideas and were left to consider those ideas and if they thought any were worthwhile, to continue exploring them. A couple of weeks ago City staff contacted him about a couple of design modifications to make the project look better and have other types of uses Council discussed at their meeting. He was invited to review the ideas and basically the feedback he received from staff was that the only potential modifications to the project that were really in the realm of worth considering was to consider doing a design change to include a residential or mixed-use development on the west side of the deck. The other ideas were not feasible. City staff prepared a list of pros and cons of whether or not doing a design modification that way would be a good idea. That is what led us to the interest in having a little more discussion on this matter.

Vice-Mayor Mumpower and Councilman Dunn felt that the parking deck matter was already discussed (with a certain number of parking spaces being set) and voted on and disagreed with the action coming again before City Council.

After a short discussion, Mayor Worley ruled the matter was properly before the Council,

Councilman Dunn moved to overturn the Mayor's ruling that the matter is properly before the Council (thus removing the item from the agenda). This motion was seconded by Vice-Mayor Mumpower and said motion failed on a 2-5 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "yes," and Mayor Worley, Councilwoman Bellamy, Councilman Davis, Councilwoman Jones and Councilman Newman voting "no."

City Engineer Cathy Ball said that staff, along with the consultants for the project, have evaluated the option of incorporating some residential housing units into the proposed footprint of the Haywood Street Parking Garage and found that the only way to add residential units would be to add units on the O.Henry Street side of the parking garage. The impact of this change would be as follows: (1) Nineteen units could be added at a size of about 600 square feet per unit; (2) The number of parking spaces would be reduced by 109 spaces; (3) A minimum of 19 remaining spaces would need to be earmarked for the added residential component of the plan; (4) A need for parking would increase by a minimum of 19 parking spaces to accommodate the residential units; (5) The total impact on the number of parking spaces would be 128, which is approximately 20% of the total number of proposed spaces in the parking garage; (6) The cost to redesign the parking garage would be an estimated additional $250,000; (7) The City would experience an additional four to six month delay in the construction of the parking garage; (8) The cost of constructing the parking garage would remain about the same because the efficiency of the garage would decrease. The cost per parking space would increase approximately $5,000 to $6,000 per space in present day dollars; (9) The marketing of the private development portion of the project may be adversely impacted due to the reduced number of parking spaces available in the parking garage; (10) The cost of financing the garage would increase because a higher percentage of the parking spaces would have to be funded at a non-tax exempt rates; (11) The annual revenue generated from the parking garage would decrease by approximately $150,000; (12) The overall operation of the parking garage would be adversely effected due to the loss of one access point on the O.Henry side of the garage; and (13) Regarding the efficiency of the deck under the current scenario system-wide, in the year 2019, approximately 20 days during that year the deck would be full. The same model suggests that by reducing the number of parking spaces by 128 spaces, (1) in the year 2019, approximately 77 days during that year the deck would be full, and; and (2) in the year 2014, 19 days during the year the deck would be full. After careful consideration, it is staff's recommendation that we move forward with the construction of the parking garage as it is designed. Staff looks forward to exploring the options of developing a request for proposals for the private development portion of the project that may provide opportunity for the addition of some residential housing. Staff will be working closely with

Council and the community to develop this request for proposals. She also suggested a market study to make sure we use the land as appropriately as possible.

Councilman Newman felt there were two basic reasons to consider a design modification. One is that there is a need for more moderately priced residential development downtown and the other is the potential benefits of how the project will look in downtown. Using a picture of a similar deck in Greenville, S.C., he illustrated how the project can look in downtown Asheville.

Upon inquiry of Councilman Newman about some financial positives of considering doing the private sector development on the west side of the property as well as the east side, Ms. Ball said if you were to bring in the residential component on the west side, you wouldn't have to put on the façade. You would still have to build a concrete firewall, which would be cheaper, however, that is a very short distance, so the cost didn't decrease tremendously as a result of that. The other is whether or not you could sell this land or the possible air rights. That cost could potentially be there, but we didn't have market data to show what we could sell them for. However, based on our appraisals we have done in 2000, it was about $34.00 a square foot for land and it's now about $40.00 a square foot. It was approximately $120,000 for the land.

Councilman Newman said that some of the positives would be that we could sell that property for private sector development and there would be some façade reduction costs. Ms. Ball pointed out that those figures have already been included in the total change in cost ($250,000). She said the parking garage costs would remain about the same, but the cost per space would go up. It will not necessarily decrease the cost of the garage because you have to build more in the turn-around area and have to move the elevator. It wasn't enough to offset the per space cost.

Councilman Newman said that the financial benefits of reducing construction costs, compared to the financial costs of having to do redesigns, is basically a wash. Therefore, considering a design modification to the project would lose approximately 115 parking spaces, but what you get is 20 residential units downtown, which will be smaller and hopefully fairly moderately priced. And, the project might look better if the deck is wrapped with residential development.

Upon inquiry of Councilwoman Jones, Ms. Ball said that they did not look at, nor did they consider, the increase associated with putting the property back on the tax rolls. Mayor Worley calculated that the additional tax base to be approximately $1,300 a year.

Councilman Newman explained how in the short run the decks would generate more money. Ms. Ball responded that in come cases where a council wants a certain type of development, they may even give away the land. It would depend on the kind of deal you come up on the spaces, whether or not you lease them at market rate or you are able to throw them in as an affordable housing project. There are a lot of questions Council would have to consider in giving these spaces out. If they paid full costs, there would be a demand for an additional 19 spaces earlier than later. Councilman Newman felt that in the short run the decks would generate more money (because there would be more demand for the parking spaces in the front end.

Councilman Newman also pointed out that since the cost of every parking space is about $50 a month to maintain, there would be reduced future maintenance costs if there were fewer parking spaces.

Ms. Ball said that the finance positives discussed but not listed in her report were the property tax realized (approximately $1,300); the amount of the sale of the property at $40 a square foot (approximately $110-120,000); and maintenance costs (approximately $40-50 a

space). She felt that in the short run, the amount of money that would be generated would be negligible.

Councilman Newman moved to consider design modifications on the west side of the deck for private sector development of approximately 20 moderately priced residential units. This motion was seconded by Councilwoman Jones.

Councilman Newman said that regardless of his first motion, he would put forward a motion to give direction to City staff that when we develop the Request for Proposals (RFP) for the private sector development on the Civic Center side of the deck, that we encourage them to structure the RFP in a way that can hopefully maximize the number of affordably or moderately priced residential units.

Mr. W. Louis Bissette Jr., representing the Grove Arcade, was concerned with the reduction in the number spaces and the delay in the construction of the deck. He urged Council to move forward with the current design plan and hoped that the affordable housing aspect would be addressed by the private sector development near the Civic Center.

Mr. Bill Griffin, merchant at the Grove Arcade, urged Council to proceed with construction of the original design as soon as possible.

Ms. Ruth Summers, with the Grove Arcade, also spoke in support of the original design of the parking deck.

Mr. Eric Gorny, County resident, spoke in support of additional parking in the City.

Ms. Selina Sullivan spoke in support of affordable housing and less parking.

There was further discussion on the design modification and ach Council member voiced their opinion.

City Manager Westbrook suggested a limited market study be performed by someone other than City, as to what may be the best use. Once we have that market study, then we can create the RFP.

Ms. Ball also recommended a market study and then the development of an RFP based on the market study. The market study will give Council better direction on what would be the best options and it will also tell Council what trade-off's the City will have to make if they you want affordable or mid-range housing to occur. She suggested, so that Council can get the best and most information they can, is that Council look at both options – what is the highest and best use, and what kind of subsidy would have to be done for putting in affordable housing units in that area.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that, based on other units in the area, the market rate for a developer to come in and build the 19 units would be approximately $180,000 a unit, unless there was some subsidy.

Councilwoman Jones said that she would support the motion for a design modification subject to keeping the existing parking commitments and cutting from the vague private sector portion. She did, however, recognized that there would be a time delay.

The motion made by Councilman Newman for a design modification and seconded by Councilwoman Jones failed on a 2-5 vote, with Councilwoman Jones and Councilman Newman

voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

Councilman Newman moved that someone other than City staff prepare a market analysis for the private sector development on the Civic Center side of the desk, and that we look at the feasibility of including affordable and moderately priced housing as part of the overall project. This motion was seconded by Councilwoman Bellamy.

When Councilwoman Jones asked that the market study include the downtown merchants to see what they really want, Mr. Shuford suggested a little broader market study in general, and then have a specific component for this area so we are able to have a nice economy of scale and get a useful tool for other areas in downtown as well.

City Manager Westbrook said that staff will bring back an appropriation request of approximately $25,000 to fund the market study prior to the study being actually performed.

Vice-Mayor Mumpower would not support the City spending $25,000 when we have been given many ideas about how the property needs to be developed.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

B. RESOLUTION NO. 05-78 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Mumpower said that the terms of John Legerton, Lewis Isaac and Allison Jordan, as members on the Asheville School Board, expire April 1, 2005.

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for Elizabeth Hubbell, Leslee Kulba, Keith Thomson, Alfred Whitesides Jr., Jim Taylor and Gene Bell. On March 9, 2005, Ms. Kulba withdrew her name from consideration.

It was the majority of Council's decisions to not bring in Ms. Jordan for an interview, however, she would remain an active candidate for a vacancy.

After each Council member spoke in support of all the candidates, Allison Jordan received 7 votes, Elizabeth Hubbell received no votes, Gene Bell received 7 votes, Keith Thomson received no votes, Alfred Whitesides Jr. received six votes and Jim Taylor received 1 vote. Therefore (1) Allison Jordan was reappointed to serve a four-year term, term to expire April 1, 2009, or until her successor has been appointed; and (2) Alfred Whitesides Jr. and Gene Bell were each appointed as members to the Asheville School Board to serve a four-year term respectively, terms to begin on April 1, 2005, and expire on April 1, 2009, or until their successors have been appointed.

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B. RESOLUTION NO. 05-79 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that Jerry Bailey has resigned as a Regular member of the Board of Adjustment, thus leaving an expired term until January 21, 2006.

At the City Council's worksession on March 15, 2005, City Council instructed the City Clerk to arrange interviews for Starr Silvis, W.E. Lack, Scott Shealy and Robert Middlemas. Ms. Silvis was unable to come in for the interview.

After each Council member spoke in support of all the candidates, it was the consensus of City Council to appoint Robert Middlemas (current Alternate member) as a Regular member to the Board of Adjustment to serve the unexpired term of Mr. Bailey, term to expire January 21, 2006, or until his successor has been appointed.

Because Mr. Middlemas was an Alternate member, it was the consensus of City Council to appoint Mr. Scott Shealy to fill the unexpired Alternate term of Mr. Middlemas, term to expire January 21, 2006, or until his successor has been appointed.

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VI. OTHER BUSINESS:

For Our Kids

Vice-Mayor Mumpower thanked those who participated in developing The Leadership Circle, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

Claims

The following claims were received by the City of Asheville during the period of February 25-March 10, 2005: PSNC Energy (Water), Eric Stewart (Water), Kevin Kelley (Water) and James T. Wintle Jr. (Fire.) These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hamilton stressed that it is virtually impossible for any organization to operate successfully without a Comprehensive Quality Plan. The International Standards Organization (ISO 9001) provides ample guidance for the development of such a Plan. On behalf of Asheville Citizens for Quality Government, he urged City Council to improve the quality of City government by instituting such a plan.

Mr. Eric Gorny, County resident, urged City Council to take the initiative to contact the Buncombe County Commissioners and schedule a Joint City-County Meeting to work on the Water Agreement.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:28 p.m.

Magdalen Bowlesson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 12, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Clyde A. Erwin High School Army Junior ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the Invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL, 2005, AS "CHILD ABUSE PREVENTION MONTH"

Councilwoman Bellamy read the proclamation proclaiming April 2005 as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, Director of Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING APRIL 12, 2005, AS "MISSION HOSPITALS DAY"

Mayor Worley read the proclamation proclaiming April 12, 2005, as "Mission Hospitals Day" in the City of Asheville. He presented the proclamation to Mr. Joseph F. Damore, President and CEO; Mr. Ernest Ferguson, Chairman of the Board of Directors of Mission and Senior Vice-President of Wachovia Bank; Dr. George Bilbrey, Chief of the Mission Medical Staff; and Mr. Robert F. Burgin, recently retired President and CEO of Mission Hospitals, who briefed City Council on some activities taking place during the day.

C. PROCLAMATION PROCLAIMING APRIL 10-16, 2005, AS "NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK"

Councilman Dunn read the proclamation proclaiming April 10-16, 2005, as "National Public Safety Telecommunications Week" in the City of Asheville. He presented the proclamation to telecommunicators with the Asheville Police Department, who thanked City Council for their support.

D. PROCLAMATION PROCLAIMING APRIL 17-23, 2005, AS "NATIONAL VOLUNTEERS WEEK"

Councilman Newman read the proclamation proclaiming April 17-23, 2005, as "National Volunteers Week" in the City of Asheville. He presented the proclamation to Ms. Cathy Stout, Member of Directors of Volunteers in Agencies, who briefed City Council on some activities taking place during the week.

E. RECOGNITION OF RIVERLINK VOLUNTEERS

Councilman Davis commended the RiverLink volunteers who worked diligently to clean-up the Swannanoa River in mid-March, 2005. He presented the recognition certificate to Ms. Karen Cragnolin, Executive Director of RiverLink.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE WORKSESSION HELD ON MARCH 15, 2005, AND THE FORMAL MEETING HELD ON MARCH 22, 2005

B. RESOLUTION NO. 05-80 - RESOLUTION AUTHORIZING THE CITY TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE TRAFFIC SIGNAL SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NC DOT) in order for the NC DOT to use City of Asheville earmarked money to proceed with design and construction of new computerized traffic signal systems for College Street and Patton Avenue downtown, and Hendersonville Road from Meadow Road to Long Shoals Road.

The City was awarded an earmark of approximately $2 million for implementation of the City's portion of the citywide computerized traffic signal system. This earmark was intended to be used to match NC DOT's portion, of about $9 million. Instead of waiting for the additional $9 million to be allocated by the State for construction of the citywide traffic signal system, it is proposed to use the available funding to address the most critical needs. In effect, the City would be allowing some of its funding earmarked for City-maintained signals to be used toward State-maintained traffic signals, with the agreement that the State would use its funding to upgrade the remaining City-maintained signals once its funding is allocated. The State's portion of the funding is an unfunded Transportation Improvement Plan (TIP) project and has consistently been one of the City's top TIP priorities. Due to its unfunded status, no definite timetable exists for its implementation.

The project would involve the installation of new traffic signal controllers and cabinets, new communications equipment, new central computers for the City and State, replacement of some traffic signal heads, and some pedestrian signals. It does not include mast arms in any locations; existing poles and mast arms will continue to be used on College Street and Patton Avenue downtown, and span wire will be used on Hendersonville Road, as well as several signals on the periphery of downtown.

The project was initiated with the collaboration of NC DOT signal systems staff and City staff.

Pros

- Installation of much-needed traffic signal system along Hendersonville Road to manage congestion
- Replacement and upgrading of some aging traffic signal equipment downtown
- Use of a federal earmark to leverage future State funding
- No direct cost to City taxpayers (all funding is State-allocated)

Cons

- Lending of City-procured funding to State (not necessarily a negative)

This project meets the following City Council Strategic Operating Plan: (1) Planning Goal #2, Objective A, Task 2: Leverage outside funding to achieve multiple transportation goals where possible; and (2) Planning Goal #2, Objective B, Task 1: Determine opportunities for managing traffic demand through changes to commuting patterns and transportation modes, land use patterns, signalization improvements, etc.

City staff recommends City Council authorize the Mayor to enter into an agreement with the NC DOT in order to allow the NC DOT to begin design of the traffic signal systems.

City Engineer Cathy Ball responded to questions from City Council regarding the traffic signal system.

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C. RESOLUTION NO. 05-81 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING A PROPOSED LICENSE AGREEMENT WITH THE HOUSING AUTHORITY FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution directing the City Clerk to publish a notice of intent regarding a proposed License Agreement with the Housing Authority of the City of Asheville for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road (White Fawn) is the site of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

The Housing Authority has proposed to install an antenna and related equipment at White Fawn. There are two towers at 36 Reservoir Road and the Housing Authority antenna would be located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable the Housing Authority to relocate its antenna from Spivey Mountain to White Fawn and thereby improve its in-house wireless communications.

The Housing Authority will pay an initial annual License Fee of $2,400 for the White Fawn site, which represents about 50% of fair market rent. The reduction in the license fee is in consideration of the official nature of the Housing Authority as an agency of the City of Asheville and its charge to carry out the public housing franchise for the City. The agreement includes a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years.

Approval of the resolution will authorize the City Clerk to publish a notice of intent to enter into the License Agreement.

Planning Department staff recommends adoption of the resolution directing the City Clerk to publish a notice of intent regarding a proposed License Agreement with the Housing Authority of the City of Asheville for an antenna at 36 Reservoir Road.

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D. RESOLUTION NO. 05-82 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY LOCATED ON COURTLAND AVENUE (LOT #11) TO SET SAIL DEVELOPMENT INC.

Summary: The consideration of a resolution authorizing the Mayor to convey land on Courtland Avenue (Lot 11) to Set Sail Development Inc. for $25,500.

On August 24, 2004, the City Council directed the City Clerk to advertise an offer to purchase land on Courtland Avenue from Ross B. Parkinson in the amount of $6,000 for upset bids. The advertisement ran in the Asheville Citizen-Times on August 27, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received and the sale was re-advertised. Subsequently the sale was advertised a total of 15 times in response to upset bids received. No further bids were received after the 15th advertisement. Therefore, the offer to purchase from Set Sail Development, Inc. in the amount of $25,500 was not upset and the sale to Set Sail Development, Inc. should be approved.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey land on Courtland Avenue (Lot 11) to Set Sail Development, Inc., in the amount of $25,500.

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E. RESOLUTION NO. 05-83 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY LOCATED ON COURTLAND AVENUE (LOT #12) TO SET SAIL DEVELOPMENT INC.

Summary: The consideration of a resolution authorizing the Mayor to convey land on Courtland Avenue (Lot 12) to Set Sail Development Inc. for $28,500.

On August 24, 2004, the City Council directed the City Clerk to advertise an offer to purchase land on Courtland Avenue from Samuel Koerber in the amount of $6,000 for upset bids. The advertisement ran in the Asheville Citizen-Times on August 27, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received and the sale was re-advertised. Subsequently the sale was advertised a total of 15 times in response to upset bids received. The only bid received after the 15th advertisement did not meet the statutory minimum requirement for an upset bid. Therefore, the offer to purchase from Set Sail Development, Inc. in the amount of $28,500 was not upset and the sale to Set Sail Development, Inc. should be approved.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey land on Courtland Avenue (Lot 12) to Set Sail Development Inc., in the amount of $28,500.

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F. ORDINANCE NO. 3224 - BUDGET AMENDMENT TO REFLECT CURRENT FUNDING LEVELS FOR THE ASHEVILLE TRANSIT SYSTEM

Summary: The consideration of a budget amendment, in the amount of $332,907, reflecting current funding levels for the Asheville Transit System, including the provision of transit services to the Town of Black Mountain.

The Asheville Transit System has been approved to receive funds from the State of North Carolina in the amount of $65,273 to pass through to Mountain Mobility for the provision of services within Black Mountain; an additional $166,745 in federal operational funding due to late maneuvering in congress which once again resulted in an exemption for the ATS from the new requirements of the Urbanized Area of over 200,000 population classification; the projected increase in budgeted passenger fares and Bulk income of $40,624.

This revenue is offset by the pass through of $65,273 from the State of North Carolina to Mountain Mobility for its fixed route Black Mountain Operations, an increase in Para-transit funding of $12,000, and an increase in the operational budget of $195,369.

The benefit to the City of Asheville is the increased mobility for the citizens of Asheville both within and outside the city.

City staff recommends City Council approve the budget amendment to reflect current funding levels for the Asheville Transit System, including the provision of transit services to the Town of Black Mountain.

Transit Services Director Bruce Black responded to questions from Councilman Newman regarding the transit services budget.

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G. RESOLUTION NO. 05-84 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain.

The Asheville Transit System has received funding for the operation of a route to Black Mountain through a contract signed by the Mayor last year. The unexpended funds have allowed some operation into this year. The City will receive these funds again this year enabling it to continue these routes through June 30, 2005, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. There are no City funds in any of these operations, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes.

The benefit to the City of Asheville is the increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

There are no disadvantages to the City of Asheville.

City staff recommends City Council to authorize a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation for the provision of transit services to the Town of Black Mountain.

Transit Services Director Bruce Black responded to questions from Vice-Mayor Mumpower regarding the Black Mountain bus route.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING AT 96 LOUISIANA AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ADDITION OF A PROPOSED DUPLEX, RESULTING IN A TOTAL OF FOUR RESIDENTIAL UNITS**

ORDINANCE NO. 3225 - ORDINANCE REZONING PROPERTY AT 96 LOUISIANA AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/ CONDITIONAL USE

ORDINANCE NO. 3226 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 96 LOUISIANA AVENUE FOR THE ADDITION OF A PROPOSED DUPLEX, RESULTING IN A TOTAL OF FOUR RESIDENTIAL UNITS

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:48 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at 96 Louisiana Avenue from RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density

District/Conditional Use, and a request to issue a conditional use permit for the addition of a proposed duplex, resulting in a total of four residential units.

The applicant (Brian and Joy Fuchs) are requesting a conditional use rezoning of a split-zoned lot from RS-8/RM-8 to RM-8 (Conditional Use). The .51 acre lot is located in West Asheville in a predominantly single family neighborhood where the unusually shaped lot straddles the zoning line between single family and multi-family zoning (Attachments to City Exhibit 3 – Location Map and Aerial Map). The rear portion of the lot lies in the RS-8 zoning district while the front portion of the lot, already supporting a single family home and accessory apartment, lie in the RM-8 zoning district. The applicant is proposing the addition of a 2688 s.f. duplex at the rear of the lot which would result in a total of 4 units. Because the 4 units are spread over three structures, a multi-family zoning designation is required without subdivision. All three structures would share a common driveway but parking is provided separately for all three structures (Attachment to City Exhibit 3 – Site Plan).

Duplexes are permitted in an RS-8 zoning district as either a "Use by Right, Subject to Special Requirements" or as a "Conditional Use". However, due to the inability to subdivide under current standards without a subdivision modification, and due to restrictions associated with the existing zoning, the applicant preferred to keep the larger lot intact and pursue a rezoning that would allow multiple structures on a single lot. The front portion of the lot is surrounded by single family uses zoned RM-8, the rear portion of the lot is surrounded by single family uses zoned RS-8. The proposed density would be 7.8 units an acre, under the maximum allowed. The current site plan shows the location of the existing structures, proposed location of the duplex, required parking for all the units, and landscape requirements for parking and buffering.

The Technical Review Committee (TRC) reviewed this project at their January 19, 2005, meeting where it was unanimously agreed that the project be forwarded to the Planning and Zoning Commission with a recommendation of approval with conditions. The majority of the TRC conditions were minor revisions of clarification and standard comments noting the need for separate applications at a later date. Three points of conditional approval were reiterated after public comment and those points include: (1) Verify project will meet sight visibility requirements; (2) Verify minimum width of driveway required for safe maneuvering; and (3) Applicant to provide more detailed alternative compliance for required buffer.

Both the traffic engineer and fire marshal reviewed the driveway width and sight visibility issues and determined that, given the existing site constraints, a variance to the driveway width would have to be granted (from 16' minimum, to 12'). It was recommended that once past the obstacle of the large mature tree at the corner of the property that the driveway be widened to 16', however, this would result in a further encroachment into the required buffer that was already reduced through alternative compliance. Understanding the conflict, both the traffic engineer and fire marshal have approved the 12' wide driveway for the entire length of the entrance.

At their February 2, 2005, meeting the Planning & Zoning Commission reviewed this application and, after public comment and deliberation, recommended denial by a 5-2 vote. Concerns cited by the Commission included compatibility with the adjacent homes, negative impacts on adjacent property values, failure to meet minimum technical standards, and potential problems with storm water run-off.

The applicant did appeal this recommendation and has submitted revised conceptual building elevations better addressing concerns over architectural compatibility and scale. The revised concept plans reflect a more contemporary suburban style not unusual to west Asheville and is generally felt to be much more architecturally compatible than the original plan showing a stripped down modular style. In addition, a new building model has been chosen by the applicant that is not as tall and smaller in overall square footage and building footprint. The original plan

showed a two story, 30' tall building totaling 2688 s.f. with a 48'x28' footprint. The new plan shows a two story building that is between 25'-28' tall (slab vs. crawl space) that is a little over 2100 s.f. with a footprint of 44'x24' (Attachments to City Exhibit 3 – Elevations and Revised Building Elevation Drawings – Front and Rear Areas). This change results in an approximate 10% reduction in height, a 20% reduction in total square footage and a 4' reduction on both footprint dimensions. The new building model will aid in mitigating the scale and bulk of the proposed building while still enabling the applicant to accomplish his development goals (Attachment to City Exhibit 3 – New Proposed Site Plan Model).

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed duplex will be located in an open and clear area at the rear of the property. A minimal amount of fine grading will be necessary to smooth out grade transitions and no vegetation will be removed as a result of the site work. In addition, a separate grading, drainage, and erosion control plan will be required before site work can begin.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   There is significant evidence that supports the position that the addition of well maintained multi-family, rental properties, or affordable housing does not substantially injure the value of adjoining or abutting property. The applicant has made significant improvements to the single family home and property and intends to continue with renovations. In addition, the conditional use permit can provide a mechanism by which assurances can be made that the property will continue to be well maintained through current or future property owners.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   Evaluating the proposed development for harmony and compatibility with the surrounding neighborhood is challenging. The lot is larger than the average lot with the rear half of the property looking and feeling like its own lot, separate from the front half of the property. Evaluating the duplex alone, on what feels like a separate lot, the duplex is not significantly out of density or coverage with most of the properties in the neighborhood. In addition, at 2112 square feet, the proposed duplex is of a single-family residential

scale. However, the duplex would be taller and larger than most of the existing residences in the surrounding block. This is mitigated somewhat by landscape buffers and placement, tucked back behind the homes on Louisiana Avenue that sit higher than the proposed duplex. The duplex will, however, sit above the adjacent homes on the lower Dunwell Avenue where it is more difficult to assess the impact of scale and bulk or any possible mitigation from landscape buffers. As with standard #3, the conditional use permit may be utilized to mitigate compatibility concerns.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The Asheville City Development Plan 2025 (ACDP 2025) describes the Smart Growth policies adopted by City Council in 2000 and how these policies encourage and support a more efficient use of land and other resources to accommodate the needs of the region's population. The plan goes on to describe that areas within the existing urban fabric that are vacant or underdevloped should be targeted for compatible infill development that takes advantage of the existing infrastructure. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditonal Use Rezoning is one such tool that would allow this property to be developed at a higher density than the current zoning would allow. However, the same sections of the comprehensive plan that discuss the need for residential infill development also state that the "protection, preservation, and enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction." There is some concern that the proposed project could result in a higher impact that would be less compatibile with the properties that are in close proximity to the subject property.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The subject property is well positioned in respect to transportation facilities with easy access to major thoroughfares and multiple bus lines operating on both Patton and Haywood. The project has also been reviewed by the TRC, which did not indicate any problems with providing service to the property.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The Master Plan proposes using the same drive entrance but will relocate the existing parking area away from the adjacent property line, providing some buffer between the drive and adjacent home. In addition, the site will be graded to provide better turn-a-round maneuvering eliminating the need for backing movements into traffic on Louisiana Avenue. Lastly, the City's Engineering Department has reviewed the access and drive and has determined that, given the site constraints and comparatively low volume of traffic, a variance to the minimum driveway width is warranted

Pros

- Provides for infill development
- Provides a variety of housing types
- Improves existing off-street parking conditions
- Eliminates the existing split-zoning

Cons

- Results in a higher impact to adjacent properties
- Project is generally residential in scale and character, but less compatible with surrounding homes
- Project has some challenges meeting minimum requirements (landscape buffers & driveway width)

Staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use rezoning, particularly in light of the recent changes submitted by the applicant.

Concerns over neighborhood compatibility may be best addressed by those most affected by the proposed use. Staff recommends that the City Council utilize public input concerning this and other issues and carefully consider whether the conditional use permit should be conditioned to mitigate these concerns.

Mr. Brian Fuchs, property owner, said that they currently reside on the property and would like to have the opportunity to build some needed housing on the big weeded field on their back lot. He said that he met with every neighbor that abuts the back lot and explained to them what he would like to do. Unfortunately, the neighbors did not support the structure being built. He said they have done everything they can to meet the neighbors' concerns and the Planning & Zoning Commission's concerns. He had a revised site plan drawn which shows a reduction in height and a smaller footprint. He said that they would like to work on the renovation of the outside of their home at the same time the duplex in the back is being built. He showed several photographs of surrounding properties that show his proposed duplex is not out of scale of what is normal in the area nor is it uncommon to have multi-residences on one property (Applicant Exhibits 1 and 2). He explained how the property values have risen in the area. He explained that his duplex will be built in his back lot which backs up to the backyards of the adjoining property owners. Regarding stormwater run-off, they will build a water basin dispersal pit, which has been approved by the City. He presented Council with a petition containing 134 signatures of people that support the addition of his duplex as well as a letter and e-mail from Adam Fritch and Martha Are (Applicant Exhibits 3 and 4). He stressed that they currently reside of the property and will manage it themselves. He urged Council to support his effort to enhance the area and provide housing by allowing him to build this duplex.

Upon inquiry of Councilman Newman, Mr. Fuchs said that the exterior rendering (Attachment to City Exhibit 3) is what they are working from to move forward.

The following individuals spoke in opposition to the conditional use zoning/permit for several reasons, some being, but are not limited to: renovation of the area is occurring and allowing this duplex will slow down the momentum; all multi-family residents in the area are located on the street, not in the backyards; neighborhood should remain single-family; this will set a precedence of allowing others who have large backyards to build multi-family residences; the base of the proposed duplex will be above the top of the structures on Dunwell Avenue; the neighborhood wants the protection of existing zoning laws; the duplex will injure property values in the area; the duplex will bring more traffic and noise to the area; residents who live on Louisiana Avenue have to deal with existing traffic and noise and their backyards should remain private; this lot is shaped similarly to a flag lot which prohibits duplexes; there is no room to widen the driveway and the large oak tree should remain; there is no room for an appropriate buffer at the front of the property and to put up a fence will be out of character with the neighborhood; lights from the duplex will encroach upon adjoining residences; additional cars backing out onto Louisiana Avenue will be a traffic hazard; there will be a blind spot in the driveway because the driveway will have to loop around the existing garage apartment to get to the duplex; additional

traffic on Louisiana Avenue will result in more accidents; applicant has no firm plans in place for the duplex; and the duplex will have an adverse affect on the privacy of the adjoining backyards:

Mr. Nathan Bryant, resident at 97 Louisiana Avenue
Mr. Joel Mayne, resident at 103 Dunwell Avenue (Neighborhood Exhibits 1-4)
Ms. Julie Allen, resident at 94 Louisiana Avenue (Neighborhood Exhibit 5)
Ms. Carol Ali, resident at 95 Louisiana Avenue (Neighborhood Exhibits 6-7)
Ms. Megan Palmer, resident on Dunwell Avenue (Neighborhood Exhibit 8)
Mr. Keith Buff, resident at 101 Dunwell Avenue (Neighborhood Exhibit 9)

The following individuals spoke in support to the conditional use zoning/permit for several reasons, some being, but are not limited to: property should be used for something other than a field; the proposed fence will create uniformity in the backyard; project is seeking uniformed zoning of a split-zoned lot; duplex will promote infill development; duplex will add needed housing; duplex is close to transit and is well within walking distance of grocery stores and entertainment; parking will be on the property; site plan will enhance the parking of others who reside on the property; and the project will control stormwater runoff:

Mr. Adam Fritch, resident in the garage apartment on the property of 96 Louisiana Avenue
Mr. Colin Robertson, consultant (Applicant Exhibit 5)
Mr. Neal Peak
Mr. Walter Plaue
Ms. Joy Fuchs, applicant who resides at 96 Louisiana Avenue

Upon inquiry of Councilman Newman, Ms. Tuch said that if the project is approved, the duplex couldn't be subdivided.

When Councilman Newman asked about the hazards of backing out onto Louisiana Avenue, Ms. Tuch said that if this project is approved, people will have room to turn-around on the property and drive onto Louisiana Avenue.

Councilman Newman asked to what degree can the City hold the developer to the rendering shown in City Exhibit 3 of the outside of the duplex. Ms. Tuch said that staff monitors the proposed architecture to ensure that it is compatible with what ultimately gets built. Personally she consults with the City's Historic Resources Commission Director for architectural references.

Upon inquiry of Councilwoman Bellamy, Ms. Tuch said that a fire truck and ambulance would be able to access the duplex in case of an emergency. She showed a map of the property lines of the adjoining property owners (City Exhibit 4).

Upon inquiry of Councilman Davis, Ms. Tuch explained what some alternative buffering could be used on the front property of the property and stated that it is up to the applicant to determine what they want to use to comply. City staff will, however, work with the applicant and the adjacent property owner.

In response to Vice-Mayor Mumpower, Ms. Tuch explained why staff does not feel this is a flag lot.

After hearing no rebuttal, Mayor Worley closed the public hearing at 7:29 p.m.

Councilman Newman moved to approve the conditional use rezoning for property located at 96 Louisiana Avenue from RM-8 Residential Multi-Family Medium Density District and RS-8

Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower.

Councilman Newman supported the motion in that he felt this is a good design and language will be crafted to assure the structure that will be built will fit in and enhance the neighborhood. He felt there is a great need for this type of development in our community. He felt comfortable that the property cannot be subdivided and since the applicant lives on the property, there is an incentive to improve his property value as well.

Vice-Mayor Mumpower felt this is a subjective decision, however, with the housing needs we have in Asheville, we need to reach for opportunities.

Councilman Dunn felt this was an issue of basic property rights and the property owner should be able to use his property as he feels fit. He felt the property values in the area wouldn't be affected by this duplex.

Councilman Davis said that he would reluctantly support the conditional use zoning but was concerned about what zoning protects. He felt the applicant would design a good structure because they live on the property as well.

Councilwoman Bellamy would support the conditional use zoning, but stated her concerns regarding the driveway.

The motion made by Councilman Newman and seconded by Vice-Mayor Mumpower carried unanimously.

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After a short discussion and upon a suggestion by the City Attorney, Councilman Davis moved to continue the conditional use permit matter to allow staff to work with the applicant to develop a more detailed site plan and elevation drawings and to address some of the issues raised, like the buffer and the driveway access. This motion was seconded by Councilwoman Bellamy.

At the request of Council, Ms. Tuch suggested the following condition: "Before the issuance of a final zoning permit, the applicant shall permit final plans detailing and qualifying the character of the proposed building elevations including details such as the amount and location of window and door fenestration. the number and direction of the multiple roof pitches with moderate to deep overhangs, the location and layout of the proposed foot paths and ornamental plantings, building materials and architectural details including asphalt roof shingle, hardiplank siding, cedar shake shingles, window shutters and exposed end rafters."

Vice-Mayor Mumpower asked that a sentence be included about compatibility with the surrounding properties.

Councilman Davis was comfortable with the condition suggested by Ms. Tuch, with an additional sentence about compatibility, and withdrew his motion. Councilwoman Bellamy withdrew her second to the motion.

Mayor Worley also suggested that the suggested condition by Ms. Tuch include that the structure be substantially similar with the rendering presented in City Exhibit 3.

At the request of Council, Ms. Tuch suggested the following condition: "Before the issuance of a final zoning permit, the applicant shall submit final plans detailing the alternative

compliance in lieu of the required "B" buffer. An alternative that is historically appropriate to the single-family character of the West Asheville neighborhood, in which the property is located. This plan may include such elements as an evergreen hedgerow, 3-5 feet tall, interspersed with other ornamental species including, but not limited to, small ornamental trees and shade-loving perennials in the areas on the side of the house. In addition, other ornamental plantings shall be added to the front of the existing single-family structure to improve the overall appearance of the existing single-family neighborhood. In addition, this plan shall include the removal of the existing chain link fence."

At the request of Councilwoman Bellamy, Ms. Tuch provided further information regarding the driveway from the Engineering Department and the Fire Department.

Councilman Davis moved to adopt Ordinance No. 3226 to issue a conditional use permit for property located at 96 Louisiana Avenue for the addition of a proposed duplex, resulting in a total of four residential units, subject to the following conditions: (1) Addressing all outstanding TRC conditions; (2) Applicant is to submit a revised site plan displaying new building footprint and elimination of additional parking spaces, as necessary (3) Proposed duplex is to match the character and materials reflected in the conceptual building elevations; (4) Before the issuance of a final zoning permit, the applicant shall permit final plans detailing and qualifying the character of the proposed building elevations including details such as the amount and location of window and door fenestration, the number and direction of the multiple roof pitches with moderate to deep overhangs, the location and layout of the proposed foot paths and ornamental plantings, building materials and architectural details including asphalt roof shingle, hardiplank siding, cedar shake shingles, window shutters and exposed end rafters. (with language about the structure being compatible with other structures in the area and that the structure be substantially similar with the rendering presented in City Exhibit 3); (5) Before the issuance of a final zoning permit, the applicant shall submit final plans detailing the alternative compliance in lieu of the required "B" buffer. An alternative that is historically appropriate to the single-family character of the West Asheville neighborhood, in which the property is located. This plan may include such elements as an evergreen hedgerow, 3-5 feet tall, interspersed with other ornamental species including, but not limited to, small ornamental trees and shade-loving perennials in the areas on the side of the house. In addition, other ornamental plantings shall be added to the front of the existing single-family structure to improve the overall appearance of the existing single-family neighborhood. In addition, this plan shall include the removal of the existing chain link fence; and (6) The two-story structure shall not be more than 2200 s.f. and shall not be more than 28 feet tall. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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At 7:54 p.m., Mayor Worley announced a short recess.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING PROPERTY LOCATED ON DEPOT AND RALPH STREETS, KNOWN AS THE GLENROCK PROJECT, FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A MIXED-USE DEVELOPMENT PLANNED ON DEPOT AND RALPH STREETS

ORDINANCE NO. 3227- ORDINANCE REZONING PROPERTY LOCATED ON DEPOT AND RALPH STREETS, KNOWN AS THE GLENROCK PROJECT, FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3228 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON DEPOT AND RALPH STREETS FOR A MIXED-USE DEVELOPMENT PLANNED ON DEPOT AND RALPH STREETS

Councilwoman Bellamy asked to be excused from participating in this matter due to a conflict of interest. Therefore, Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:30 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Julia Cogburn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Cogburn said that this is the consideration of a request to rezone property located on Depot and Ralph Streets, known as the Glenrock Project, from CI Commercial Industrial District to Urban Place District/Conditional Use, and a request to issue a conditional use permit for a mixed-use development planned on Depot and Ralph Streets.

The applicant, Mountain Housing Opportunities, is requesting a conditional use rezoning of 2.11 acres along Depot, Bartlett and Ralph Streets from CI (Commercial Industrial) District to UP-CUZ (Urban Place Conditional Use) District in order to allow for the development of these parcels for a mixed-use development (Attachment to City Exhibit 3 – Location Map). The project site is located within the City Limits between Ralph and Depot Streets at their intersection with Bartlett Street. The project site currently contains 6 lots that will be combined upon project approval and acquisition of all parcels. The property contains five buildings (the Corner Market building at 262 Depot Street; the old Glen Rock Hotel building at 403 Depot; two block buildings at 376 and 382 Depot Street; and a frame building on Ralph Street (City Exhibit 4).

The development proposal calls for the new construction of a 46,800 square foot (footprint) building with a mix of retail/gallery, office/studio, community and residential development throughout. Parking for the development is provided internally to the new building (first three levels) with entrances for the parking on Depot and Ralph Streets. Retail, community

and office space is also provided on the first three levels of this new building with the proposed residential development of 85 units on levels 4-7. At its highest, the building is 74'8" tall. (Attachments to City Exhibit 3 – Concept Site Plan and Photos of Glen Rock Model).

The development also calls for the later phase rehabilitation of the Glen Rock Hotel and the Corner Market buildings. It is proposed that the Corner Market building will be utilized for retail, office, or light industrial development in the future and that the Glen Rock Hotel will contain a large first floor community space with a maximum of 25 residential units created on the upper two levels. Total residential development for the project is a maximum of 110 units for a density of 52.13 units per acre. The development proposal calls for the demolition of the 2 block buildings and the frame building on the site. The project proposal calls for the provision of 174 parking spaces.

Included in the concept plan design are provisions for improving the Town Branch Creek area by incorporating pedestrian amenities and landscaping along the banks of the creek. Pedestrian amenities are also proposed for an existing unopened alleyway that will lead along a sidewalk to the City's Livingston Street Park. The developer has requested alternative compliance for landscaping requirements to provide street trees along both sides of Ralph Street, street trees along Bartlett Street, and trees along both sides of the proposed Else Alley sidewalk in lieu of required buffer. This request has been approved by the Planning Department based on the limitations of existing conditions on the property and the nature of the development and the surrounding area. The applicant has also requested a reduction in required parking as permitted in the Urban Place District where multi-modal transportation amenities are included. The developer is proposing a number of pedestrian amenities, bicycle parking and a covered transit shelter. Although at the present time, transit service is not currently serving the immediate area (due to little development in the area), there is an interest in trying to serve the development with existing Route 18 once the development is completed.

On February 18, 2005, the Technical Review Committee (TRC) reviewed the conceptual plans and voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report and the following additional conditions:

- That the sidewalks along Bartlett (7.5 feet) and Depot (9.5 feet) would be acceptable but the sidewalk along Ralph Street would need to be constructed to 10 feet in width.
- That the developer work with the City Traffic Engineer on provisions for on-street parking.

The developer has already submitted a revised site plan that addresses most of the conditions shown in the TRC report. Remaining conditions to be addressed include: working out the details on the use of Else Alley with Parks and Recreation; designing the sidewalks and street tree plantings in accordance with Engineering and Public Works Department requirements; and, making sure the final design of the building complies with all the design requirements stipulated in the Unified Development Ordinance (UDO) for the Urban Place District.

On Thursday, February 24, 2005, Mountain Housing Opportunities hosted a neighborhood/developer meeting to share information about the proposed development and hear the concerns of those in the neighborhood. This meeting was held in lieu of Planning and Zoning Commission consideration of the project and associated zoning change. The minutes from this meeting, prepared by the facilitator, Paul Godfrey, illustrate general community support for the project. The principal concerns noted by the neighborhood were traffic and parking. Since this meeting the developer is proposing reducing the density of residential development by removing 15 dwelling units and is working to additionally address parking concerns with the City's Traffic Engineer (providing on-street parking). The traffic concerns raised should be mitigated by the development. Those voicing traffic concerns were not concerned so much for the future traffic to be generated by the development, but for the speed of the traffic currently traveling on Depot

Street. It is felt that the development and on-street parking provisions should assist in slowing down traffic along Depot.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The applicant is incorporating the gradual slope of the property in the design of the proposed new mixed-use building. The developer is incorporating the channeled Town Branch Creek into the project and is proposing a clean up of the area surrounding the creek and the creation of a public amenity along the creek.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The Glen Rock development is proposed in a once vibrant area of Asheville that has experienced neglect in recent years. The design of the project is meant to bring vitality back to the area by bringing in a mix of uses at a significant density and by including a number of amenities to enhance the livability of the entire area. Significant street trees and other vegetation are proposed to further enhance the beautification of the property that will be brought about as a result of this project.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   While it is noted that portions of the proposed Glen Rock development (the new mixed-use building) are of a greater scale and density than other existing development in the area in which the project is located, the development that is proposed is no larger than would be allowed under current zoning (CI). Furthermore, the Glen Rock is felt not to compromise the area because of the location of the project, the largely residential nature of the project, and because of what has been developed in the area in the past and what is envisioned for the future. Any potential conflict in the relationship of this development with the existing single-family neighborhood located to the east is reduced by the topographic change between the areas and the proposed sidewalk and street tree improvements which will link the two areas in the overall design. The Glen Rock will serve as a primarily residential buffer between the industrial/rail development to the west and the neighborhood to the east. The Glen Rock hotel building will basically be used in its current configuration on the property as will the Corner Market. The Urban Place District is envisioned for further application in this area and other

locations along the urban riverfront to encourage redevelopment of the same scale and density as is seen in the Glen Rock and the Wilma Dykeman Plan envisions precisely this scale of development.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The Asheville City Development Plan 2025 calls for the promotion of adaptive reuse of vacant and unterutilized structures and encourages the construction of affordable housing throughout the community. The City's smart growth initiative, contained in the comprehensive plan, encourages mixed use developments and compatible, higher density commercial and residential development. This development proposal also complements the River Arts District concepts found in the Wilma Dykeman Riverway Master Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development. While transit does not currently service the location, the transit services staff is interested in providing service once the development is completed.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The City's Traffic Engineer has reviewed the proposal and has determined that there are no traffic issues created by this project nor is a traffic impact analysis warranted.

Pros

- The Glen Rock development is proposed in an area that has been neglected over recent years. It is believed that this development will bring renewed interest in development to this area and vitality that will help to further enhance the livability of the area.
- The density proposed for the development can be supported by the existing infrastructure and is in close proximity to potential employment centers, shopping venues and educational institutions which makes the increased density attractive and appropriate at this location.
- The project as initially conceived will make a contribution to meeting the needs for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to affordable housing, infill development, and smart growth.
- Several amenities (e.g., creek enhancement, pedestrian facilities) are incorporated in the design of this project.

Cons

- The proposed new building is of a larger scale than buildings currently found in the immediate area.
- The reduction in parking provisions allowed in the Urban Place District may present some parking issues in the area.

City staff strongly supports this project due to its potential to jumpstart the implementation of the Wilma Dykeman Plan, adaptively reuse an older structure having significant architectural and historic character, and to establish a strong residential presence in this underdeveloped area of our City.

Ms. Cindy Weeks, representing Mountain Housing Opportunities, spoke in support of the project showing various photographs of the property. She also reviewed a comparison of the Commercial Industrial District vs. the Urban Place District. She said that preliminary figures of the Glen Rock new building would contain 85 apartments and 3000 sq. feet of community space. They anticipate 40 1-bedroom units - $300-500/month; 35 2-bedroom units - $350-575/month; and 10 3-bedroom units - $400-675/month. In the later phase when the Glen Rock Hotel is renovated, they anticipate 20-25 comdominiums with preliminary pricing to range from $130-150 per square foot.

Mr. Rick Reinhardt, architect, reviewed with Council the site plan and elevations (Applicant Exhibit 2).

The following individuals were very supportive of the conditional use zoning/permit:

Ms. Susan Kendall, owner of 357 Depot Street
Ms. Gail McCarthy, property owner in the area
Mr. Kevin Green, representing Greene's Mini-Mart at 414 Depot Street
Mr. Steven Kuhl, owner of 375 Depot Street

Upon inquiry of Councilman Dunn, Ms. Weeks said that there will be 174 parking spaces internally and 66 spaces outside. They will build a bus shelter and the City's transit will try to reroute the bus to that area.

In response to Vice-Mayor Mumpower, Ms. Weeks explained that they will be building this project using three sources of tax credits.

Upon inquiry of Vice-Mayor Mumpower about possible flooding, Ms. Weeks said that they monitored the area very closely after the last heavy flooding in September of 2004 and the water did not go over the banks.

After hearing no rebuttal, Mayor Worley closed the public hearing at 9:13 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located on Depot and Ralph Streets, known as the Glenrock Project, from CI Commercial Industrial District to Urban Place District/Conditional Use. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 54

Vice-Mayor Mumpower moved to adopt Ordinance No. 3228 to issue a conditional use permit for property on Depot and Ralph Streets, known as the Glenrock Project, for a mixed-use development planned on Depot and Ralph Streets, subject to conditions of the TRC. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 56

C. PUBLIC HEARING ON THE CONSOLIDATED STRATEGIC HOUSING & COMMUNITY DEVELOPMENT PLAN FOR 2005-2010

Mayor Worley opened the public hearing at 9:18 p.m.

Ms. Charlotte Caplan, Community Development Director, said that is a public hearing on the Consolidated Strategic Housing & Community Development Plan for 2005-2010. This public hearing was advertised on April 1 and 8, 2005.

She said that every five years, the City is required to prepare a Consolidated Strategic Housing and Community Development Plan to set out broad priorities, strategies, and targets for the use of Community Development Block Grant (CDBG) and HOME funds. This Strategic Plan covers not just the City of Asheville, but also the four-county Asheville Regional Housing Consortium (Buncombe, Henderson, Madison, and Transylvania counties) within which HOME funds are used.

Under the direction of the Consortium Board, staff commissioned a detailed Housing Needs Assessment for the entire Consortium, and prepared a more limited assessment of non-housing community development needs for Asheville. Fifteen public meetings were held to gather community input on priorities and strategies. These are set out in the plan, together with realistic, measurable targets for each priority area.

She explained that resale prices are up by 39% in five years; that the median sales price is $170,000; and the minority homeownership rate has decreased from 58% in 1990 to 45% in 2000.

She reviewed the affordable housing priorities as follows: (1) Provide housing for people near minimum wage; (2) Help those with special needs – homeless, elderly, disabled; (3) Make efficient use of land and infrastructure; (4) Preserve existing housing stock through rehabilitation; (5) Coordinate housing with transportation, jobs, and services; (6) Increase affordable housing stock through new construction; (7) Emphasize energy efficient, neighborhood-compatible designs; (8) Help people succeed through housing support services; (9) Build and preserve affordable multifamily rental housing; (10) Use local resources - local contractors and locally-made supplies; (11) Promote homeownership; and (12) Preserve long-term affordability.

She then reviewed the performance targets for housing as follows:

Production Type	5-Year Target
New construction for homeownership	200
New construction for rental	300
Homeowner rehab or repair	200
Rental rehab	75
Downpayment assistance	50
Rent assistance	175
Total	1,000

Ms. Caplan explained that homeless priorities being (1) to maintain existing Continuum of Care; and (2) implementation of the 10-Year Plan to End Homelessness. She reviewed the performance targets for homelessness.

She outlined the non-housing community development priorities being (1) develop living wage employment and job training; (2) provide services that support affordable housing, public transportation, youth and employment; (3) provide infrastructure to facilitate affordable housing, multi-modal transportation, and economic development; (4) help people improve credit and avoid predatory lending; (5) support start-up and growth of small businesses; and (6) support plan to eradicate homelessness. She then reviewed the performance targets for non-housing activities.

The draft Plan was published on March 29, 2005, to allow for a 30-day public comment period. A final public hearing is required during this comment period. Staff will then seek Council's approval of the Plan (with necessary final corrections and amendments) on April 26, 2005.

Mayor Worley closed the public hearing at 9:30 p.m.

Councilwoman Jones said that this plan involved intensive community work with entities and is real model of how things can work well regionally.

Vice-Mayor Mumpower said that this is a reaffirmation of the 10-Year Plan to End Homelessness and he has many personal concerns about that Plan being unrealistic, unaffordable and personally a disturbing distraction from a real problem that needs more tangible and immediate solutions. He has concerns that this Plan reflects a model of governance that can be better described as socialism than the model of government that best represents the best that is in us. He is not comfortable with that model as reflected by some of the content.

Councilwoman Jones said that the U.S. Dept. of Housing and Urban Development requires this Plan and the City prepares this document every five years.

In response to Councilwoman Jones, Ms. Caplan reviewed with Council the City's progress in meeting the targets in the last 5 years.

Mayor Worley said that the resolution on this matter will be considered at Council's next formal meeting.

D. PUBLIC HEARING ON THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN FOR 2005

Mayor Worley opened the public hearing at 9:39 p.m.

Ms. Charlotte Caplan, Community Development Director, said that this public hearing is on the draft Annual Action Plan, allocating Community Development Block Grant (CDBG) and HOME funds for Fiscal Year 2005-06. This public hearing was advertised on April 1 and 8, 2005.

The City expects to have available $1,725,170 in CDBG funds and $1,723,349 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2005. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 41 projects.

Ms. Caplan reviewed the following summary of the annual action Plan:

CDBG PROGRAM

Projected Revenue:	
Entitlement Grant from U.S. Dept. of HUD	$1,465,512
Projected 2005-06 Program Income	125,000
Prior Year Program Income Balance	125,813
Reallocation of prior year funds	8,845
Total	$1,725,170

Proposed Use of Funds:	
Affordable Housing Coalition – Homebase Housing Counseling	$ 60,000
Affordable Housing Coalition – Homeownership Education	50,000
Asheville Area Habitat for Humanity – Housing Services	75,000
Asheville-Buncombe Community Relations Council – Fair Housing	15,000
Children First – Emma Resource Center	15,000
City of Asheville – Emergency Relocation	2,000
City of Asheville – CDBG Property Management	5,500
Consumer Credit Counseling Service – Financial Counseling	25,000
Hospitality House – Homeless Programs	95,000
Housing Authority of the City of Asheville – Youth Enrichment	35,000
Mountain Housing Opportunities – Single-Family New Construction	60,000
Mountain Housing Opportunities – Emergency Repair	95,000
Mountain Housing Opportunities – Housing Services	85,000
Mountain Microenterprise Fund – Micro-Business Development	90,000
Mountain Microenterprise Loan Fund – Small Business Loan Pool	75,000
Neighborhood Housing Services – Single Family Development	195,000
Neighborhood Housing Services – Bradley Street Infrastructure	220,000
Neighborhood Housing Services – Burton Street Area Planning	15,000
Neighborhood Housing Services – Housing Services	77,500
Pisgah Legal Services – Resource Development	40,000
Regional Water Authority – Water Line Improvement	87,500
Asheville Transit Authority – Route Signage & Bus Shelters	30,000
City of Asheville – Program Administration	247,229
Contingency	30,441
CDBG Total	**$1,725,170**

HOME PROGRAM

Projected Revenue:		
	Entitlement grant	$1,434,604
	ADDI Entitlement	49,954
	Prior Year Funds Reallocated	185,453
	Program Income (Asheville)	53,338
	Total HOME Funds Available	**$1,723,349**

Proposed Use of Funds:	
Asheville	
Asheville Habitat for Humanity – S/F Housing Development, Enka	$ 103,338
Affordable Housing Coalition – Tenant Based Rental Assistance	50,000
National Church Residences – Vanderbilt Apartments Rehabilitation	250,000
Neighborhood Housing Services – S/F Development	57,067
Mountain Housing Opportunities – Glen Rock Apartments	200,000
Mountain Housing Opportunities – Clingman Avenue Townhomes	50,000
Buncombe County	
Neighborhood Housing Services – S/F Development	80,000
Mountain Housing Opportunities – Owner-occupied Rehabilitation	47,800
Mountain Housing Opportunities – S/F Development,	80,000
Mountain Housing Opportunities – Self-Help Homeownership	80,000
Henderson County	
Housing Assistance Corporation – Mainstay Manor Apartments	90,000
Henderson Co. Habitat for Humanity – Shuey Knolls Subdivision	110,000

Housing Assistance Corporation – Rehab for Home Ownership		60,000
Transylvania County		
Western Carolina Community Action – English Hills Apartments		200,000
Operating Costs		
CHDO (non-profit agencies) Operating Expenses		71,730
City of Asheville – Administration		125,472
Member Government Administration & Planning		17,988
American Dream Downpayment Initiative (ADDI)		
Neighborhood Housing Services of Asheville		49,954
	HOME Total	**$1,723,349**

If approved, the HOME and CDBG funding will assist 376 affordable housing units, Consortium-wide. CDBG funds will help more than 3000 low-income City residents obtain financial and housing counseling, homeless services, youth and family support services, and small business assistance. CDBG funds will also carry out street and waterline improvements in West Asheville, and enhance transit services in several in low-income areas.

Notice of the public hearing and a summary of the draft plan were published on March 29, 2005. A 30-day public comment period is required by federal regulations. The final plan must be submitted to Dept. of Housing and Urban Development by May 15, 2004.

The Consolidated Strategic Plan for 2005-10, which sets out the broad framework for allocating CDBG and HOME funds over the next five years, will be the subject of a separate public hearing also scheduled on April 12, 2005.

Mayor Worley closed the public hearing at 9:50 p.m.

At the request of Vice-Mayor Mumpower, Ms. Caplan said that she would provide him with a hard copy of the Annual Action Plan.

Mayor Worley said that the resolution on this matter will be considered at Council's next formal meeting.

E. PUBLIC HEARING TO CONSIDER THE SAWYER MOTOR COMPANY BUILDING AT 100 COXE AVENUE AS A LOCAL HISTORIC LANDMARK

At the request of the applicants, Councilwoman Bellamy moved to continue this public hearing until May 10, 2005. This motion was seconded by Councilman Dunn and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3222 – ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS ON BILTMORE AVENUE FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE COVERED TO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY

City Attorney Oast said that at its March 22, 2005, meeting, Council unanimously approved the issuance of a Conditional Use Permit for the Biltmore Gardens project. This was done as part of a conditional use rezoning, and the approval was subject to final review by Council of the language of the conditions in the Conditional Use Permit (CUP).

Staff has drafted a proposed CUP, with findings, conclusions, and conditions. The conditions were drawn from the staff report, the minutes of the March 22 meeting, and Council's discussion at that meeting. However, the revised site plan, which was to incorporate some of the conditions, has not been completed. As the modifications to the site plan, especially those involving landscaping and tree preservation, were of critical importance to Council and the neighborhood, and may affect the form of the CUP, it is our recommendation that that matter be continued until your April 26 meeting. The developer has indicated that the revised site plan will be available in plenty of time for that meeting, and we will get the proposed CUP to you as soon as possible. If you have any questions or need any further information, please contact us before the April 26 meeting so that we can try to address your concerns.

City staff recommends City Council continue this item until Council's April 26, 2005, meeting.

Councilwoman Bellamy moved to continue the conditional use permit wording until April 26, 2005. This motion was seconded by Councilman Davis and carried unanimously.

V. NEW BUSINESS:

A. ANNEXATIONS

Planning & Development Director Scott Shuford said that this is the consideration of resolutions stating the intent of the City to annex the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Two Town Square East and Town Square East.

He said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population.

The City of Asheville has initiated annexations for the past four years. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

The City's policy is to include within its corporate boundaries areas that are urban in nature and meet State of North Carolina qualification requirements. Staff has identified six areas: Ridgefield Business Park, Ascot Point Village, Long Shoals Road, Airport Road, Two Town Square, and Town Square East with potential for being annexed. Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	April 12, 2005
Council Adoption of Plans of Services	April 26, 2005
Staff-Sponsored Public Informational Meeting	May 31, 2005
City Council Public Hearings	June 14, 2005
Council Adoption of Annexation Ordinances	June 28, 2005

Effective Date of Annexations:

September 30, 2005 – Ridgefield Business Park area, Two Town Square & Town Square East

December 31, 2005 – Ascot Point Village, Long Shoals Road & Airport Road

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Ridgefield Business Park area, Ascot Point Village area, Long Shoals Road area, Airport Road area, Two Town Square and Town Square East.

Mr. Shuford stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the First Floor North Conference Room in the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m., at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 14th day of June, 2005, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

Mr. Shuford then reviewed each of the proposed annexation areas.

Upon inquiry of Councilman Davis, City Attorney Oast reviewed with Council the earlier challenge of Ridgefield Business Park.

Vice-Mayor Mumpower said there are a lot of strong arguments supporting annexation, however, he feels the harm outweighs the benefits. For philosophical reasons, he will vote against the annexations.

Councilman Newman said that families and businesses in Asheville pay twice the property taxation than people who live just outside of the City limits, and when areas become urban in nature, they should pay to support the critical infrastructure needs in Asheville.

Councilman Dunn said that he would not support any annexation unless the City puts the revenue back into basic City services.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 05-85 - RESOLUTION OF INTENT TO ANNEX THE RIDGEFIELD BUSINESS PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-85. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 89

RESOLUTION NO. 05-86 - RESOLUTION OF INTENT TO ANNEX THE ASCOT POINT VILLAGE AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-86. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 93

RESOLUTION NO. 05-87 - RESOLUTION OF INTENT TO ANNEX THE LONG SHOALS ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-87. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 97

RESOLUTION NO. 05-88 - RESOLUTION OF INTENT TO ANNEX THE AIRPORT ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-88. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 101

RESOLUTION NO. 05-89 - RESOLUTION OF INTENT TO ANNEX TWO TOWN SQUARE AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-89. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 105

RESOLUTION NO. 05-90 - RESOLUTION OF INTENT TO ANNEX TOWN SQUARE EAST AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 31, 2005, IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., AT 5:00 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 14, 2005, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE N.C., AT 5:00 P.M.

Councilman Newman moved for the adoption of Resolution No. 05-90. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 109

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced the Film Commission vacancy.

Vice-Mayor Mumpower thanked those who participated in the For Our Kids program at Erskine public housing clean-up project, which Program he and Councilwoman Bellamy share responsibilities in.

At the request of Councilwoman Bellamy, City Attorney Oast said that he would provide City Council with a report on taxicab rates at the May 17, 2005, City Council worksession.

Councilwoman Jones urged the public to do what they can to prevent child abuse.

The following claims were received by the City of Asheville during the period of March 11-31, 2005: 32 Ocala Street (Streets), Shawn Wilson (Streets), Carolyn Hembree (Streets), Herman Parris (Sanitation), Virginia Ritter (Inspections), Judy St. Clare (Streets), Bryan McKeown (Sanitation), Gregory Meade (Water), Chin Pak (Water), Cornelia Streeter (Police), Corbin Hightower (Parking Services), Helen Van Rensselaer (Streets), Jim McKinnon (Streets), Kirby Connolly (Civic Center) and Roy Chapman (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar asked for time on an upcoming worksession to illustrate his feeling about how installing traffic calming devices will increase our fire ratings. City Engineer Cathy Ball stated that traffic calming devices do not impact the fire ratings.

CLOSED SESSION

At 10:25 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including possible litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

At 12:15 a.m., Councilwoman Bellamy moved to go out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:15 a.m.

Magdalen Bourneson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 19, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Towing of Illegally Parked Vehicles, Junked Motor Vehicles or Abandoned Vehicles

Summary: The consideration of an ordinance amending Chapter 19 of the Asheville City Code allowing the city manager or his or her designee to tow illegally parked vehicles, junked motor vehicles or abandoned vehicles in the City of Asheville.

There are several vehicles in the parking garages that are abandoned. They need to be removed. This amendment gives the City Manager or designee the ability to remove vehicles which are abandoned or impeding traffic flow in city garages and parking lots, or vehicles illegally parked in a fire lane or commercial loading zone.

The advantage of this to the City is that vehicles which have been abandoned may be removed, freeing up parking spaces for the paying public, and increasing safety in fire lanes, and increasing the ability to load or unload for commercial businesses.

The disadvantages are that the person whose vehicle has been towed may not feel that he or she should have been towed.

City staff requests that City Council approves the ordinance amending Chapter 19 of the Asheville City Code allowing the city manager or his or her designee to tow illegally parked vehicles, junked motor vehicles or abandoned vehicles in the City of Asheville.

Upon inquiry of Councilwoman Jones, Transit Services Director Bruce Black explained the City's current policy.

Mr. Black responded to Councilwoman Bellamy about the notification procedure.

Amendment to Allow Gates & Doors to Open onto a City Street or Sidewalk

Summary: The consideration of an amendment to Section 16-7 of the City Code to allow gates and doors to open onto a City street or sidewalk under certain specified conditions.

Since 1965, Section 16-7 of the City Code prohibits persons from erecting or maintaining any gate or door which opens outwardly on any street or sidewalk. Throughout the City of Asheville, there are numerous instances whereby gates or doors open outwardly on the street or sidewalk. This amendment is intended to provide flexibility to the strict prohibition by allowing gates or doors to open outwardly onto a City street or sidewalk if there is compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

Pros:

- Provides flexibility to allow consideration for present day situations
- Public safety remains number one priority

Cons:

- Adds additional time to review process

City staff recommends adoption of the ordinance amendment to allow gates and doors to open onto a City street or sidewalk under certain specified conditions.

Strategic Plan Update

Summary: As committed to by City staff at which time that the Asheville City Council formally passed the Strategic Operating Plan, this update is for the various staff tasks outlined within the document.

This multi-year plan document outlines seven (7) key focus areas that City Council has identified as critical to the overall long-term positive growth and vibrancy of the Asheville community. Within those seven key focus areas, 45 goals and 94 operational tasks are identified. Timeframes were identified for each of the tasks. This report outlines staff progress in the third 90 days after adoption of this plan for those tasks with timeframes conducive to this fiscal year.

Pros: City Council will continue to receive quarterly updates to insure city staff is progressing as directed by City Council.

Cons: None noted.

No formal action is required. City Council may provide direction as necessary for tasks as appropriate.

Initiated by Councilman Davis, there was a brief discussion about the vacant economic development position. It was the consensus of Council to discuss the Chamber of Commerce's outside agency funding request for the Economic Development Coalition and the City Manager's request to fill the vacancy of Economic Development Director at the end of this formal agenda.

Upon inquiry of Councilman Davis, Assistant City Manager Jeff Richardson said that Council will need to review the Strategic Plan during the upcoming budget worksessions to determine if it is meeting their long-term or immediate needs and give direction to re-direct staff so that the budget resources can be aligned for future years. City Manager Westbrook also said that Council asked to revisit the Strategic Plan every other year and that should be done at their retreat or similar occasion.

Councilman Davis requested that future Strategic Plan updates be given to Council several days prior to the update being placed on the worksession agenda, in order to give Council additional time within which to review it.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the appropriate formal City Council agenda, if appropriate.

RIVER DISTRICT

Planning & Development Director Scott Shuford updated City Council on where the City is with the redevelopment of the River District area.

He said that the River District (1) contains 873 acres – much larger than the CBD; contains properties located on both sides of the French Broad and Swannanoa Rivers; has 27% of the District is in the Floodway; and has 47% of the district is in the 100-Year Floodplain.

The River District contains a wide variety of land uses and is fairly well-served by roads and other infrastructure, although the main corridor is flood-prone. The City has adopted a plan – the Wilma Dykeman Riverway Master Plan – for improving the area and the transportation corridor.

The Dykeman Plan promotes economic revitalization of River District; promotes environmentally-sensitive redevelopment; and calls for a reconfigured and redesigned road – the Wilma Dykeman Riverway – to serve the area.

Other plans for the River District include (1) Mountain Housing Opportunities has purchased the Depot Street block that contains the Glen Rock Hotel; (2) City Council will consider rezoning this block to Urban Place District; and (3) MHO's plans call for a mixed-use 125 unit project on 2 acres.

He explained the redevelopment planning: (1) The Rural Center has provided the City with a $20,000 planning grant to study the Biltmore Village area of the River District; (2) Up to $700,000 of implementation money may follow this grant; (3) For Biltmore Village proper, we will concentrate on steps needed to protect and rehabilitate historic structures; (4) For nearby areas, we will focus on redevelopment of underutilized property using current development standards and to implement the Dykeman Plan; (5) The City may seek an additional Rural Center planning grant to study another area or areas of the River District; and (6) We could be eligible for additional implementation money as well.

He then explained the roadway planning: (1) The City has obtained $600,000 to prepare some design and development plans for the Wilma Dykeman Riverway; (2) We will try to establish the Riverway as a high priority project on the TIP (Transportation Improvement Program); (3) The City of Asheville is attracting national and international attention; (4) The success of the Downtown is beginning to spread; and (5) City plans and Smart Growth policies promote River (re)development.

He said that recent floods have identified problems in the types of land uses we allow in our floodplains: hazardous materials ended up in our rivers as flooding occurred; and residential areas were isolated by flooding. Certain uses need to be prohibited or better controlled in the River District.

He said that recent development has created new development pressure in the River District. Flood damage has created new opportunities for redevelopment. Development standards need to help implement the Urban Riverfront Plan. Development standards need to reflect best management practices and promote conservation of key features.

He said that with these issues in mind, City staff has identified several categories of redevelopment goals: financial incentives, regulatory incentives, environmental design, and Infrastructure and safety.

Financial incentives provide (1) financial incentives to adaptively reuse existing buildings, especially historic ones; and (2) financial incentives to spur private redevelopment in accordance with Wilma Dykeman Plan.

Regulatory incentives provide (1) regulatory incentives to relocate buildings from floodway and to elevate or flood-proof buildings in flood plain; and (2) regulatory incentives to spur private redevelopment in accordance with Wilma Dykeman Plan.

Environmental designs include (1) Create new greenway and park areas; (2) Promote redevelopment that meets "best management practices" for environmentally-sensitive design; and (3) Address stormwater volume and quality through regional solutions.

Infrastructure and Safety include (1) Relocate roads and associated infrastructure from floodway, where both feasible and appropriate; and (2) Buy-out private property in floodway.

The next steps are to (1) Secure grant(s); and (2) Develop draft ideas to share with: RDDRC, RiverLink, Property owners, Planning and Zoning Commission, City Council, and The Rural Center; (3) Obtain approval of the plan; and (4) Move forward with implementation steps: Financial incentives, Regulatory incentives (including rezoning), development & design standards, property acquisition, and infrastructure construction.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: how does this plan coincide with the Greenway Plan; what is the status of the greenway path on the Super Wal-Mart site; and are we looking to apply for more FEMA grants to buy out some of the River District property.

PETITION FOR ZONING STUDY FOR THE WESTERN PORTION OF SARDIS ROAD

Director of Development Services Joe Heard said that this is the consideration of a request from property owners for a zoning study for properties along the western end of Sardis Road, near the intersection with Sand Hill Road.

Section 7-7-2 of the Unified Development Ordinance (UDO) provides property owners with a method to petition City Council to authorize a zoning study for property not entirely owned by them. The Code requires that at least 51% of property owners in the area join the request and, in this case, the percentage has been reached. The petition process does not require City Council to ask staff to undertake the zoning study; it only requires that Council consider the request.

The area included in the petition is described on the Map #1. In the staff's opinion, this area does not contain all relevant property that should be examined in a zoning study. If Council directs that staff analyze the zoning of this area, then it is recommended that the area be expanded to the proportions illustrated on the Map #2 including all of the CB-II zoned area.

The request is prompted by the petitioners' belief that much of the current development in this area does not comply with the standards for development (particularly restrictions on car sales lots and parking location requirements) in the Community Business II (CB-II) district. The petitioners would prefer a zoning designation of Commercial Industrial (CI) to maximize the number of allowed uses, bring most of the current development into conformity, and allow for future development standards to be more consistent with the current development pattern.

Pro –

- The zoning study would enable the issue about the appropriate zoning of this neighborhood to be decided by City Council.

Con –

- The study will consume limited staff resources that could be devoted to other projects.

Planning & Development staff is presently involved with projects such as annexation coordination, development review, neighborhood planning, and other special studies to implement Council's strategic plan goals. Performing a zoning study for the Sardis Road area would require some of these other duties to be reprioritized. If City Council desires the requested rezoning study be performed, then staff recommends that the study encompass the larger area described in Map 2.

Upon inquiry of Councilman Davis, Mr. Heard explained what is involved in a zoning study.

After a brief discussion, it was the consensus of Council to instruct Planning staff to provide the following information to Council via memo: (1) is there a time sensitive nature of the zoning study relative to the petitioners; (2) what is the effect of the zoning study might have on the Planning Department's current work program; and (3) a doable timeframe to perform the zoning study that doesn't interfere with the current work program.

Councilwoman Jones want to make sure that the applicants understand that if a zoning study is undertaken, the results of that study might result in a different zoning classification than they requested.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on an appropriate formal City Council agenda.

TRAFFIC CALMING

Traffic Engineer Anthony Butzek said that this is information pertaining to historic traffic enforcement data and recent traffic calming projects.

Traffic Enforcement:

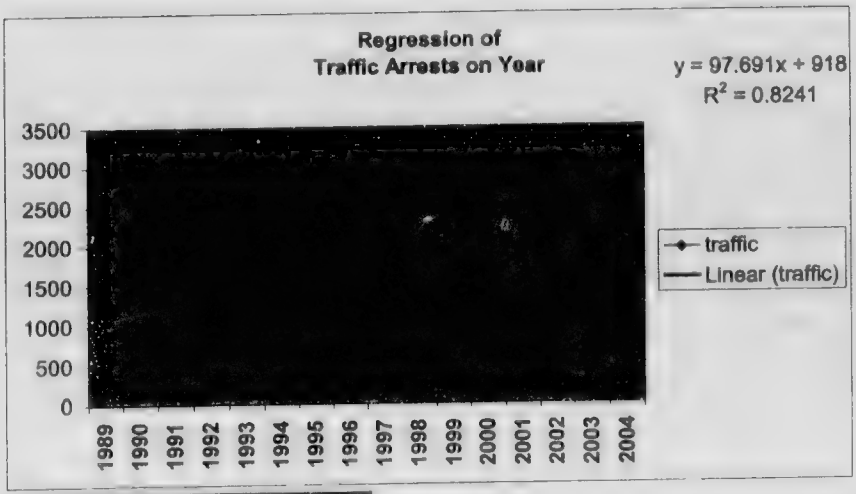
The following provides an historical summary of traffic enforcement activities, including:

1) Traffic Arrest data
2) Traffic crashes reduction efforts
3) Amount of time spent on traffic enforcement activities

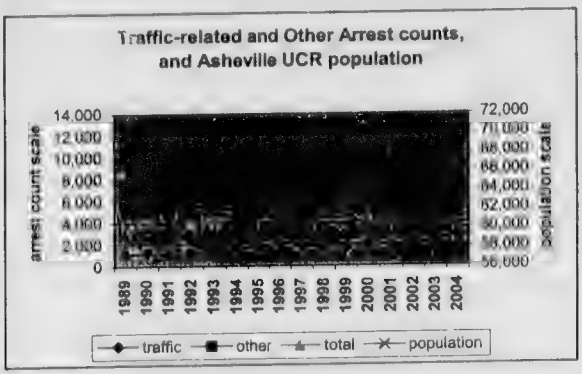
1) Traffic Arrest data

APD arrest data go back 16 years from 1989 to 2004. These were categorized as being either 'traffic-related' or 'other' types of arrests. Based on this data the number of traffic-related arrests has increased each year by an average of 98 arrests per year. The 95% confidence interval for this rate of increase is between 72 and 123 arrests per year. As such, this average increase can be considered to be statistically significant, and we can conclude that traffic-related arrests have generally increased over the last 16 years. It is also notable that year 2004 is appreciably higher than all other years.

The graph below shows the increasing trend of traffic-related arrests by year. The second chart below and associated graph shows the counts, for each year, of 'traffic' arrests and 'other' arrests, as well as UCR population data.



year	traffic	total
1989	1,048	6,549
1990	1,224	7,071
1991	1,073	6,109
1992	1,189	6,876
1993	1,222	6,390
1994	1,615	6,957
1995	1,770	7,342
1996	2,132	7,949
1997	1,856	8,359
1998	1,725	7,349
1999	1,772	8,844
2000	2,112	10,460
2001	1,887	10,528
2002	2,190	11,560
2003	2,248	11,337
2004	2,911	12,914



2) Traffic crashes reduction efforts

An ongoing effort is in place wherein Patrol will select specific roadways and intersections that are known to have relatively high numbers of traffic crashes. Once selected, they work to reduce the number of crashes by at least 5%. To help achieve this goal there is an increase in traffic enforcement activities in these areas. Patrol also works with traffic engineering and NCDOT to enhance red light timing cycles, intersection configurations, signs, and might also employ simple solutions like having shrubbery trimmed by public works. The following represent the results of these activities, based on six-month time intervals.

Last half of 2002 compared to First half of 2003:
Central: from 7 to 2 crashes, 71% reduction (Patton Ave from Clingman to Grove St)
East: from 5 to 1 crashes, 80% reduction (US 70 at Crockett Ave)

North: from 22 to 9 crashes, 59% reduction (Merrimon Ave at Edgewood, E Chestnut, and Hillside)
South: from 5 to 7 crashes, 20% increase (US 25 at Mills Gap Rd)
West: from 2 to 3 crashes, 50% increase (N Bear Creek from Johnston Blvd to Deaverview Rd)
Overall: from 41 to 22 crashes, 46% reduction

First half of 2003 compared to Last half of 2003
Central: from 10 to 4 crashes, 60% reduction (Biltmore Ave and Patton Ave)
East: from 27 to 25 crashes, 7% reduction (Fairview Rd and I-240)
North: from 50 to 48 crashes, 4% reduction (Merrimon Ave between Claremont Ave and Edgewood Rd)
South: from 50 to 44 crashes, 12% reduction (Hendersonville Rd from Thompson St to Lula St)
West: from 180 to 175 crashes, 3% reduction (US 19/23 from Regent Park Blvd to NC 63)
Overall: from 317 to 296 crashes, 7% reduction

Last half of 2003 compared to the First half of 2004
Central: from 2 to 5 crashes, 150% increase (College St from N Oak to Spruce St)
East: from 7 to 8 crashes, 14% increase (US 70 at Riceville Rd)
North: from 65 to 39 crashes, 40% reduction (Merrimon Ave at Gracelyn, Larchmont, Edgewood, Chestnut)
South: from 16 to 25 crashes, 56% increase (Hendersonville Rd from Thompson St to Lula St)
West: from 9 to 8 crashes, 11% reduction (N Louisiana Ave at Kmart/Bi-Lo entrances, just north of Patton Ave)
Overall: from 99 to 85 crashes, 14% reduction

The aggregate change for the above time periods is from 457 to 403 crashes, an overall 12% reduction. A new 10-month cycle will be utilized for future assessments, the next one being for the period 8/1/03-5/31/04 compared to 8/1/04 to 5/31/05. Currently selected locations are: Central (I-240 EB, Smoky Park Bridge to Charlotte St), East (US 70 at Tunnel Rd), North (Merrimon Ave from Edgewood to Dunwood), South (Sweeten Creek at Mills Gap, and West (Patton Ave and Louisiana Ave).

To represent the overall citywide trend, the counts of crash-related calls for service are shown below for available years. It is important to note that the new OSSI CAD system was put in place 3/11/03, and probably does a far better job of excluding duplicate calls for service that relate to the same accident. As can be seen below, the counts using the new system are appreciably lower than counts from the old system.

Year	Count	Source
1999	7,941	old CAD
2000	8,149	old CAD
2001	8,162	old CAD
2002	8,191	old CAD
2003	6,699	mostly new CAD
2004	6,846	new CAD

3) Amount of time spent on traffic enforcement activities

During Fiscal Year 2003-2004 APD spent about 47,000 hours traveling to and servicing all calls for service. Approximately 13,000 of these hours were in response to traffic-related calls for service. Thus, about 13000/47000 = 27% of Patrol's active time is committed to traffic-related activities.

Traffic Calming:

Completed projects
South French Broad (phase 1 of 2), Florida/Dorchester, Caribou, Wyoming, Gracelyn/Ottari – 3.3 miles, $97,000
Murdock/Ridgelawn/Wellington (in progress) – 1.5 miles, $82,000

Projects Under Design
Kenilworth Road – 1.3 miles, est. $80,000
Redwood Forest (from Riverbend) – 0.96 miles, $65,000 max private funds
Shiloh (from Appeldoorn) – 2.3 miles, $84,000 max
Biltmore Park (HOA project) – 2.7 miles, est. $65,000 private funds

Planned Projects
Grove Park neighborhood (from GPI) – 3.4 miles, est. $200,000 private funds

Likely Future Projects
Governors View/Arco (from Riverbend UV) – 1.3 miles, $25,000 max private funds
South French Broad (phase 2 of 2) – 0.5 miles
Cedar Street and Wood Avenue – 0.7 miles

Costs and Needs
The engineer's estimate for the most recent project was about $77,000 per mile of traffic calming. The most recent bid for same was about $114,500 per mile. We believe the engineer's estimate is reasonable, and that the contractor's bids were excessive due to lack of local competition, particularly in the asphalt industry.

At this time, we have not prioritized future projects beyond Kenilworth Road. We have requests for traffic calming on about 300 street segments in the City, totaling about 100 miles of streets. The streets which appear to be most impacted by existing traffic, based on measured traffic volumes and measured speeding are:

- Cedar Street and Wood Avenue, 0.74 miles
- South French Broad Avenue (Phifer to Livingston), 0.47 miles
- Kimberly Avenue and Edwin Place, 1.65 miles
- Montford Avenue, 0.89 miles
- Edgewood Road (north), 0.36 miles
- School Road East, 0.52 miles
- Chestnut Street, 1.12 miles
- Bear Creek Road, 0.73 miles
- London Road, 0.70 miles
- Burton Street, 0.56 miles
- Hanover Street, 0.50 miles
- State Street, 1.00 miles
- Forest Hill Drive (Wyoming to Biltmore), 0.23 miles
- Westwood Place, 0.70 miles
- Shelburne Road, 0.67 miles

These total to 10.84 miles. In addition, there are many more residential streets on which traffic volumes are relatively low, but speeding is particularly prevalent, including Cisco Road, Michigan Avenue, and Riverview Drive.

Pros of traffic calming

- Speeding is reduced
- Need for enforcement is reduced
- Quality of life is improved for residents of streets
- Can include aesthetic enhancements to support community

Cons of traffic calming

- Costs for installation
- Costs of maintenance
- Some opposition to measures (typically a minority of residents)

Regarding the City Council's Strategic Operating Plan, traffic calming supports an efficient transportation system by managing traffic demand in neighborhoods.

Councilman Dunn expressed concern with the $77,000 per mile amount and the time delay for emergency vehicles

Councilman Newman felt that with the resources that we have available, we may need to focus our traffic calming towards more pedestrian safety in key areas, i.e., around playgrounds.

Discussion surrounded the different technology for traffic calming and how the fine money is distributed.

Councilman Dunn was interested in looking at the use of technology as a way of traffic calming.

Councilwoman Jones felt it was important to have community involved if a decision is reached to use different technology in traffic calming.

When Councilwoman Bellamy asked how many police officers are dedicated to traffic enforcement, Police Chief Hogan said that all police officers play a role in traffic enforcement. Twenty-five to twenty-seven percent of our time is spent on traffic enforcement in addition to one officer dedicated in each district to the traffic safety of that district.

It was the consensus of Council to instruct staff to report back to Council of alternative ways to use technology in traffic enforcement.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on May 24, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Establishing Conditional Zoning

City Attorney Oast said that this is the consideration of an ordinance to amend the Unified Development Ordinance by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process.

Conditional or Special Use District (CUD) zoning has been authorized in North Carolina since the mid 1960's. Asheville adopted CUD zoning as part of the UDO in 2000. Despite the benefits of flexibility that CUD zoning provides, its legal and theoretical underpinnings –

bifurcating the legislative rezoning from the quasi-judicial conditional use permit – have always been difficult to apply in practice.

In 2001 and 2002, the North Carolina Court of Appeals in two cases (review denied by the Supreme Court) approved the use of "conditional zoning." Conditional zoning is essentially the same practically and conceptually as CUD zoning in that it is a rezoning based on a site specific development plan, and the applicant is bound by the conditions in the ordinance. Legally, however, it collapses what was an awkward two-step process into a single process.

One important difference for the Planning and Zoning Commission and City Council is that the conditional zoning process requires no specific findings. Decisions should still be based on sound land use guidance principles, however, and this is set forth in the proposed ordinances. It may help to think of conditional zoning as adopting a set of development regulations (building height, setback, etc.) and applying them to a single property or group of properties, creating a single use classification. Procedurally, the process is much less complicated than CUD zoning. The process for appealing a conditional zoning ordinance into the courts would be different as well.

Under the proposed ordinance, the application process would be mostly unchanged from the current process for CUD zoning – requiring that the owner be the applicant, that a site specific plan be submitted, and that the uses be specified. Also under the proposed ordinance, conditional zoning is not available for classifications such as Urban Village, where a site plan is already required.

The current CUD zoning process would be eliminated for future use. Any CUD zoning designations established by this process, however, would continue to be governed by the CUD ordinance.

History / Prior Actions: After adding the reference to the conditional use standards in Sec. 7-16-2 to Sec. 7-7-8(d)(5), the Planning and Zoning Commission unanimously recommended adoption of the proposed ordinance.

Considerations:

- streamlined process at Planning & Zoning/Council level, and in courts
- increased flexibility in zoning
- less administrative time required to process applications, administer ordinance
- less vulnerability to judicial challenge
- susceptible to over use

City staff recommends City Council amend the Unified Development Ordinance (UDO) by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process.

City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: how will protest petitions be affected; will more conditional zoning requests be applied for; how many cities in North Carolina use this type zoning and are they satisfied with the process; what is the reason behind repealing the conditional use district zoning; and are there any hidden risk factors.

City Attorney Oast said that he would include language in the ordinance that it be used for firm development proposals and revise the Code references in Section 7-7-8 (c) (6).

At the request of Councilman Newman, City Attorney Oast said that when this ordinance is brought before Council for formal action, the Planning & Development Director will provide Council with examples of minor modifications that can be approved by him. Councilman Newman asked that City Council be apprised of any minor modifications made by the Planning & Development Director.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the appropriate City Council agenda.

CHAMBER OF COMMERCE – ECONOMIC DEVELOPMENT COALITION

Discussion surrounded the role of the City's vacant Economic Development position; the relationship with the Chamber of Commerce and the next $100,000 commitment for their new building; and the Economic Development Coalition's outside agency request for $75,000.

City Manager Westbrook said that the City's policy is to not recruit and that is the role for the Chamber of Commerce. He explained why the City's Economic Development Director position is distinctly different that the work of the Chamber of Commerce.

Councilman Newman felt the City's economic development policy needed to be reviewed.

Vice-Mayor Mumpower felt the role of the City's Economic Director should be expanded and strengthen for a stronger sense of substance.

Councilman Bellamy said that the City contributes financially to the Economic Development Commission and we are only allowed one voting member. She felt that if the City is "paying" for that seat, we need to be sure that they are meeting our needs and our expectations.

The majority of Council was in favor of the City Manager hiring the City's Economic Development Director.

It was the consensus of City Council to discuss these items with the Chamber of Commerce at their quarterly meeting on May 10, 2005.

SPECIAL MEETING

Councilwoman Bellamy moved to schedule a special meeting on Tuesday, April 26, 2005, at 8:00 a.m. at the Renaissance Hotel in downtown Asheville, for the purpose of participating in the mediation regarding termination of the water agreement. It is anticipated that City Council will go into closed session for a significant part of that meeting, pursuant to the attorney-client privilege exception, in order to consult with the City's attorneys. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint W. E. Lack to the Civic Center Commission, to fill the unexpired term of Sylvia Farrington until June 30, 2005, and then a full three-year term until June 30, 2008, or until his successor is appointed.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for the following individuals for a vacancy on the Film Commission: Mary Trimarco and Donna Daniels.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:25 p.m.

Magdalen Bowlegs
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 26, 2005 - 5:00 p.m.

Regular Meeting

Present Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Leading City Council in the Pledge of Allegiance was Enka High School Air Force Junior ROTC Color Guard.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 05-91 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE JOHN P. MIALL JR

Mayor Worley read the resolution of appreciation to retiring Risk Manager John P. Miall Jr. On behalf of the City Council, Mayor Worley thanked Mr. Miall for his nearly 30 years of service he has devoted to the citizens of Asheville.

Councilman Dunn moved for the adoption of Resolution No. 05-91. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 113

II. CONSENT AGENDA:

At the request of Vice-Mayor Mumpower, Consent Agenda "A" and "B" were removed from the agenda for individual votes.

A. RESOLUTION APPROVING THE CONSOLIDATED STRATEGIC HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2005-2010

This item was removed from the Consent Agenda for an individual vote.

B. RESOLUTION APPROVING THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN FOR 2005

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 05-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LICENSE AGREEMENT WITH THE HOUSING AUTHORITY FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with the Housing Authority of the City of Asheville for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road (White Fawn) is the site of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

The Housing Authority has proposed to install an antenna and related equipment at White Fawn. There are two towers at 36 Reservoir Road and the Housing Authority antenna would be located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable the Housing Authority to relocate its antenna from Spivey Mountain to White Fawn and thereby improve its in-house wireless communications.

The Housing Authority will pay an initial annual License Fee of $2,400 for the White Fawn site. which represents about 50% of fair market rent. The reduction in the license fee is in consideration of the official nature of the Housing Authority as an agency of the City of Asheville and its charge to carry out the public housing franchise for the City. The agreement includes a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years.

The Notice of Intent to enter into a License Agreement with the Housing Authority was published on Friday, April 15, 2005, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute a License Agreement with the Housing Authority of the City of Asheville for antennas at 36 Reservoir Road.

RESOLUTION BOOK NO. 29 – PAGE 114

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 05-93 - RESOLUTION APPROVING THE CONSOLIDATED STRATEGIC HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2005-2010

Summary: The consideration of a resolution approving the City's Consolidated Strategic Housing & Community Development Plan for 2005-2010.

This Strategic Plan sets out broad priorities, strategies, and targets for the use of Community Development Block Grant (CDBG) and HOME funds over the next five years. The draft Plan was published on March 29, 2005, and a public hearing was held at the City Council meeting on April 12.

No public comments were made on April 12, and no comments of substance have been received. The following minor amendments have been made to the Plan since the draft was published, or remain to be made before it is submitted to HUD:

Housing Needs Assessment
- Added information on current rent levels from recent apartment survey
- Added data on Housing Authority waiting lists

Affordable Housing Chapter
- Changes to Henderson County Housing Strategies – per County request
- Add information from Housing Authority Five year Plans (requested)

Non-Housing Community Development Chapter
- Completed blanks in Table 2B (Appendix)
- Separated the targets for job training and micro-business assistance in Tables 12 & 13
- Added information on sewer needs and planned improvements

Appendices
- Add appendix on results of consultation (few comments are expected because so many focus group participants were involved in developing the key sections of the plan)
- Add HUD-required description of priorities and strategies that will reduce number of families living in poverty
- Add note on the cost of the Plan

Revise page numbering & contents pages

Advantages:
- Complies with HUD regulations and enables the City to continue to receive CDBG and HOME funds
- Provides a wealth of information about existing housing and community development needs
- Establishes priorities to direct the use of CDBG and HOME funds over the next five years
- Includes quantitative performance targets to provide accountability in the use of funds

Disadvantages: None

Staff recommends approval of the Consolidated Strategic Housing and Community Development Plan for 2005-10.

Councilman Newman moved for adoption of Resolution No. 05-93. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 115

RESOLUTION NO. 05-94 - RESOLUTION APPROVING THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN FOR 2005

Summary: The consideration of a resolution authorizing submission of the Consolidated Action Plan for 2005-06, allocating federal Community Development Block Grant (CDBG) and HOME funds, to the U.S. Dept. of Housing & Urban Development.

The City expects to have available $1,725,170 in CDBG funds and $1,723,349 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2005. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 40

projects. Allocations are consistent with the draft Consolidated Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME and CDBG funding will assist 361 affordable housing units Consortium-wide. CDBG funds will also help more than 3000 low-income City residents obtain housing counseling, business training, and other needed services, and will carry out street, water, and public transit improvements in low-income areas.

A summary of the draft Action Plan was published on March 29, 2005, and a public hearing was held at the City Council meeting on April 12. The Plan is due to be submitted to HUD by May 15, 2005.

Advantages:

- Allocates $3,448,519 in compliance with federal rules and enables the City to utilize these funds
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium
- Directly addresses all of the priorities set out in the Strategic Plan except for job training
- Leverages other funding in the ratio of $12 to every $1 of CDBG or HOME funds

Disadvantages: None

Staff recommends approval of the resolution submission of the Consolidated Action Plan for 2005-06, allocating federal Community Development Block Grant (CDBG) and HOME funds, to the U.S. Dept. of Housing & Urban Development.

Councilman Newman moved for adoption of Resolution No. 05-94. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 116

Councilman Dunn would support these two plans to comply with HUD regulations, however, he felt the plans are not practical as the City doesn't have the tax dollars to support them.

Vice-Mayor Mumpower felt he could not support the plans due to some of the language and some of the methodology. He thinks this speaks of a system that psychologically he disagrees with. He feels there is a way to help people without enabling people and he has concerns about a number of the programs that are included in both plans.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3222 – ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS ON BILTMORE AVENUE FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE COVERED TO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY

Urban Planner Shannon Tuch said that on March 22, 2005, City Council unanimously approved the Biltmore Gardens Project with a number of conditions. One of those conditions was that the wording for the conditional use permit be returned to the Council for review before final

approval. City Attorney Oast and the rest of the legal department has worked on providing that draft for your review and Planning staff felt that it would be best to consider this in conjunction with some additional plan information.

She reviewed with Council what was discussed in March. She showed the first drawing, which is an illustrative of the overall Master Plan (Attachment to City Exhibit 3), which shows the overall plan in the original layout for the new construction. As a result of considerable input from the neighborhood, the designers for the project produced an alternative layout referred to as "Alternate Concept A" (City Exhibit 4). This alternate layout is what was approved by Council (City Exhibit 4). For clarification, staff asked the designers to create a new Master Plan inserting Alternate Concept A into the overall Master Plan (Attachment to City Exhibit 5 – Alternate A Plan). The only real difference between new Master Plan and the original Alternate Concept A is that a portion of parking was split up (originally it was one row) to better fit existing grades and to accommodate some large trees on site. However, since the drafting of the memo, the designers worked out an alternative that was more true to the original.

In addition to a more flushed out Master Plan, Planning staff also asked for a blow-up of the new construction area that better identified trees to be preserved (Attachment to City Exhibit 5 – Tree Preservation Plan). What this drawing illustrates is all the existing trees located from a tree survey that will be removed as a result of the new development. The other trees that are more boldly identified with a darker outline will be preserved. She emphasized that these "preserved" trees are trees that will not be removed as a result of construction. It does not mean that they will not be impacted by the construction. The site planners intend on using tree protection fencing but since this fencing cannot be installed to meet the City's standard for tree protection she asked the designers to remove the fencing from the plan over concern that this will lead to confusion and that some people in the community may equate the fencing with adequate protection.

She then pointed out that the bold dashed line in the Tree Preservation Plan, indicates the limits of disturbance. This is the boundary line, so to speak, for grading and other ground disturbing activity. She thought it was important to show so that Council could see how the extent of grading is held very close to the edge of the proposed building. This is accomplished to some degree by the proposed terrace retaining walls (City Exhibit 6) that will help prevent additional grading down slope. You can see up slope of the project, where there are no walls, the extent of grading is broader but still within the building parameters.

Because the existing buildings are a fixed feature, it is possible that some smaller walls could be required on the upslope side but should be comparatively smaller.

She said that the developer has submitted (late this afternoon) a revised Alternate A Plan (City Exhibit 7 – Exhibit XX).

Mr. Matt Sprouse, site designer, said that their site plan just submitted today shows an emergency vehicle entrance only. The owners plan on putting walkable bollards or a gate to now allow traffic to pass through, per the neighborhood's request. He explained that the only change from what was submitted earlier is the entrance and parking area and once they got into the finer grading, they realized that they can have less of an impact with this new configuration (City Exhibit 7 – Exhibit XX).

Ms. Tuch said that this new plan shows the entrance as being emergency access only but it was Council's direction in the conditional use permit that the entrance is to be a full access open to all traffic at all times.

Councilwoman Bellamy expressed concerns about the row of trees as well as the entrance.

After a brief discussion and concurrence by Mr. Sprouse, it was the consensus of City Council to keep the full open access and bring that access around the higher side of the cluster of trees with the single row of parking.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3222, approving the form of the conditional use permit, with said permit condition no. 8 being amended to read "The southern drive entrance along Kenilwood Place shall be open for full access to all traffic, as shown on Exhibit XX." (City Exhibit 7). This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

ORDINANCE BOOK NO. 22 – PAGE 31

V. NEW BUSINESS:

A. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING FOUR AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) THE RIDGEFIELD BUSINESS PARK AREA; (2) THE ASCOT POINT VILLAGE AREA; (3) THE LONG SHOALS ROAD AREA; (4) THE AIRPORT ROAD AREA; (5) TWO TOWN SQUARE AREA; AND (6) TOWN SQUARE EAST AREA

Planning & Development Director Scott Shuford said that the Annexation Services Plan is being submitted for Council's approval for the following areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Two Town Square area and Town Square East area.

City Council approval of this document is the second step in the annexation process that began on April 12, 2005, when Council adopted the resolutions of intent to annex these six areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	April 26, 2005
Public information meeting	May 31, 2005
Public hearings	June 14, 2005
Adoption of annexation ordinances	June 28, 2005

Effective Date of Annexations:

September 30, 2005 – Ridgefield Business Park area, Two Town Square & Town Square East

December 31, 2005 – Ascot Point Village, Long Shoals Road & Airport Road

Mr. Blake Esselstyn, Urban Planner, said that the N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

Mr. Esselstyn reviewed with Council the specifics of how each area qualifies for annexation and used photos to show some of the uses in the proposed annexation areas.

Ridgefield Business Park Annexation Area – 190.71 acres, 57 properties, 2 dwelling units;

Ascot Point Village Annexation Area – 31.75 acres, 1 parcel, 334 dwelling units;

Long Shoals Road Annexation Area – 215.6 acres, 56 parcels, 706 dwelling units, 1,341 people

Airport Road Annexation Area – 239.23 acres, 113 parcels, 402 dwelling units, 763 people

Two Town Square Annexation Area – 1.19 acre, 1 parcel, commercial

Town Square East Annexation Area – 29.56 acres, 44 parcels, 21 dwelling units, 40 people

Ms. Julia Cogburn, Urban Planner, explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department. Extending service into the proposed annexation areas will require operational adjustment in two primary areas (1) configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service; and (2) adding sworn personnel positions to accommodate the anticipated increase in demand for police services. He explained how each area would be served by an expansion of a particular district.

Based on the estimated calls for service in the annexation regions, it will be necessary to add four (4) officers to maintain the ratio of 520 calls for service for each sworn officer. The plan of services calls for the addition of these officers, at the annual cost of $140,000, plus associated capital costs, on or before August 1, 2005.

Fire protection: Three additional firefighter positions will be required to adequately serve the additional land area, dwelling units, businesses and improvements. The current first unit to be placed out of service is Ladder 4 when personnel are not available for minimum staffing. These positions will reduce the number of "out of service" times for this response company. The annual cost for the positions will be $108,906 for salary and benefits plus associated equipment and safety items of $15,500. The extension of fire protection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.1 to offer existing fire service entities contract opportunities, which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the suburban fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Solid waste collection: An additional automated truck and a new position, Motor Vehicle Operator III, are required. The City is required by G.S. 160A-49.3 to offer existing private service entities contract opportunities which allow for the continued service of annexed areas by existing companies. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the existing private companies may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending solid waste collection services; therefore, the City has developed a plan that incorporates alternative solutions to extending solid waste collection services to annexed areas.

Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require expansion of Public Works Department, Street Maintenance Division. The City has evaluated the streets in the annexation areas for inclusion in the maintenance program as follows: (1) Ridgefield Business Park area: Alliance Court, Heart Drive, Ridgefield Boulevard and Ridgefield Court (39 street lights at a total annual cost of $8,327); (2) Ascot Point Village area: Ascot Point Circle (2 street lights at a total annual cost of $418); (3) Long Shoals Road area – Skyland Inn Drive (3 street lights at a total annual cost of $650); (4) Airport Road – Machen Road (8 street lights at a total annual cost of $1,677); (5) Two Town Square area – none; and (6) Town Square East area – East Schenck Crescent, Columbine Road, Dearborn Street, Town Square Boulevard, Town Square and Dayflower Drive (55 street lights at a total annual cost of $21,945).

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed four annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following four areas require no water line improvements: Ridgefield Business Park area, Ascot Point Village area, Two Town Square area and Town square East area. In the Long Shoals Road area, there is a lack of fire protection coverage. Therefore, there is a need to upgrade an existing small diameter water line on Plott Place and to upgrade an existing small diameter water line on Overlook Road Extension. Approximately 500 linear feet of six-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Plott Place and approximately 550 linear feet of 6-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Overlook Road Extension. All existing water service connections shall be

reconnected to the proposed 6-inch water line and the existing small diameter water lines shall be abandoned. In the Airport Road area, there is a lack of fire protection. Therefore, there is a need to upgrade an existing small diameter water line on Machen Road and install additional fire hydrants to existing water lines in the area to bring fire protection coverage to the same level as other parts of the City. Approximately 1,000 linear feet of 6-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Machen Road. All existing water service connections shall be reconnected to the proposed 6-inch water line and the existing small diameter water line shall be abandoned. Two new fire hydrants will be installed on the existing 24-inch water line along Airport Road, 1 new fire hydrant will be installed on the existing 24-inch water line along Hendersonville Road and 1 new fire hydrant will be installed on the existing 6-inch water line along Glen Bridge Road. Water system improvements for the Long Shoals Road area and Airport Road area are planned for completion within two years of the effective date of annexation.

Sewer collection: The following four areas require no sanitary sewer system improvements: Ridgefield Business Park area, Ascot Point Village area, Two Town Square area and Town Square East area. In the Long Shoals Road area, major sanitary sewer trunk lines and interceptors are currently in place for the majority of this area; however, upgrades will be required to the existing sanitary sewer infrastructure in order to bring this area to substantially the same level as other parts of the City. Approximately 800 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed cross-country, beginning on Long Shoals Road, approximately 350 feet east of the intersection of Long Shoals Road and CP&L Drive and extending south to tie into the existing sanitary sewer system on CP&L Drive. In the Airport Road area, major sanitary sewer trunk lines and interceptors are currently in place for the majority of this area; however, upgrades will be required to the existing sanitary sewer infrastructure in order to bring this area to substantially the same level as other parts of the City. Approximately 350 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed along Airport Road, beginning 380 feet west of the intersection of Airport Road and Hendersonville Road. Approximately 850 linear feet of 8-inch sanitary sewer line and all related appurtenances shall be installed along Benwood Drive, beginning approximately 700 feet west of the intersection of Benwood Drive and Bradley Branch Road. Sanitary sewer system improvements for the Long Shoals Road area and Airport Road area are planned for completion within two years of the date of annexation.

Administrative and other municipal services: The City of Asheville is governed by a City Council consisting of a Mayor, Vice-Mayor, and five Councilpersons with general administration responsibilities delegated to a City Manager. Supporting the City Manager are key professionals and department heads specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and recreation and various other municipal activities and functions. The City of Asheville is active minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities in an effort to make Asheville a better community for present and future residents, businesses and property owners. Employees and employee relations are managed by the City Manager. The City of Asheville is an Equal Opportunity Employer. Three well-qualified practicing attorneys provide legal counsel to the City.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $1,088,508; Total state utility taxes - $113,120; Total sales tax - $393,265; Total Powell Bill allocation - $66,218; and Total fees, charges and permits - $112,580. Total revenue - $1,773,678.

Annual recurring expenditures: Police (four additional officers to be hired effective August 1, 2005) - $140,000; Fire (costs for additional personnel and financial impact payments to the rural fire departments (5-year duration) - $308,553, Solid waste - $49.909 (annual costs for solid waste collection and disposal and recycling are not anticipated to be absorbed into current budgets; the solid waste annual expenses include an additional MEO III position plus annual disposal costs of $16,909. Annual costs for street maintenance are anticipated to be absorbed into the current budget with no increase in expenditures at this time); Recycling - $0; and Street lighting - $33,017. Total recurring expenditures - $531,479.

Annual capital expenditures: Water lines - $153,650; Sewer lines - $285,000; Solid waste (cost equals potential economic loss compensation for private solid waste haulers of $62,040 plus $182,000 for an additional automated loader truck) - $244,040; Rollout containers - $18,160; Police (police capital costs include equipment, training and vehicles for hired officers) - $186,385; and Fire (fire costs include equipment for hired personnel) - $15,500. Total annual capital expenditure - $902,735.

Ms. Cogburn asked City Council to adopt the resolutions approving the report of plans for the six annexation areas.

Upon inquiry of Councilman Dunn, Police Chief Bill Hogan said that the Police Department has 8 police officer vacancies.

Vice-Mayor Mumpower said that staff has done a good job on presenting the services plan, however, he would be voting against it for previously shared concerns regarding annexation.

Mr. Shuford responded to Councilman Dunn's inquiry of why is the City is annexing small portions of property each year. He said that he would provide Council with information on the City's policies regarding providing specific services to annexation areas.

Councilman Newman said that families and businesses in Asheville pay twice the property taxation than people who live just outside of the City limits, and when areas become urban in nature, they should pay to support the critical infrastructure needs in Asheville. He felt that as an elected official looking out for the wellbeing of Asheville taxpayers, annexation is an issue of basic fairness for families who live in Asheville and he would support it.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 05-95 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE RIDGEFIELD BUSINESS PARK AREA

Councilman Davis moved for the adoption of Resolution No. 05-95. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 117

RESOLUTION NO. 05-96 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE ASCOT POINT VILLAGE AREA

Councilwoman Jones moved for the adoption of Resolution No. 05-96. This motion was seconded by Councilwoman Bellamy and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 118

RESOLUTION NO. 05-97 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE LONG SHOALS ROAD AREA

Councilman Newman moved for the adoption of Resolution No. 05-97. This motion was seconded by Councilwoman Bellamy and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 119

RESOLUTION NO. 05-98 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS THE AIRPORT ROAD AREA

Councilwoman Bellamy moved for the adoption of Resolution No. 05-98. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 120

RESOLUTION NO. 05-99 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS TWO TOWN SQUARE AREA

Councilman Davis moved for the adoption of Resolution No. 05-99. This motion was seconded by Councilman Newman and carried on a 5-2 vote with Vice-Mayor Mumpower, and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 121

RESOLUTION NO. 05-100- RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION, WHICH IS GENERALLY KNOWN AS TOWN SQUARE EAST AREA

Councilwoman Jones moved for the adoption of Resolution No. 05-100. This motion was seconded by Councilwoman Bellamy and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 122

VI. OTHER BUSINESS:

For Our Kids Program

Vice-Mayor Mumpower thanked those who participated in the For Our Kids program at the Bartlett Arms Apartments clean-up project, which Program he and Councilwoman Bellamy share responsibilities in:

Claims

The following claims were received by the City of Asheville during the period of April 1-14, 2005: Earl Lee Gray (Water), Margo Lenmark (Streets), Wanda Brookshire (Engineering), Michael Overstrom (Transit Services) and Sarah Brown (Police.)

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English expressed concern over the veterans memorial discussion with the Pack Square Conservancy.

Ms. Mary Steiner and Mr. Fisher Caldwell spoke about the on-going problems escalating at Pisgah View Apartments.

Closed Session

At 6:15 p.m., Councilman Newman moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Gannett Pacific Corporation, d/b/a Asheville Citizen-Times Publishing Company; Chesapeake Television, Inc. d/b/a WLOS-TV; City of Asheville; and County of Buncombe. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously.

At midnight, Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at midnight.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 10, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY, 2005, AS "MOTORCYCLE AWARENESS MONTH"

Vice-Mayor Mumpower read the proclamation proclaiming May, 2005, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Roger Williams who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilwoman Bellamy, Consent Agenda Items "K" and "L" was removed from the agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON APRIL 12, 2005, AND APRIL 26, 2005, THE WORKSESSION HELD ON APRIL 19, 2005

B. RESOLUTION NO. 05-101 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MARTIN STARNES & ASSOCIATES, CPAs, P.A., FOR AUDITING SERVICES FOR FISCAL YEAR 2005-06

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Martin Starnes & Associates, CPAs, P.A., for auditing services for Fiscal Year 2005-06.

N. C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In April of 2005, the City Finance Department sent letters to 31 local and regional CPA firms, including the two firms listed on the Minority Business listing, soliciting proposals from qualified firms of certified public accountants to audit the City of Asheville's financials statements for the fiscal year ending June 30, 2005, with the option of auditing the City of Asheville's financial statements for the two subsequent fiscal years. Five firms expressed interest and were provided a copy of the request for proposals. All five firms submitted a complete proposal. The proposal from Martin Starnes & Associates, CPA's, P.A. proposes a fee of $49,000 for the fiscal year

ending June 2005. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

PROS:

- The fee includes an audit in accordance with generally accepted auditing standards which includes an assessment of the City's internal control procedures, testing for compliance with N. C. General Statutes, testing for compliance with pronouncements of the Governmental Accounting Standards Board, Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs and the Federal Office of Management and Budget's Compliance Supplement for Single Audits of State and Local Governments.
- This audit will enable the City of Asheville to comply with N.C. Gen. Stat. sec. 159-34.

CONS:

- None determined.

City staff recommends City Council authorize the Mayor to execute a contract with Martin Starnes & Associates, CPAs, P.A., for auditing services for Fiscal Year 2005-06.

City Accountant Pat Leckey responded to questions from Councilman Davis regarding the firm of Martin Starnes & Associates, CPAs, P.A.

RESOLUTION BOOK NO. 29 – PAGE 123

C. ORDINANCE NO. 3229 - ORDINANCE AMENDING CHAPTER 19 OF THE CODE OF ORDINANCES TO DESIGNATE THE CITY MANAGER OR HIS DESIGNEE TO TWO ILLEGALLY PARKED VEHICLES, JUNKED MOTOR VEHICLES OR ABANDONED VEHICLES

Summary: The consideration of an ordinance amending Chapter 19 of the Asheville City Code allowing the city manager or his or her designee to tow illegally parked vehicles, junked motor vehicles or abandoned vehicles in the City of Asheville.

There are several vehicles in the parking garages that are abandoned. They need to be removed. This amendment gives the City Manager or designee the ability to remove vehicles which are abandoned or impeding traffic flow in city garages and parking lots, or vehicles illegally parked in a fire lane or commercial loading zone.

The advantage of this to the City is that vehicles which have been abandoned may be removed, freeing up parking spaces for the paying public, and increasing safety in fire lanes, and increasing the ability to load or unload for commercial businesses.

The disadvantages are that the person whose vehicle has been towed may not feel that he or she should have been towed

City staff requests that City Council approves the ordinance amending Chapter 19 of the Asheville City Code allowing the city manager or his or her designee to tow illegally parked vehicles, junked motor vehicles or abandoned vehicles in the City of Asheville.

ORDINANCE BOOK NO. 22 – PAGE 63

D. ORDINANCE NO. 3230 - ORDINANCE AMENDING SECTION 16-7 OF THE CODE OF ORDINANCES TO ALLOW GATES AND DOORS TO OPEN ONTO A CITY STREET OR SIDEWALK UNDER CERTAIN SPECIFIED CONDITIONS

Summary: The consideration of an amendment to Section 16-7 of the City Code to allow gates and doors to open onto a City street or sidewalk under certain specified conditions.

Since 1965, Section 16-7 of the City Code prohibits persons from erecting or maintaining any gate or door which opens outwardly on any street or sidewalk. Throughout the City of Asheville, there are numerous instances whereby gates or doors open outwardly on the street or sidewalk. This amendment is intended to provide flexibility to the strict prohibition by allowing gates or doors to open outwardly onto a City street or sidewalk if there is compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

Pros:

- Provides flexibility to allow consideration for present day situations
- Public safety remains number one priority

Cons:

- Adds additional time to review process

City staff recommends adoption of the ordinance amendment to allow gates and doors to open onto a City street or sidewalk under certain specified conditions.

ORDINANCE BOOK NO. 22 - PAGE 64

E. RESOLUTION NO. 05-102 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Summary: Sylvia Farrington has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2005.

At the City Council worksession on April 19, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Mr. W.E. Lack, as a member of the Civic Center Commission, to serve the unexpired term of Ms. Farrington, term to expire June 30, 2005, and then to serve a full three-year term, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 124

F. RESOLUTION NO. 05-103 - RESOLUTION REAPPOINTING MEMBERS TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of reappointing members to the Educational Access Channel Commission.

The terms of Charlie Glazener, Gerry Kovach, Greg Dillingham and Rusty Holmes, members on the Educational Access Channel Commission, expire on June 1, 2005.

Mr. Tim Amos, Chairman of the Educational Access Channel Commission, notified the City Clerk that Mr. Glazener, Ms. Kovach, Mr. Dillingham and Mr. Holmes are all interested in reappointment and have an excellent attendance record. He recommended reappointments.

Therefore, the City Clerk has prepared the proper paperwork to reappoint Charlie Glazener (City School representative), Gerry Kovach (County School representative), Greg Dillingham (UNC-Asheville representative) and Rusty Holmes (A-B Technical Community College representative) to each serve a three-term respectively, terms to expire June 1, 2008, or until their successors are appointed.

Staff recommends City Council reappoint members to the Educational Access Channel Commission.

RESOLUTION BOOK NO. 29 – PAGE 125

G. RESOLUTION NO. 05-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASING AGREEMENT WITH DATAMATIC LTD FOR METER READING EQUIPMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into a purchasing agreement with Datamatic, LTD in the amount of $56,278.

The Water Resources Department and Information Technology Department use Datamatic equipment for meter reading data. The current equipment the Meter Services Division has become outdated and the division has now moved to automated meter reading (AMR) devices as well as conventional devices. The standard for new development is now AMR devices. The cost for this upgraded hardware and software including equipment for automated meter reading is $56,278 for which funds are available. Annual maintenance support cost after the first year, which is included in the initial payment amount, is $8,294.50.

PROS:

- This equipment will enable the Water Resources Department to expand its AMR program, which will enhance the safety of meter readers by eliminating areas where the meter readers have to walk on streets and narrow roadways.

CONS:

- The equipment and software cost of $56,278 and recurring annual cost, after the first year of $8,294.00.

City staff recommends City Council approve the City Manager signing purchasing agreement with Datamatic, LTD in the amount of $56,278 and recurring annual maintenance support cost of $8,294.00.

RESOLUTION BOOK NO. 29 – PAGE 126

H. RESOLUTION NO. 05-105 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SUPPLEMENTAL MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO EXPAND, INSTALL AND MAINTAIN A PUBLIC-ACCESS PARKING LOT ON NC DOT RIGHT-OF-WAY

Summary: The consideration of a resolution authorizing the Mayor to execute a supplemental municipal agreement with the N.C. Dept. of Transportation (NC DOT), to expand, install and maintain a public-access parking lot on NC DOT's right of way.

In 1961 the City entered into a municipal agreement with the NC DOT to utilize the NC DOT's right of way, which is situated on the north side of the expressway fence and to the south

of Cherry Street between Short Street and Broadway for parking purposes. That agreement was subsequently supplemented twice providing additional parking flexibility to the City. The City wishes to further supplement the 1961 agreement by performing some additional improvements within the right of way.

Pros:

- Parking often used by itinerants for living (old buses, vans, etc.). APD will have control of such long-term parkers – safer for citizens
- Parking services will meter lot (revenues)
- Lot will be approved in accordance with downtown development requirements.
- More public parking access for citizens.

Cons:

- Cost to improve lot in accordance with downtown development plans
- Lot must be improved (paved), meters installed, enforcement, etc.

This action complies with City Council's Strategic Operating Plan by encouraging new downtown development by making additional parking available to them (Sense of Place, Heritage and Arts, Goal 3, Objective B).

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a supplemental municipal agreement with the NC DOT to expand, install and maintain a public-access parking lot on NC DOT's right of way.

RESOLUTION BOOK NO. 29 – PAGE 127

I. RESOLUTION NO. 05-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A MOBILE SOURCE EMISSIONS REDUCTION GRANT

Summary: The consideration of a resolution entering into an agreement with the NC Dept. of Environment and Natural Resources (Division of Air Quality), to accept a Mobile Source Emissions Reduction Grant award and adoption of the accompanying budget amendment.

The Asheville Public Works Department was awarded a $12,000 grant from the NC Dept. of Environment and Natural Resources to purchase two electric vehicles for Asheville Police Department use in the central business district. A match of $9,830 is required for this grant. The matching funds are available from the Asheville Police Department equipment budget.

The Asheville Police Department emphasizes the use of non-traditional modes of transportation for downtown patrol duties. Patrol officers walk or ride bicycles in much of the downtown area. Officers who use standard police patrol vehicles drive at very slow speeds due to both traffic congestion and the need to observe pedestrian and street activities.

This action coincides with the City of Asheville's Strategic Operating Plan under the focus area of Natural and Built Environment, goal #1: Enhance and preserve air and water quality.

Pros

- Two electric vehicles will operate in much the same manner as traditional marked police cruisers, handling routine calls for service, providing traffic control, and conducting patrols.
- At low speeds the electric drive system operates more efficiently than a traditional police vehicle. Replacing two patrol cars with electric vehicles for downtown patrols will eliminate the emissions from those gasoline engines.

- By eliminating the unnecessary pollutants, the electric vehicles will add to the health and enjoyment of residents, visitors, and festival-goers.

Cons
- The cost of the match.

City staff recommends the City of Asheville accept the grant award by entering into an agreement with the NC Department of Environment and Natural Resources, and amend the Fiscal Year 04-05 budget to increase it by $12,000.

RESOLUTION BOOK NO. 29 – PAGE 128

J. ORDINANCE NO. 3231 - BUDGET AMENDMENT TO ACCEPT GRANT FROM N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A MOBILE SOURCE EMISSIONS REDUCTION GRANT

See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 22 - PAGE 65

K. RESOLUTION AMENDING RESOLUTION NO. 05-47 FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

This item was removed from the Consent Agenda for an individual vote.

L. RESOLUTION OF SUPPORT FOR THE TAX CREDIT APPLICATIONS FOR THE MOUNTAIN HOUSING OPPORTUNITIES' GLEN ROCK HOTEL REVITALIZATION PROJECT

This item was removed from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 05-107 - RESOLUTION AMENDING RESOLUTION NO. 05-47 FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of an amended resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Asheville Grizzlies Home Games.

The Asheville Grizzlies have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their home games and allow for consumption at these events. Ordinance No. 05-47 failed to state the dates and times on which the Grizzlies home games were scheduled.

The Asheville Parks and Recreation Department recommends approval of the resolution amending Resolution No. 05-47.

Councilwoman Bellamy felt that people should not need alcohol to enjoy an event and would not support the resolution.

Councilman Newman moved for the adoption of Resolution No. 05-107. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 129

RESOLUTION NO. 05-108 - RESOLUTION OF SUPPORT FOR THE TAX CREDIT APPLICATIONS FOR THE MOUNTAIN HOUSING OPPORTUNITIES' GLEN ROCK HOTEL REVITALIZATION PROJECT

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Summary: The consideration of a resolution supporting the tax credit applications for Mountain Housing Opportunities' Glen Rock Project.

City Council has recently approved a conditional use zoning for Mountain Housing Opportunities' (MHOs) Glen Rock project. The project is to be funded, in part, by tax credit financing. The resolution of support is intended to reflect City Council's strong enthusiasm for this critical project since it represents an opportunity to implement City Smart Growth infill and redevelopment policies and objectives as well as those of the Wilma Dykeman Riverway Master Plan.

City staff recommends the adoption of the resolution supporting the tax credit applications for Mountain Housing Opportunities' Glen Rock Project.

Councilwoman Jones moved for the adoption of Resolution No. 05-108. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 131

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE SAWYER MOTOR COMPANY BUILDING AT 100 COXE AVENUE AS A LOCAL HISTORIC LANDMARK

Mayor Worley announced that the applicants have requested this public hearing be continued until May 24, 2005. Therefore, Vice-Mayor Mumpower moved to continue this public hearing until May 24, 2005. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A REVISION TO THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR BROTHERTON COMMONS, LOCATED AT THE CORNER OF VIRGINIA AVENUE AND BROTHERTON AVENUE, FOR A PROPOSED 44-UNIT HOUSING DEVELOPMENT

Mayor Worley announced that the applicants have requested this public hearing be continued until May 24, 2005. Therefore, Vice-Mayor Mumpower moved to continue this public hearing until May 24, 2005. This motion was seconded by Councilwoman Bellamy and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE LEXINGTON STATION PROJECT, LOCATED AT THE CORNER OF LEXINGTON AVENUE, HILLIARD AVENUE AND CHURCH STREET, FOR A MULTI-COMMERCIAL, RESIDENTIAL DEVELOPMENT

ORDINANCE NO. 3232 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR LEXINGTON STATION PROJECT, LOCATED AT THE CORNER OF LEXINGTON AVENUE, HILLIARD AVENUE AND CHURCH STREET, FOR A MULTI-COMMERCIAL, RESIDENTIAL DEVELOPMENT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:16 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the Lexington Station project, located at the corner of Lexington Avenue, Hilliard Avenue and Church Street, for a multi-commercial, residential development.

The proposal is for a new infill development to be located on 1.7 acres in the downtown area of Asheville. The project is being reviewed under the Conditional Use Permit process because of the number of residential units involved. The property was formerly owned by Buncombe County and was purchased in 2000. Concern was expressed in the downtown community when the County announced a proposal to develop a jail annex and later an ambulance response team at that site. People involved in downtown issues and the Downtown Commission became interested in encouraging the County to find another buyer for the property for a mixed-use project.

Last year the County placed the property for sale. The proposal that is being currently reviewed has come from the purchaser of the property.

The proposal is for 3 new buildings to be placed on the parcel (Attachment to City Exhibit 3 – Location Map). The existing building, which is a large warehouse structure, will be

demolished (Attachments to City Exhibit 3 – Street Level Site Plan, Lexington Avenue Elevation, Elevation at Hilliard Avenue, Elevation at Lexington Avenue, Elevation at Lexington Avenue – Building C). The new buildings are proposed to be between three and four stories. The project would provide about 26,000 square feet of commercial space on the ground floor of the buildings and 66 residential condominium units on upper floors. The units could be considered middle price-range housing within the overall downtown condominium market. The units have been offered for about $160,000 for a one bedroom unit and about $250,000 for two bedroom units. Four units will be larger penthouse units located in the fourth floor level of Building B. The commercial space will be offered in buildings A and B. The commercial space totals about 26,000 square feet. Green space for the residential units will be provided along Church Street. Open space is not a requirement for residential projects in the downtown area but this green pocket park will provide some green space in the community.

The existing street width along Lexington Avenue is somewhat narrow. Based on City staff comments, the developer is providing more travel lane width there as well as new sidewalks surrounding the entire development. Area traffic and on-street parking can be accommodated safely. The site plan noted as 'L-1' is the most recently updated site plan showing on-street parking and the travel lanes in the area. Access to the underground parking areas is from 3 driveways along Church Street.

CBD Zoning is developed to reinforce the downtown as the urban center of Asheville and Western North Carolina by encouraging private and public investment. A further goal is to encourage a supportive retail center along with high-density residential development to complement other downtown uses and surrounding neighborhoods. There are no residential density maximums in the downtown area and there are no height limits.

The Asheville City Plan 2025 encourages more sustainable land development patterns in new construction and higher density commercial and residential projects in new mixed-use buildings. The City Development Plan 2025 encourages strengthening of downtown neighborhoods by providing a mix of new residential units and increasing livability by providing pocket parks.

Although the parcel is just outside of the Downtown Design Review map boundaries, the developer provided a courtesy review for the Downtown Commission. The Downtown Commission is supportive of the project and encouraged the architect to reinforce the ground floor areas for commercial uses by providing large well-defined window areas in the style of a storefront. This will better support any uses that will occupy the spaces.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that the seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project will comply with all City and State codes and requirements and will not endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site is an infill parcel that currently contains parking lots and several single-story warehouse buildings. The new proposal will step

with the natural topography of the street and in addition provide more green space than is currently provided on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development is not expected to injure the value of adjoining property. Rather, the proposed development represents significant re-investment in this neighborhood and could likely lead to additional redevelopment and increased property values in the surrounding area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The parcel is located in the Central Business District of the City. The proposed development is in harmony with the goals of the CBD and the scale, density and character of the types of development found in the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development conforms to the goals stated in the comprehensive plans and smart growth policies adopted by the City to support denser mixed-use infill development in areas of the City like downtown.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Infrastructure is in place to support the proposed development. The project would involve improvements to the adjoining sidewalks and streets. The development would also provide a bus stop at the corner of Hilliard Avenue and Lexington Avenue. No other infrastructure concerns were noted during the review by the Technical Review Committee.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The density of the development is not expected to create a traffic hazard or undue traffic congestion. The proposed development plan would widen Lexington Avenue to make traffic movements safer and easier.

Pros

- The project brings additional residential uses and commercial space to the downtown area.
- The existing vacant use will be replaced by a much more dynamic proposal.
- This important investment below Hilliard Avenue may encourage other redevelopment proposals in the vicinity of the project.

Cons

- Lexington Avenue is somewhat narrow but the proposed development should improve the traffic flow through the area.

The Planning and Zoning Commission at their April 6, 2005, meeting voted 6 to 0 to recommend approval of the project, subject to the conditions noted by the Technical Review Committee. Staff concurs with that recommendation.

Mr. Steve Moberg, applicant, urged City Council to support this development, which will revitalize the area.

Upon inquiry of Councilwoman Bellamy, Mr. Glines said that the existing angled parking will be improved, the sidewalks along Hilliard will be expanded and the building will be sprinklered.

After rebuttal, Mayor Worley closed the public hearing at 5:28 p.m.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3232, granting a conditional use permit for the Lexington Station project, located at the corner of Lexington Avenue, Hilliard Avenue and Church Street, for a multi-commercial, residential development, subject to the conditions noted by the Technical Review Committee. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 67

D. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED ON HILL STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND OFFICE DISTRICT TO OFFICE/BUSINESS DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A 30,000 SQUARE FOOT OFFICE BUILDING, ASSOCIATED PARKING AREA(S) AND REALIGNMENT OF MICHAEL STREET AND JASON STREET TO PROVIDE ON-STREET PARKING**

ORDINANCE NO. 3233 - ORDINANCE REZONING PROPERTY LOCATED ON HILL STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND OFFICE DISTRICT TO OFFICE/BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3234 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT HILL STREET FOR THE CONSTRUCTION OF A 30,000 SQUARE FOOT OFFICE BUILDING, ASSOCIATED PARKING AREA(S) AND REALIGNMENT OF MICHAEL STREET AND JASON STREET TO PROVIDE ON-STREET PARKING

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:30 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a request to rezone property located on Hill Street from RM-8 Residential Multi-Family Medium Density District and Office District to Office/Business District/Conditional Use, and a request to issue a conditional use permit for the construction of a 30,000 square foot office building, associated parking area(s) and realignment of Michael Street and Jason Street to provide on-street parking.

The subject property is located within the City Limits on Hill Street, which is located less than ¼ mile from Montford Avenue and near the I-240 interchange (Attachments to City Exhibit 3 – Location Map, Aerial Map). The applicant is requesting a conditional use rezoning of 5 lots totaling approximately 1.15 acres in order to construct a 30,000 square foot office building. The requested zoning change includes two parcels located on the west side of Michael Street, one zoned Office and the other split zoned Office and RM-8, and three parcels located between Michael Street and Jason Street all zoned Office. The applicant, Frontier Syndicate, LLC, is requesting a rezoning of all five (5) parcels to Office Business District in order to allow for the construction of a much larger scaled office building than what is permitted under the current Office District designation.

The properties surrounding the development site include: a single family dwelling zoned RM-8 to the north of the site; vacant property zoned Office District and single family dwellings zoned RM-8 to the west; and a mixture of single-family, office use and vacant property zoned Office, and RM-8 to the east of the site along Jason Street. The south side of the property fronts Hill Street, which is adjacent to I-240.

- The Office district zoning designation allows a structure size of 4,000 square foot in gross floor area for one-story buildings and 8,000 square feet for multiple story buildings. The intent and purpose of this district is to reserve areas for the development of small-scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition as residential areas convert to other uses or between residential and commercial areas.
- The Office Business district allows for a structure size of up to 30,000 square feet in gross floor area. The intent and purpose of this district is to reserve areas for development of medium scale office uses and related support uses and may serve as a transition area between commercial and residential areas.

The conceptual site plan(s) proposes removal of two vacant structures housed on the site in order to construct a 30,000 square foot office building and a 50 space off-street parking area (Attachment to City Exhibit 3 – Conceptual Site Plan). Associated with the development, the applicant is also proposing to realign and reconstruct both Michael and Jason Streets and also provide several pull-off parking spaces along Hill Street to provide a total of 38 on-street parking spaces. A recent amendment approved by City Council that allows a percentage of newly created on-street parking spaces to count towards a development's off-street parking requirements, in conjunction with a flexible development approval of a 25% reduction in the total number of required off-street parking spaces for the development, allows for the preservation of a large deciduous tree that is located west of the proposed building. In addition to the preservation of this tree, street trees will be provided along Hill Street and portions of Jason and Michael Streets. The site plan also illustrates a request for alternative compliance along Jason Street and along portions of the western and north sides of the property. In order to provide a more consistent streetscape design, the applicant is requesting street trees be provided in lieu of where a 20-foot Type B buffer would be required along Jason Street. The alternative would also include

buffering the parking area with vegetation in order to effectively screen it from the street and the adjacent residential uses. Alternative compliance is also being requested for a buffer yard reduction from a 25-foot Type C buffer to a 20-foot Type B buffer, in lieu of a privacy fence along the north and western side of the property. The applicant hopes to gain feedback from the adjoining property owners on the type of landscaping that would be most preferred.

The two conceptual site plans included in the submittal illustrate a slight variation in the building design as it pertains to the footprint layout. The option shown in Plan A is for rectangular building. The option shown as Plan B indicates an "L" shaped building. Both building layouts propose an approximate 8,000 square foot footprint with a total building size of 31,000 square feet (1,000 square feet will be used for mechanical space.), and a maximum height of 40-feet. The design of both buildings will be as shown on the schematic elevation provided (Attachment to City Exhibit 3 – Schematic Design Elevation).

On Monday, January 19, 2005, the Technical Review Committee (TRC) approved the project subject to a number of conditions. A revised site plan and narrative provided by the applicant addresses the following conditions: scale of the drawing, a reduction in building size as required by the code, building height, number of spaces required for the development, approval of flexible development standards, location of the bicycle rack, and clarification on the applicants alternative compliance request. Should the project be approved by City Council, the remaining comments will be addressed in detail upon final submittal of the project to TRC.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   With the exception of the grade change between the development site and Hill Street, the project area is relatively flat. Grading of the site and removal of existing vegetation and overgrowth will be necessary in order to meet the stormwater and erosion control requirements and overall development of the site, as proposed.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   Approximately 2/3 of the site is surrounded by property that is zoned Office District, several properties of which are currently vacant. A landscape buffer is required around the north, south and east sides of the site where adjacent residential and lower impact uses exist. The ordinance further requires that all vehicular use areas be screened with

vegetation when within 50 feet of the street. This will assist in mitigating any negative impacts the development may have to abutting properties.

Additionally, the location and design of the building and the proposed road improvements associated with the project is likely to have a positive affect on the surrounding area and may serve as a catalyst for future development on surrounding vacant lots.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   As stated above, the majority of the site is surrounded by property that is currently zoned Office District. Although the scale and bulk of the proposed building is much larger than what is permitted within the Office District, the design and location of the building is likely to add to the character of the area. This, along with the proposed road improvements to Michael and Jason Streets, has the potential of spurring additional improvements and development opportunities on lots that are currently vacant or otherwise under utilized.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The Asheville City Development Plan 2025 (ACDP2025) describes economic development forecasts' in the *Occupational Employment Projections to 2010,* for the need in an increase in private office use, which will result in changes to residential patterns with people wanting to reside in immediate proximity to their workplace. The project supports smart growth and transportation goals by providing a compatible, high density and high quality commercial infill development project within the City Limits in an area where existing utilities are adequate to support the development and extensive infrastructure improvements to several substandard streets servicing the development, are proposed.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   This proposed development is located within close proximity to major road facilities, interstate connections, transit service and other service stations.

   Additionally, representatives of the Water Department and MSD informed the applicant, at the TRC meeting, that any relocation of the existing water lines or sewage manholes associated with the proposed improvements to both Michael and Jason Streets, are to be completed at the expense of the developer.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The City's Traffic Engineer, who has reviewed the proposed project, has determined that the size of the development and associated street improvements, including the proposed on-street parking spaces, will not cause undue traffic congestion or create a traffic hazard. Parallel parking, when placed appropriately, tends to control vehicle speeds, thus reducing crash severity, and protects the sidewalk by serving as a buffer. Parallel parking is typically desirable in urbanized areas. Examples of when this might not be true are on high-speed or high-volume roadways such as Hendersonville Road or Tunnel

Road. Hill Street, Michael Street, and Jason Street do not qualify as either high-speed or high-volume.

Pros:

- The proposed development will provide a high-quality infill site on several properties that have remained vacant for a period of 1-5 years.
- The development is providing the surrounding neighborhood with much needed road improvements to Michael and Jason Streets, including the creation of 38 on-street parking spaces that are open for public use.
- The Office Business district, due to it's proximity to existing neighborhoods limits all activities associated with non-residential uses, including deliveries and refuse collection to the hours of 7:00 a.m. and 10:00 p.m.
- The developer has submitted a list of allowed uses for the property that limits uses to those in a general office classification rather than all uses in the Office Business district. The uses provided on the list are considered low impact uses that should protect the integrity and compatibility of the development with the surrounding area and neighboring residential uses.

Cons:

- Although contrary to favorable comments received by a number of surrounding property owners at the TRC meeting, the creation and use of the on-street parking spaces by the development may be seen as an inconvenience or nuisance to adjoining property owners.
- Due to the size and scale of the proposed building the project has faced many challenges in being able to meet the City's development standards, including off-street parking requirements and required landscape buffers. The developers, have however, utilized several zoning tools available in order to address these difficulties including approval of flexible development standards for a reduction in the required number of off-street parking spaces for the development and also a request for alternative compliance to address some of the landscape issues.

Staff feels that the seven conditional use standards have adequately been addressed and that the proposed development supports several adopted City policies and goals by providing a high-density commercial infill project in an area where adequate infrastructure exists. Staff also feels that the proposed development will have a positive affect on the surrounding area, and is likely to spur additional improvements and development opportunities for properties within the immediate area that are currently vacant or otherwise under utilized.

On April 6, 2005, the City of Asheville's Planning and Zoning Commission voted unanimously to uphold staff's recommendation in recommending approval of the zoning amendment to Office Business District and also approval of the conceptual master plan subject to the following conditions:

1. That all TRC conditions be met;
2. All site lighting shall be equipped with 90 degree cut-off features and be directed away from adjoining properties and streets;
3. All existing vegetation to remain shall be clearly indicated and dimensioned on the site plan. Additionally, tree protection devices in accordance with Section 7-11-2 (c)(3) shall be provided and shown on both the grading and landscape plans;
4. In the event that the large deciduous tree shown as being preserved on the concept plan dies, a 5-6 inch caliper tree chosen from the City of Asheville's tree species list shall replace it.

In addition to the above conditions, staff also recommends that the list of uses, provided by the developer, be made a condition of approval.

1. In order to ensure that the proposed development remains in character with the general office use in which it is intended for, the development shall be limited to the following list of uses provided by the developer: Residential (Dwellings, multi-family); Recreational (no recreational uses shall be permitted); Institutional (No institutional uses shall be permitted); Public/semi-public (no public/semi-public uses shall be permitted); Office/business (offices; home occupations; studios, galleries, and workshops for artists, designers, photographers); and Uses by right subject to special requirements (antenna, government buildings, financial institutions).

Mr. Gerald Green, representing the developer, urged Council to support the development as he spoke about the ways the project meets the goals and direction of the City of Asheville.

Upon inquiry of Councilman Davis, Mr. Green said that the Chamber of Commerce building is roughly 33-34,000 square feet and this proposed building is 30,000 square feet.

Ms. Mary Hitchcock, resident at 11 Jason Street, said that she had several concerns about the project and its impact to her quality of life. Since she will be losing the parking space in front of her home (Applicant Exhibit 1), she requested the developer to construct a gravel parking space on her property, next to her house. Regarding her privacy being affected, she requested a privacy fence built along the front of her property. Regarding the disruption during construction, she was concerned about the asbestos in the structure, which will be demolished, and her access to and from her home. She asked to be notified of the various phases of construction and she may feel it would be best to relocate temporarily during some phases and she would like to be reimbursed for that expense.

Ms. Hamel said that curb and gutter will only be required on the one side of the street where the widening on Jason Street will occur, which will be on the developer's property.

After a brief discussion about providing parking for Ms. Hitchcock, Ms. Green said that the developer would be willing to make her a driveway.

A property owner on Michael Street spoke in support of the development. She did note that they also only have on-street parking, but they are not asking for a driveway to be constructed for them.

Mr. Watkins, resident of 85 Michael Street, explained to Council that his deed shows that he is the owner of some of the property that is being requested to be rezoned.

In response to Mr. Watkins, Mr. Green submitted a letter from the developer's attorney, Mr. David E. Matney, III, (Applicant Exhibit 1), which states in part "...it is our opinion neither Mrs. Watkins, nor any one claiming through her has any interest in any lands owned by Frontier Syndicates, LLC. ... While the Watkins parcel adjoins the Frontier Syndicate property, we have found no evidence of any ownership by Mrs. Watkins, or any one claiming through her in the Frontier Syndicate property." Mr. Green said that Mr. Matney, the developer's attorney, will be willing to work with Mr. Watkins or his attorney to resolve Mr. Watkins' claim.

City Attorney Oast said that City Council is not the appropriate venue for a dispute of this nature. This is an issue between private property owners and if it turns out that the developer does not own the property, the conditional use permit will be void.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said that the developer would be required to get permits from the Air Quality Agency prior to any demolition.

At the request of Vice-Mayor Mumpower for staff to craft some language about providing a parking space, Ms. Hamel suggested the following condition: "The developer shall address the parking impact created by the development to a single-family residential property owned by Mary Hitchcock located on the east side of Jason Street, with an amount to not exceed $5,000."

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:11 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located on Hill Street from RM-8 Residential Multi-Family Medium Density District and Office District to Office/Business District/Conditional Use. This motion was seconded by Councilman Newman.

Councilwoman Bellamy said that she would not support this action. She feels the development does not comply with Condition No. 4, in that the proposed development is too large for the neighborhood.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3234 to issue a conditional use permit for property located on Hill Street for the construction of a 30,000 square foot office building, associated parking area(s) and realignment of Michael Street and Jason Street to provide on-street parking, subject to following conditions: (1) That all TRC conditions be met; (2) All site lighting shall be equipped with 90 degree cut-off features and be directed away from adjoining properties and streets; (3) All existing vegetation to remain shall be clearly indicated and dimensioned on the site plan. Additionally, tree protection devices in accordance with Section 7-11-2 (c)(3) shall be provided and shown on both the grading and landscape plans; (4) In the event that the large deciduous tree shown as being preserved on the concept plan dies, a 5-6 inch caliper tree chosen from the City of Asheville's tree species list shall replace it; (5) In order to ensure that the proposed development remains in character with the general office use in which it is intended for, the development shall be limited to the following list of uses provided by the developer: Residential (Dwellings, multi-family); Recreational (no recreational uses shall be permitted); Institutional (No institutional uses shall be permitted); Public/semi-public (no public/semi-public uses shall be permitted); Office/business (offices; home occupations; studios, galleries, and workshops for artists, designers, photographers); and Uses by right subject to special requirements (antenna, government buildings, financial institutions); and (6) The developer shall address the parking impact created by the development to a single-family residential property owned by Mary Hitchcock located on the east side of Jason Street, with an amount to not exceed $5,000. This motion was seconded by Councilman Newman.

Councilman Dunn was comfortable with the developer helping Ms. Hitchcock with a driveway, however, was uncomfortable attaching a random dollar figure for that.

Vice-Mayor Mumpower said that Mr. Green suggested the $5,000 cap, although he assumed it would be a much lower figure.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

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E. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 66 LONG SHOALS ROAD FROM INSTITUTIONAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED KENNEL OCCUPANCY**

ORDINANCE NO. 3235 - ORDINANCE REZONING PROPERTY LOCATED AT 66 LONG SHOALS ROAD FROM INSTITUTIONAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3236 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 66 LONG SHOALS ROAD FOR A PROPOSED KENNEL OCCUPANCY

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:30 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of a request to rezone property located at 66 Long Shoals Road from Institutional District to Commercial Industrial District/Conditional Use, and a request to issue a conditional use permit for a proposed kennel occupancy.

The subject property is being considered for the addition of a Pet Adoption Center building with associated parking on a 2.63 acre lot. The proposed building will be at the back of the lot, near three existing structures (Attachments to City Exhibit 3 – Location Map, Aerial Map). The lot is on the north side of Long Shoals Road within the City of Asheville's corporate limits. The applicant seeks for the lot to be rezoned from Institutional to Commercial Industrial-CUZ (Attachments to City Exhibit 3 - Existing Conditions Map, Proposed Site Plan, Perspective Drawing).

Kennels are a permitted use (classified as "high impact") in the Commercial Industrial district. The project would involve construction of a new building with an area of 3220 square feet, placing it within the acceptable structure size standards, and exempting it from open space

requirements. Parking areas are shown on the plan and appear to have a sufficient number of spaces.

At their March 21, 2005, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, with the following project conditions summarized below. The applicant agreed at the meeting to comply with these conditions.

1. Applicant must provide specific information about the area of the potential future grooming shop building.
2. Sewer easements must be shown.
3. Applicant must document and label other historic easement lines as no longer valid.
4. Buffers must be provided between proposed use and funeral home (type "A") as well as between proposed use and residence (type "D"). Existing vegetation can be used towards alternative compliance in buffer areas and parking lot landscaping, but must be fully documented
5. Area calculations will be required for the vehicular use area.
6. Entire site will have to be brought into compliance – e.g. parking lot landscaping must be
7. specified for existing parking area as well.
8. Street trees at south end of parcels must be identified and either shown to meet City of Asheville requirements, or more street trees must be planted.
9. Sidewalk (or fee-in-lieu) must be provided along Long Shoals Road
10. The existing roadway will need to be upgraded to a min. of twenty feet of width from Long Shoals Road to the one-way split. The entire roadway will also need to an all-weather surface capable of supporting an imposed 75,000 lb. vehicle load. A fire hydrant capable of flowing 500gpm must be provided within 400 ft. of the new building. The developer is responsible for installing all needed fire protection improvements.
11. Driveway apron must be paved per City Standard Detail 3.15
12. Applicant must submit plans if buildings are to be sprinkled.

At their April 6, 2005, meeting, the Planning and Zoning Commission approved the application by a 5-1 vote, subject to the following conditions:

1. TRC conditions must be met.
2. Hours of outdoor animal exercise shall be consistent with the provisions of the noise ordinance. (As with the use of lawn mowing equipment), such exercise shall be permitted only between the hours of 8:00 a.m. and 9:00 p.m. (see UDO Chapter 10-85).
3. All site lighting shall be equipped with 90 degree cut-off features and be directed away from adjoining properties and streets.
4. All existing vegetation shall be clearly indicated and dimensioned on the site plan.
5. Tree protection devices, in accordance with Section 7-11-2 (c) (3) of the UDO shall be provided and shown on both the grading and landscape plans.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The site design is indeed compatible with the surrounding natural features and topography.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   Staff does not expect that the proposed use would have anything more than a minimal impact on property values. The applicant reports that all neighbors have given their support.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The proposed project would be in harmony with these characteristics of the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The proposed development indeed conforms to the official plans and policies of the City of Asheville. Potential sidewalk improvements are one example of a stated City goal that this project could further.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The project's location on Long Shoals Road ensures access to major transportation facilities and other services. Technical Review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Pros

- Project appears to have the blessing of neighboring property owners.
- Approval would allow the construction of a project perceived as a "good cause."

480

Cons

- The kennel might not be viewed with the same support if nearby properties were to change hands.

Staff recommends approval of the rezoning request from INST to CI-CUZ with approval of the associated Conditional Use Permit and conceptual site plan, subject to the condition that all outstanding TRC conditions and Planning and Zoning Commission conditions are met.

Ms. Virginia Schmidt, property owner, said that this will be a self-contained building and there will probably be a maximum of 30-35 cats and dogs. She said that here are no future plans for expansion near the street.

Councilman Davis was concerned that future development near the street would disturb grieving families at the funeral home located on the west side of the property. City Attorney Oast noted that the site plan is incorporated into the conditional use permit and if there were any changes, they would have to come before City Council for a modification of the permit.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:43 p.m.

Councilwoman Jones moved to approve the conditional use rezoning for property located at 66 Long Shoals Road from Institutional District to Commercial Industrial District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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Councilwoman Jones moved to adopt Ordinance No. 3236 to issue a conditional use permit for property located at 66 Long Shoals Road for a proposed kennel occupancy, subject to the condition that all outstanding Technical Review Committee conditions and Planning and Zoning Commission conditions are met. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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At 6:45 p.m., Mayor Worley announced a recess.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF A ZONING STUDY OF THE WESTERN END OF SARDIS ROAD

Director of Development Services Joe Heard said that this is the consideration of a request from property owners for a zoning study for properties along the western end of Sardis Road, near the intersection with Sand Hill Road.

Section 7-7-2 of the Unified Development Ordinance (UDO) provides property owners with a method to petition City Council to authorize a zoning study for property not entirely owned by them. The Code requires that at least 51% of property owners in the area join the request and, in this case, the percentage has been reached. The petition process does not require City Council to ask staff to undertake the zoning study; it only requires that Council consider the request.

The area included in the petition is described on the Map #1. In the staff's opinion, this area does not contain all relevant property that should be examined in a zoning study. If Council directs that staff analyze the zoning of this area, then it is recommended that the area be expanded to the proportions illustrated on the Map #2 including all of the CB-II zoned area.

The request is prompted by the petitioners' belief that much of the current development in this area does not comply with the standards for development (particularly restrictions on car sales lots and parking location requirements) in the Community Business II (CB-II) district. The petitioners would prefer a zoning designation of Commercial Industrial (CI) to maximize the number of allowed uses, bring most of the current development into conformity, and allow for future development standards to be more consistent with the current development pattern.

Pro –

- The zoning study would enable the issue about the appropriate zoning of this neighborhood to be decided by City Council.

Con –

- The study will consume limited staff resources that could be devoted to other projects.

Planning & Development staff is presently involved with projects such as annexation coordination, development review, neighborhood planning, and other special studies to implement Council's strategic plan goals. Performing a zoning study for the Sardis Road area would require some of these other duties to be reprioritized. If City Council desires the requested rezoning study be performed, then staff recommends that the study encompass the larger area described in Map 2.

At the request of City Council at their April 19, 2005, worksession, Planning & Development Director Scott Shuford provided City Council with a memo containing responses to the following questions: (1) is there a time sensitive nature of the zoning study relative to the petitioners; (2) what is the effect of the zoning study might have on the Planning Department's current work program; and (3) a doable timeframe to perform the zoning study that doesn't interfere with the current work program.

Mr. Paul Smith, property owner on Sardis Road, urged City Council to study the west end for a commercial industrial designation since most businesses are out of compliance with the Community Business II designation.

Ms. Robinson, area business owner, also requested Council to study the west end of Sardis Road because it limits any expansion of her property.

In response to Vice-Mayor Mumpower, Planning & Development Director Scott Shuford explained the methodology of a zoning study. He said this particular study is not an extremely complicated one and would require approximately 40-50 hours of staff time to study the staff-recommended area of Sardis Road.

Councilman Davis wondered if it would be better to study the entire corridor since it is the most available and easily developable land we have near the City.

Councilwoman Bellamy felt that an entire corridor study would also benefit the Water Resources Department as it relates to future growth and water line extensions.

Upon inquiry of Mayor Worley, Mr. Shuford said that given his department's current workload, he felt that in about six months they could concentrate on the zoning study.

In response to Councilman Dunn, Mr. Shuford said that he would not hesitate to ask Council to reprioritize his work program. In fact, another possibility is that a consultant could be hired to perform the study, however, they do not have funds in their current budget for that.

Upon inquiry of Councilman Davis, Mr. Smith urged council to move forward quickly on the study of the western end of Sardis Road.

Regarding an entire corridor study, Mr. Shuford said the center portion of Sardis Road seems to be less likely for us to be recommending any change. Perhaps they can look at the entire corridor study and come up with a phased approach of how we would look at it, because it may not make much sense to hold a public meeting, for example, that covers the entire corridor and find out that the real interest is only in one end or the other. We can do that in a phased program and bring it back to Council in pieces. City Council was in consensus of Mr. Shuford's phased zoning study for Sardis Road.

Councilman Davis moved to authorize the Planning Department perform a zoning study for the western Sardis Road area, which encompasses the larger area described in Map 2. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. RESOLUTION NO. 05-109 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE FILM COMMISSION

Vice-Mayor Mumpower said that there currently exists a vacancy on the Asheville Film Commission until November 1, 2006.

At the City Council's worksession on April 19, 2005, City Council instructed the City Clerk to arrange interviews for Donna Daniels and Mary Trimarco.

After each Council member spoke in support of both candidates, Ms. Donna Daniels was unanimously appointed as a member to the Asheville Film Commission, to serve the unexpired term of Heidi Daugherty, term to expire November 1, 2006, or until her successor is appointed.

Mayor Worley said that he would like to have Ms. Trimarco, AdvantageWest Film Commission, considered for the next available position on the Film Commission, or to amend the ordinance to include a position for the AdvantageWest Film Commissioner. He said that an ex-officio voting member may be appropriate and asked Council to consider the change.

Councilwoman Bellamy would support the addition of the position. One thing the Film Commissioner would bring is collaboration and less duplication of services between the two agencies.

Vice-Mayor Mumpower, member of the Film Commission, said that the 13-member Film Commission is an unusually large board. He suggested having City Clerk Burleson express Council's interest to the Film Commission and ask them to deliberate the idea and report back to Council with their observations and thoughts.

Councilwoman Jones felt there is structural value to think regionally and would like the input of the Film Commission.

It was the consensus of Council to ask the City Clerk to contact the Film Commission to let them know there is an inclination on the part of Council to include an ex-officio voting seat on the Film Commission for the AdvantageWest Film Commissioner. City Council is requesting the Commission's input and staff will report back to Council with their thoughts at an upcoming worksession.

VI. OTHER BUSINESS:

DISCUSSION OF WATER NEGOTIATIONS WITH BUNCOMBE COUNTY

RESOLUTION NO. 05-111 – RESOLUTION ADVISING OUR LOCAL DELEGATION THE STATUS OF WATER AGREEMENT NEGOTIATIONS WITH BUNCOMBE COUNTY AND EXPRESSING CITY COUNCIL'S OPPOSITION TO SULLIVAN ACTS 2 AND 3

Mayor Worley said that it has been a year since we gave notice of termination of the water agreement and we have had a lot of conversations back and forth over that period of time and a mediation meeting. Out of that, Council has the desire to pull things together from a Council standpoint.

Councilman Newman said no issue looms larger in front of City Council than the future of our water system. There is a strong desire on the City Council's part to find an agreement that will be good for the future of Asheville citizens, good for the future of the Asheville water system, and also fair for the water customers who are located outside Asheville. He shared some ideas that he has heard from conversations with his fellow Council members, from conversations he has had with members of the Buncombe County Commissioners, and from members of the community. To get an agreement, we know that both sides are going to have to compromise and find that middle ground. He said was speaking for himself only but hoped this proposal reflects some of the ideas he has heard from Council collectively.

Problems with the current water agreement: (1) families in Asheville pay the highest water rates of any large city in North Carolina; (2) the current agreement prevents vital repairs to the water infrastructure (a) budget approval requires consensus of Water Authority, Asheville and the County; and (b) water revenues are diverted to the general fund of Asheville and County government; and (3) Asheville has a weak voice in governance of the water system.

Positive aspects of the current water agreement include (1) residents in Asheville are reimbursed for County law enforcement services not provided in Asheville; and (2) County takes responsibility for some recreational facilities used by people county-wide.

He provided a few thoughts about what Asheville wants from a new water agreement: (1) a stronger voice for Asheville in the future of our water system; (2) a guaranteed way to invest in water line repairs; (3) more accountability to voters and water customers; (4) relief for families in Asheville who pay the highest rates in North Carolina; (5) a less divisive process for annexation; (6) prevent double taxation of families and businesses in Asheville – tax equity; and (7) partnerships with the County and legislators on Civic Center and recreational facilities.

Concerns we have heard are: (1) extreme water rates for customers outside Asheville; (2) customers outside Asheville could be forced to annex as a condition of receiving water; (3) aggressive "satellite annexation"; (4) County wants a voice in the future of water system too; and (5) if a new agreement is not reached – costly litigation.

A proposal from Asheville for the future of our water system is (1) all current water customers would be guaranteed water; (2) no current water customers could ever be annexed for water service; (3) Asheville retains ownership of its water assets; and (4) partnership between Asheville and Buncombe County on the future of water and regional recreational facilities.

Key elements are:

(1) A more accountable empowered water board. (1) creation of a new water board (a) Asheville has 4 representatives, Buncombe County has 3 representatives; (1a) Asheville owns almost all assets; (1b) majority of customers are in Asheville; (2) Board is allowed to approve water authority budget; and (3) accountability – Asheville will appoint elected officials.

(2) A plan to fix the water system. (1) 100% of water revenues will be dedicated to water infrastructure and services – no diversions; (2) $1.5 Million per year increase to repair water lines; (3) will reduce pressure to raise water rates in the future; (4) will cost city of Asheville $1.1 Million; and (5) will cost Buncombe County government $500,000.

(3) Setting fair water rates. (1) what is true cost of delivering water: (a) 645 customers per square mile in Asheville; (b) about 100 customers per square mile outside Asheville; (c) the system would not exist without Asheville (d) 25,000 acre watersheds are source of most water; (2) NC Average – 85% higher rates for suburban and rural areas; (3) Asheville proposes a rate differential half of the state average – 35%; (4) lower rates for families in Asheville by 10-15%; (5) increase on outside customers no more than 20-25%; (6) permanent caps on rate differential; and (6) could be phased in to prevent sudden increase in water rates.

(4) A reasonable process for annexation. (1) no current water customers could be annexed for water service; (2) no aggressive satellite annexation; (3) only larger new developments proposed along periphery of Asheville could be asked to annex for water service; (4) such developments would be annexed anyway; and (5) a less contentious process.

(5) Asheville and County partnerships on recreational facilities. (1) County will continue to manage The Nature Center and Recreation Park – will receive title to these facilities; and (2) Asheville will resume management of McCormick stadium and the golf course.

(6) A realistic plan to maintain and improve the Civic Center. (1) Asheville taxpayers currently subsidize Civic Center $750,000 per year; (2) Civic Center needs $10-15 Million in short term repairs; (3) estimated 80% of Civic Center customers live outside Asheville; (4) proposal – County invests $500,000 to help finance annual operating costs; (5) proposal – County invests $750,000 to help finance near-term capital improvements; (6) Asheville and County jointly request support from our legislative delegation for a new funding source; and (7) if no new funding source is developed, County will make some additional investments for capital improvements.

This proposal would clarify tax equity payment in the current agreement: (1) law enforcement reimbursement will be set at $2 million per year – clarifies existing policy.

Lifetime of the proposed water agreement: Agreement would last 15 years (1) both sides would have to agree to terminate; (2) after 15 years, either side could withdraw with 12 months notice; and (3) agreement would automatically terminate if anti-Asheville water legislation is passed in the N.C. legislature.

Summary of the proposed agreements includes: (1) all current customers are guaranteed water service; (2) creation of a more empowered, accountable water board; (3) Asheville retains its water assets and has a stronger voice in water governance; (4) Buncombe County also has a strong voice in water governance; (5) greater investment in water infrastructure – no diversions; (6) relief for water customers in Asheville; (7) assure to customers outside Asheville that rate increases will be modest; (8) no current customers could be annexed for water service; (9) no aggressive satellite annexation; (10) a realistic plan to maintain and improve the Civic Center; and (11) Asheville, Buncombe County and legislators avoid expensive and divisive litigation.

Councilman Newman urged City Council to support this proposal for the future of our water system and forward it for consideration to the Buncombe County Commissioners.

Vice-Mayor Mumpower said that Councilman Newman offers some good insights and suggestions; however, he has significant concerns about the overall proposal. He was concerned about the whole process. He has not participated, intentionally, in the formal negotiations because he felt the outcome was established before we started. He felt that we will not get to good places through bad means. He then read the following "Resolution of commitment regarding water negotiations between Buncombe County and the City of Asheville. Whereas, in June of 2004, the City Council of Asheville, following procedures outlined in the existing water agreement, announced its intentions to end that agreement on or about July 1st of 2005; and Whereas, the City Council of Asheville has endorsed a commitment to fact based and fair negotiations on how best to dissolve the current water agreement and establish a new agreement offering just treatment to the citizens of Asheville, Buncombe County and the region; and Whereas, the City of Asheville is the only city of size in Buncombe County and, in fact, the State of North Carolina that does not manage its own water assets and offers no indication of unique incapacity to do so; and Whereas, residents of the City of Asheville pay approximately double the property taxes of those living outside the City; and Whereas, Buncombe County requested that negotiations be postponed until after the recent election and soon thereafter began a misinformation campaign and rigid negotiation posture that has impaired the negotiation process; and Whereas, the State Representatives of Asheville and Buncombe County have, from the onset of negotiations, have inappropriately threatened to introduce legislation against the City and in doing so artificially contrived their desired outcome to this local government issue; and Whereas, our State Representatives and Buncombe County have taken the unusual and ill conceived step of co-writing legislation that assures that negotiations based on facts and fairness are not possible; and Whereas, the City of Asheville does not believe that it is prudent, possible, or appropriate to participate in negotiations that are artificially contrived and controlled by external forces; and Whereas, the quality of life, economic stability, and future viability of our region is heavily founded in stable local government and a well managed, supported, and maintained water system. Now, therefore, be it resolved by the City Council of the City of Asheville that (1) we affirm a commitment to supporting a regional water authority if the means can be found to fully and fairly compensate the citizens of Asheville for the value of their water assets conservatively estimated at $75,000,000, excluding the two primary watershed properties, and that baring this desired outcome, we commit to assuming management of the water system by providing a reasonable rate cap to County residents that is no greater than half of what the state average represents, along with additional caps on monies received by the City from the system and other constraints that assure protection to Buncombe County residents; (2) we further respectfully submit a formal request that our State Delegation withdraw pending legislation that is impairing our collective ability to resolve our water negotiations in constructive fashion; and (3) we further request that the Buncombe County Commission return to an open and public negotiation table with a renewed commitment to time sensitive deliberations toward an agreement coached in facts and fair consideration of all citizens of Buncombe County, including residents of the City of Asheville." Although he would not make a motion to adopt the resolution, he was grateful for the opportunity to speak out directly to some of those concerns.

The following individuals commented on the water agreement: Mr. Fred English, Mr. Roy McGuinn, Ms. Leesa Kulba, Mr. Mike Fryer, Mr. Jerry Rice and Mr. Chris Pelly.

Councilman Dunn said that no where during these negotiations has the delegation, County Commissioners, Asheville Citizen-Times, nor Chamber of Commerce given serious thoughts about the rights of the citizens of Asheville. This proposal shows a fair council, not a city council that is greedily trying to reach out and charge people ridiculous water rates. The system is not equitable and the pending legislation is tying our hands. Even though the water agreement has little to do with the room tax, the County brought the Civic Center into the negotiations. And,

since the delegation has seen fit to enter into these negotiations and interfere with two local governments, they have become an issue and they now need to become part of the solution. The County offered to give the City $750,000 for the Civic Center. But basically 38% of everything the County gives the City is City taxpayer money in the first place. In the proposal we ask that the City and County jointly request support from our legislative delegation for a new funding source. In fact, for years the state delegation has supported room tax increases throughout the state, except in Asheville. He feels it's time for the legislators commit to give Asheville a room tax to go toward the renovation of the Civic Center. He would not be able to support any proposal until the delegation commits that support to us. He felt that since the delegation interfered with these negotiations, he felt it was time for them to help with the solution.

Mayor Worley said that a proposal was sent to the County Commissioners back on March 23, 2005, which is very substantially similar as the current proposal. He also feels like the pending legislation has taken us away from a level playing field and has tainted the negotiations, but we need to work with what we have been dealt. He felt Councilman Newman's proposal is a compromise for everyone. He clarified that in terms of the diversion of water revenues that are currently coming to the City and County, that from the City's standpoint we would phase that in. He agrees that the County should chip in to help finance the annual operating costs, but the real key is the long-term capital needs for the Civic Center. To fix it right will take a substantial revenue source that will enable us to float a bond issue of about $30-35 Million. In terms of the Civic Center he would suggest that the County put in to help finance the annual operating costs, partner with us to go to delegation and put pressure on the delegation to find us a revenue sources (whether a room tax; a food or beverage tax, or some other tax) to give us that amount of revenue. But, it needs to be a genuine partnership with Buncombe County, because if they don't step up to the plate, then they will have to put in additional money to at least help the City finance the status quo of the Civic Center (approximately $10-15 Million). He would like to tie those two together so there truly is a partnership and there is an economic incentive to be in that partnership to go to the legislature. Regarding the law enforcement reimbursement at $2 Million a year, the County has indicated the potential for growth in that figure of about a $60,000 a year increase. He wants to make sure that is part of the proposal. Lastly, we really need to be able to terminate the agreement anytime there is a law passed that would prohibit Asheville's ability to annex, particular law prohibiting the ability to use the water in a way that is conducive to the annexation. He felt the concepts of the proposal are sound and asked that his changes be included in the proposal.

Councilwoman Newman agreed with the changes in the proposal suggested by Mayor Worley.

Councilman Davis felt the proposal is a good compromise and stressed that he would like to see Asheville have the ability to perform as other cities do throughout the state.

Councilwoman Jones said that we may have made some less than perfect decisions around negotiations, we have talked and listened to a lot of citizens in Asheville and Buncombe County.

Councilman Newman explained that the Sullivan Act, which was passed in the 1930's, doesn't say that the City can't charge different rates anywhere in Buncombe County. The short story is that there were some water districts in Buncombe County that used to operate their own systems and the people in those parts of the County issued bonds to pay for those water lines out of their own tax money. What the Sullivan Act says is that in those old water districts, outside of Asheville, we can't charge a different rate on those lines because those water customers in Buncombe County paid for those lines themselves. Those are the only waterlines in Buncombe County that the Sullivan Act applies to and most of those areas are actually in the City of

Asheville now. However, we would not charge a different rate for the water lines that are controlled by the Sullivan Act.

Councilman Newman moved to support the proposal (with Mayor Worley's suggestions) and forward it to the Buncombe County Commissioners and our legislators to make them aware of where we are at and the major concessions that Asheville has made in the spirit of seeking compromise. And, that the City will continue to engage in good faith negotiations with our County Commissioners to work our a final agreement. This motion was seconded by Councilwoman Bellamy.

Councilman Dunn asked for an amendment to the proposal that the agreement would automatically terminate if anti-Asheville water legislation is passed in the NC legislature, or if no legislation is passed to give Asheville a menu of items for the Civic Center.

Councilman Newman's only concern about Councilman Dunn's amendment is that the primary bodies that have to work things out are the Asheville City Council and the Buncombe County Commissioners. The legislators have been involved, but he doesn't want to give them veto power, by their action or their inaction, to unravel the entire agreement.

Councilman Dunn pointed out that the legislation was written by the County Attorney.

Vice-Mayor Mumpower said that Asheville is the only City in Buncombe County and only City in the State that owns its assets and is not able to manage them (other than the unique circumstance in Chapel Hill). We have spent months educating people about fairness, the fact that City residents pay double rates in the city, the high City water rates, the value of the system, and need for an authority and he feels Councilman Newman's proposal is stepping away from the foundation that we have been laying for a long time. He feels we are doing it because we are being blackmailed. This agreement contains the reshuffling of the same old semi-authority. His concerns are that we retain ownership, but with very little control. The agreement doesn't offer fair compensation of the value of the system and the watersheds. The research says that $750,000,000 is an equitable estimation of the water system, which value is based on the replacement value of it being a crucial, irreplaceable infrastructure. What kind of council would give that asset or control away without fair compensation? He has no fixed position on a city managed system or a water authority, but if we are going to have an authority then the citizens of Asheville should be fairly compensated. The plan deceives people because it doesn't even begin to fund the costs of the system and the rates will have to go up dramatically for everyone involved in the very near term. This agreement locks us into paralyzing agreements and caps that we can't get out of this for 15 years. The rate caps are excessive in terms of what we are gaining for them. This agreement shows that a large portion of the County dollars comes from City residents, so when the County gives the City a chunk of money back, a large portion of that money comes from the very people they are supposedly assisting. He didn't think the water agreement is where we should be trying to deal with the Civic Center renovation. What we basically have here is a strategy for surrender. He feels we should stick by facts and fairness. He encouraged City Council to show more courage and not step back from a defensible position on this.

Councilwoman Bellamy said that prior Councils have been trying to get out of the water agreement because they see the problems in the current system that we have. We need to provide safe water for people to drink and that has been left out of the conversations by the County Commissioners and the legislators until recently. She felt we need to put more funds into making the water system better. Although we are paying the highest water rates, our infrastructure needs to be addressed. She believed this proposal begins to get us in the right direction.

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The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

Councilwoman Newman moved to instruct the City Attorney to draft a resolution advising our local delegation the status of water agreement negotiations with Buncombe County and expressing City Council's opposition to Sullivan Acts 2 and 3, with the precise language of the resolution to be circulated amongst Council members. This motion was seconded by Councilman Dunn and carried unanimously.

Upon inquiry of Councilwoman Jones, Assistant City Manager Richardson said that we have contacted the Buncombe County Commissioners about setting up a public meeting but have not heard back from them yet.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower invited the public to participate in the For Our Kids program (which Program he and Councilwoman Bellamy share responsibilities in) on Saturday, May 14, 2005, at the Klondyke Apartments for a clean-up project.

Mr. Fred English commented on the Civic Center, the requested historic designation of the Sawyer building, and the lack of interest the local delegation showed to flooded areas in our vicinity.

Mr. Jerry Rice commented on the costs to developers for installing water lines in their developments.

Mr. Roy McGuinn suggested a payroll tax be implemented.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:37 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 78

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Tuesday – May 17, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Community Meeting – May 31, 2005

At the suggestion of the City Manager, it was the consensus of City Council to not hold the May 31, 2005, community meeting due to budget issues and water negotiations.

2003-04 Annexation Areas Sanitary Sewer System Improvement Project

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Wheeler Construction Company, Inc., in the amount of $ 132,950.25, for the project known as 2003-2004 Annexation Areas Sanitary Sewer System Improvements.

This project consists of the installation of approximately 1,200 linear feet of eight-inch diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three bids on Thursday, April 28, 2005, at 2:00 p.m. Three bids were received from Wheeler Construction, Hobson Construction and Huntley construction in the amounts of $ 132,950.25, $ 133,436.00 and $ 199,872.75, respectively. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $ 132,950.25.

The project will be financed with monies from Capital Improvements Fund.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City to meet the requirements for sanitary sewer system service improvements, as established in the 2003 and 2004 Annexation Areas Plan of Services;

- The bid amount of $ 132,950.25 for the construction of the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project is equitable, as compared to the engineer's estimate of $ 135,528.00 and recent construction cost data on projects of the same nature;

- Extension of the sanitary sewer system enhances the environmental quality of the area to be served and prevents water quality problems.

- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land disturbance along the proposed sanitary sewer construction corridor.

Construction of this sewer line is in line with goal # 1 under the Natural and Built Environment focus area of the Strategic Operating Plan of the City of Asheville.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Wheeler Construction Company, Inc., in the amount of $132,950.25, for the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project.

Alcohol at the Rockin' the Mountains Fundraiser

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Rockin' The Mountains fundraiser at Jake Rusher Park.

The Rotary Clubs of Arden and Biltmore have requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at the Rockin' The Mountains fundraising event to be held on Saturday, June 11, 2005, at Jake Rusher Park, formerly known as Royal Pines Park in Arden. The proceeds of this event will go for additional park amenities and beautification projects. This is the second year that these clubs have held this co-sponsored event.

The Asheville Parks and Recreation Department recommends approval of the resolution allowing possession and consumption of malt beverages and/or unfortified wine at the Rockin' The Mountains fundraiser at Jake Rusher Park.

Changes to Speed Limits on Various Streets and Through Truck Prohibitions

Summary: The consideration of an ordinance to enact or change speed limits and enact through truck prohibitions on specific city streets.

The streets listed below have been identified for speed concerns or truck concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions and/or speed studies. Streets with requests for truck prohibitions have been reviewed for appropriateness. The Police Department supports these recommendations.

Through Truck Prohibitions

The following streets are residential streets on which it is recommended that through trucks be prohibited, with the exception of Page Avenue. Page Avenue was not designed to accommodate large vehicles.

1. Maxwell Street, between Broadway and Chestnut Street
2. Overbrook Road, between Tunnel Road and Governors View Road
3. Page Avenue, between Battery Park Avenue and Battle Square
4. Springside Road, between Hendersonville Road and Overlook Road
5. Sunset Terrace, in its entirety

6. Woodlink Road, in its entirety

15 Miles Per Hour

The following streets are narrow residential streets with extreme street geometry problems, including severe and frequent crests and curves, and heavily used on-street parking. These streets warrant a significantly lower speed limit than the typical 25 mph. The recommended safe operating speed on these streets is 15 mph:

1. Dundee Street, in its entirety

20 Miles Per Hour

The following streets are narrow residential streets with street geometry problems or business district streets. NCDOT has adopted a matching speed limit on Biltmore Avenue. Street geometry problems on residential streets include frequent crests and curves. The recommended safe operating speed on these streets is 20 mph:

1. Biltmore Avenue (US 25), between Hilliard Avenue and Aston Street (NCDOT)
2. Cane Street, in its entirety
3. College Street, between Charlotte Street and Valley Street
4. Sweetspire Ridge, in its entirety

25 Miles Per Hour

Most of the following streets are typical local residential streets without significant street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. Cedar Street and Wood Avenue are collector residential streets with character and geometry warranting lower than typical collector speed limit. Roberts Street is a mixed-use street warranting a speed limit higher than a typical business district street but lower than a typical collector street. The recommended safe operating speed on these streets is 25 mph:

1. Allen Street, between State Street and Haywood Road
2. Altamont View, in its entirety
3. Burton Street, between Haywood Road and Florida Avenue
4. Carrier Street, between Sulfur Springs Road and and Baker Place
5. Cedar Street, between Wood Avenue and Fairview Road
6. Courtland Avenue, in its entirety
7. Dortch Avenue, between Hillside Street and Mount Clare Avenue
8. Druid Drive, between Patton Avenue and Mitchell Avenue
9. East Maple Drive, between New Haw Creek Road and the dead end
10. East Oakview Road, in its entirety
11. Gashes Creek Road, between Azalea Road and the dead end
12. Haw Creek Circle, in its entirety
13. Klondyke Avenue, in its entirety
14. Lakeside Drive, between Old Haywood Road and Appalachian Way
15. Langwell Avenue, in its entirety
16. Mann Road, in its entirety
17. Maple Drive, between Old Haw Creek Road and New Haw Creek Road
18. McDade Street, in its entirety
19. Morningside Drive, in its entirety
20. Old Stone Gate Place, in its entirety
21. Olmsted Drive, between Dearborn Street and Columbine Road
22. Pressley Road, in its entirety

23. Racquet Club Drive, between Hendersonville Road and Boddington Court
24. Rhododendron Place , in its entirety
25. Roberts Street, between Craven Street and Lyman Street
26. Samayoa Place, in its entirety
27. Senator Reynolds Road, in its entirety
28. Trinity Chapel, between New Haw Creek Road and Old Haw Creek Road
29. West Maple Drive, between Old Haw Creek Road and Hillview Road
30. Wilmington Street, in its entirety
31. Winthrop Road, in its entirety
32. Wood Avenue, between Cedar Street and end of City maintenance

30 Miles Per Hour

The following streets have features that warrant operating speeds less than the typical collector street speed limit of 35 mph. These features include residential character, narrow widths, and roadside obstructions. The recommended safe operating speed on these street are 30 mph:

1. Azalea Road, in its entirety
2. Florida Avenue, between Burton Street and Patton Avenue
3. Gerber Road, in its entirety
4. Hill Street, between Montford Avenue and US 19-23-70
5. London Road, between Bellview Road and West Chapel Road
6. Lyman Street, between Riverside Drive and Amboy Road
7. Pinecroft Road, in its entirety
8. River Hills Road, in its entirety
9. Riverside Drive, between Interstate 240 and Lyman Street
10. Royal Pines Drive, in its entirety
11. Shelburne Road, in its entirety
12. Spooks Branch Road, in its entirety
13. State Street, in its entirety

The Engineering Department requests that City Council approve the ordinance amending these speed limit and through truck prohibition changes.

Traffic Engineer Anthony Butzek responded to Councilman Newman regarding how truck traffic will be affected on Maxwell Street.

In response to Vice-Mayor Mumpower, there was a brief discussion about the criteria used for lowering or raising speed limits on streets, in particular Kimberly Avenue, which current speed limit is 25 mph.

Mr. Butzek responded to various questions/comments from Council, some being, but are not limited to: does the speed limit posted have an influence on how people drive; is pedestrian traffic factored into determining speed limits; and what is the cost of signs.

Vice-Mayor Mumpower felt that the City needs to approach enforcement with enthusiasm.

Mr. Butzek said that prior to this issue coming back to Council for formal consideration on June 14, 2005, he would provide information relative to the speed limit on Kimberly Avenue, including a report from the Police Department regarding enforcement.

New Street Name – Regan Lane

Summary: The consideration of a resolution approving Regan Lane as the name for a new street located off Downing Street.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Downing Street without causing emergency response delays.

Pro:

- The street will be utilized to access six new homes. Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Regan Lane to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure:
Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Regan Lane as new street name.

Contract for Professional Services

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services contract with McGill Associates, P.A.

The Water Resources Department has requested a low interest state loan in the amount of $1,775,000.00 and has approximately $700,000.00 in unused state grant funds for infrastructure improvements.

The Water Resources Department requires a professional engineering firm to prepare the necessary documentation required by the state and appropriate professional engineer civil designed water plans for a project on US 1923 (low interest low request) and to complete the Critical Needs Phase III water system improvement projects. McGill Associates, a local engineering firm has previously worked on the preliminary design and scope of these projects. This contract is to formalize the completion of the project and to prepare all documentation required by the State of North Carolina concerning funding and reimbursement for these projects with the cost of these professional services to be $157,000.00. Funds are available in the current water budget for this expenditure.

PROS:

- These projects will enhance the water system and help create a connection to the Canton, N.C., water system.

CONS:

- There are no cons to these projects, water pressure will be increased and the US 19/23 corridor area will enhance the development potential of an area in the county that currently does not have a water line.

City staff recommends City Council approval of the City Manager signing contract agreement with McGill Associates in the amount of $157,000.00.

Ms. Rebecca Guggenheim, Executive Assistant with the Water Resources Department, responded to questions from Councilman Newman regarding the replacement water line. She said that she would provide Council with a list of the critical needs projects.

Application with the N.C. Dept. of Crime Control & Public Safety for Radio Towers to Implement VIPER Communication System

Summary: The consideration of a resolution ratifying the City Manager's actions in applying for a grant from the N.C. Dept, of Crime Control and Public Safety to construct radio towers to implement the VIPER communication system.

The N. C. Dept. of Crime Control and Public Safety, through the Governor's Crime Commission, has money available to local governments in order to have its radio system VIPER compliant. The City of Asheville entered into an agreement with the State of North Carolina through the N.C. Dept. of Crime Control and Public Safety for the purchase and installation of VIPER compliant radios for the Fire and Police Departments with endorsement of the Asheville City Council in January 2005. This grant is to construct towers to implement the VIPER system enhancing communication ability and improving interoperability.

The towers and VIPER system will allow emergency responders to communicate with each other and other state agencies involved in an incident with Asheville and in many areas across North Carolina. The towers and VIPER system will allow personnel in Asheville to communicate with our personnel or responding personnel to us in other areas of the State.

The City of Asheville will not receive these funds; instead, we are authorizing the State of North Carolina to spend the $1.5 Million on our behalf. Therefore, no budge amendment is necessary.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure:
Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

PROS:

- The towers would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day.
- The enhanced communication potential would increase effectiveness during emergencies.
- The ability to communicate from Asheville to our personnel or responding mutual aid is and invaluable service.
- If the grant is approved, 100% of the funds, would be supplied by through the N.C. Dept. of Crime Control and Public Safety.

CONS:

- Staff is not aware of a negative consequence to this grant.

City staff recommends City Council approve the resolution ratifying the City Manager's actions in applying for the grant with the N.C. Dept. of Crime Control and Public Safety.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

GATEWAY CORRIDORS

Planning & Development Director Scott Shuford said that City Council has made gateway planning and improvement a critical piece of its Strategic Operating Plan. He said that Planning staff retained an intern over the past six months to prepare a gateway inventory and strategies for gateway improvement.

Mr. Wade Luther of Clemson University then reviewed with Council a presentation summarizing his work. He said that the study is being developed as required by the Center City Plan and the City Council Strategic Operating Plan as a means for improving downtown development and to determine ways in which improvements can benefit the changing conditions that are occurring in the neighboring downtown urban core.

The objectives of the gateway corridor study was to (1) tie neighborhoods together; (2) strengthen community identity; (3) unify roadway improvements; (4) enhance and encourage new downtown development; and (5) make downtown development more attractive to the private sector.

He reviewed each study area, which included Patton Avenue, College Street, Merrimon Avenue/Broadway Street, I-240 and Biltmore Avenue.

The goals of the study include (1) develop a welcoming environment entering the City; (2) create an identity that complements the identity of the Central Business District; (3) reflect the aesthetics of the downtown urban core; (4) encourage economic growth and development in an urban form consistent with smart growth initiatives and the Center City Plan; (5) create a pedestrian-friendly environment; (6) encourage multi-modal transport; and (7) promote urban development at key gateway parcels.

General recommendations include infill redevelopment; proper land uses; traffic study and roadway design; streetscape plan, proper landscaping and signage; multi-modal transport; and Amendment One. He felt the recommendations of the study will foster economic growth and quality development for the gateways and the Central Business District as a whole through enhancing the built environment with infill redevelopment and by creating a pedestrian realm that encourages economic activity and supports multi-modal transport.

Staff recommends that the City Council receive the gateway corridor study and provide any desired direction.

Councilman Davis felt that, in the short-term, more trash receptacles are needed in the western corridor.

In response to Councilwoman Bellamy, Planning & Development Director Scott Shuford said that staff will be bringing forward to Council an ordinance that would essentially say that if you are developing in the Central Business District, your Level III threshold goes away if you able to comply with the Downtown Design Guidelines. In addition, the Downtown Commission is reviewing the Central Business District regulations and will be bringing forward some suggested changes that will help with the voluntary compliance issue.

Mr. Shuford said that this study is intended to set the groundwork for further efforts. Over the next few months, one staff effort will be to develop a project development financing plan that we will bring to Council that will include a funding source from the Amendment One authority.

Upon inquiry of Councilwoman Jones, Mr. Shuford explained Amendment One and said that he would send Council a memo outlining the tax increment financing.

It was the consensus of Council to accept the report and instruct staff to move forward in finding ways to carry out the corridor plan, e.g. ordinance revisions or other mechanisms.

CONVERSION OF COLLEGE STREET AND PATTON AVENUE TO TWO-WAY

Traffic Engineer Anthony Butzek said that this is consideration of an ordinance converting the downtown one-way pair of College Street and Patton Avenue back to two-way operation.

A traffic study commissioned by the City in 2001 concluded that the conversion to two-way traffic is feasible and would not significantly degrade traffic operations. Levels of service remained generally similar to conditions under one-way operation with the full implementation of the conversion, including several minor geometric improvements. This study, conducted by Kimley-Horn and Associates, analyzed traffic conditions in the downtown area, recommended improvements for two-way operation, and estimated costs for conversion.

The conversion from one-way to two-way would be done to support the economic vitality of downtown and increase pedestrian safety. It is generally felt that one-way streets have the ability to move more traffic, while two-way streets are more conducive to economic vitality. Two-way streets also avoid the confusion to motorists that one-way streets create, allowing for more direct routes of travel. This is especially important in Asheville as downtown is a tourist destination. Two-way streets would result in slower traffic movement, and slightly increased congestion. The idea that congested downtown streets keep people away is generally obsolete, with current wisdom dictating that slower traffic is representative of economic vitality. Many cities are converting their one-way streets back to two-way, as traffic conditions permit.

Generally, downtown merchants have expressed support for two-way streets. Representatives of several buildings, including the Biltmore Building and the BB&T Building, have expressed concern over the potential conversion.

College Street and Patton Avenue are currently proposed to be converted to two-way east of Biltmore Avenue/Broadway to facilitate traffic movement consistent with the Pack Square Plan. In order to pursue conversion of the remainder to the west (to Coxe Avenue), and to request State funding to perform necessary replacement of the signals on Biltmore Avenue/Broadway at Patton Avenue and College Street, staff requests approval of the conversion by City Council.

Summary of PM peak-hour operational differences between levels of service (LOS):

Intersection	One-way LOS	Two-way LOS
College & Spruce	B	B
College & Market	A	A
College & Broadway	B	B
College & Lexington	B	B
College & Haywood	B	B
Patton & Coxe	C	C
Patton & Haywood	A	A
Patton & Lexington	B	B
Patton & Biltmore	C	C
Patton & Market	B	*

The conversion requires modification to or replacement of eight traffic signals (six City and two State) along the corridor, and allows for removal of three others (Haywood & Battery Park, Patton & Haywood, Patton & Market). These replacements comprise most of the costs associated with the conversion. Replacement of all eight signals with decorative poles is estimated to cost $1.05 million. Modification to the City's six signals could serve two-way traffic on a temporary basis at an estimated cost of $100,000. Geometric modifications to the streets for two-way traffic are estimated at $125,000, about half of which will be done as part of Pack Square.

Staff proposes that Council allocate approximately $250,000 per year over the next four budget years in order to facilitate the necessary geometric modifications and replacement of traffic signals.

Pros

- Expected economic benefits for downtown
- Reduced traffic speeds downtown (pro for downtown) and improved pedestrian safety
- Consistency with Pack Square plans
- Support by many downtown merchants

Cons

- Costs
- Reduced traffic speeds downtown (con for drivers)
- Concerns from some downtown office buildings

This project meets several of Council's strategic goals and objectives:

- Planning Goal #2, Objective A, Task 2: Leverage outside funding to achieve multiple transportation goals where possible.
- Planning Goal #2, Objective B, Task 1: Determine opportunities for managing traffic demand through changes to commuting patterns and transportation modes, land use patterns, signalization improvements, etc.

Staff recommends City Council support the two-way plan and authorizing staff to pursue State funding and phased implementation of the two-way conversion as budgets permit.

Upon request of Councilman Davis, Mr. Butzek said that he would be happy to furnish Council with a map outlining the conversion and visual aids when this matter comes back to Council for approval on June 14, 2005.

Mr. Butzek responded to various questions/comments from Council, some being, but are not limited to: was this a staff initiated plan; what happens and what are the costs if we don't make the conversion; how long has the streets been one-way and why; is this conversion linked

to the pedestrian plan; will the traffic signals need replacing in the near future if nothing is done at this time; would the conversion have an impact on emergency vehicles; will it take longer to drive from one end of the downtown to the other; what would be the expected economic benefits for downtown; will there be any loss of parking spaces; how much property tax dollars come from the Central Business District; and what other groups have reviewed this conversion plan.

Councilman Davis was concerned about not creating too much of an obstacle course in the downtown area to slow traffic because customers may feel it is easier to go somewhere else for basic shopping.

Mr. Butzek pointed out that the entire conversion could be done for approximately $250,000. He additional costs come from the replacement of the traffic signals that staff is also recommending.

When Vice-Mayor Mumpower asked if Council should consider a special tax for the Central Business District since this project seems devoted to them. City Manager Westbrook said that normally what a special use tax is used for are other kinds of improvements, such as a uniform sidewalk streetscaping, not passing traffic.

Upon inquiry of Vice-Mayor Mumpower, Planning & Development Director Scott Shuford said that he would provide Council with information from other cities where this type of change took place and what type of rewards were had from an economic development standpoint. In addition he would provide Council with specific indications from the stakeholders who have reviewed this plan.

City Engineer Cathy Ball said that we may want to consider is asking the N.C. Dept. of Transportation to take over those streets once we have made the decision to go with the two-way conversion. We could then ask for additional funding from them in order to support putting in the decorative poles. She said that staff will research that and bring it back to Council at the June 14 meeting.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the June 14, 2005, formal City Council agenda.

At 4:34 p.m., Mayor Worley announced a short break.

ANIMAL CONTROL ORDINANCE

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance amending the existing animal control ordinance.

The Asheville Police Department is seeking to improve public safety and the humane treatment of animals by reviewing and updating the animal control ordinance. Many of the amendments are technical in nature.

The following are the major revisions to the ordinance:

- City Council will have to decide between adopting a differential licensing or fertile animal permit scheme:

  A. Differential licensing fees for fertile and unfertile dogs, Sec. 3-5 Annual Registration for Dogs

1. Annual registration for spayed/neutered dogs will be less than that for fertile dogs.
2. Owner must provide proof of sterilization when initially registering a dog
3. The Fees and Charges Committee will set the annual fertile and unfertile license fees.

B. The Fertile Animal Permit

1. The owner of a fertile animal will have to pay the City a one-time $100.00 permit fee to keep a fertile animal within the City.
2. The City will only enforce this section if the Animal Control Officer is investigating another violation of the ordinance.
3. If the owner if found to have a fertile animal without a permit, the fine is $200.00
4. If the owner gets the animal spayed or neutered within 30 days of the issuance of the fine, the City will waive the fine.

- Waiver of Registration Fees for licensed service dogs and working law enforcement dogs
- Fine structure has been amended –Appendix B

A. There is a cap on the amount of fines a person may receive before it is turned over to debt collections
B. The fine will accrue monthly, not weekly

- Specific regulations placed on the tethering of an animal, Sec. 3-12 Animal Care

A. Restraint must be at least 15 feet in length
B. Restraint shall not become tangled or prevent the dog from moving freely or having access to food, water or shelter.

- Changes providing more agreement with state law, such as the requirement to immediately report an animal bite to the Police Department, Sec. 3-13 Animal Bite

- Adoption of fertile animals in public prohibited, Sec. 3-12 Animal Care

- Prohibits the giving away of animals as a prize. Sec. 3-12 Animal Care

- Selected serious offenses made Criminal, Sec. 3-20 Penalties

A. Interference with Animal Control Officer, Concealment of Animal, Sec. 3-8 Inspection, Interference or Concealment
B. Animal Fighting, Sec. 3-12 Animal Care
C. Failure to report an animal bite, Sec. 3-13 Animal Bite
D. Failure to comply with an order of seizure, Sec 3-30 Seizure and Disposition of Animals

- Clarified definition of terms, Sec. 3-4 Definitions

A. *Bona fide farm*: use of one's real property for a farming business or enterprise, zoned or grandfathered for agricultural use; must comply with all applicable federal, state and local laws.
B. *Exotic pet*: any animal that is not classified as domesticated, livestock or a wild animal; does not include feral animals.

C. *Feral animal*: an animal of a species normally domesticated that has reverted back to a wild state.
D. *Fowl*: any bird traditionally associated with sport, farming or production; including but not limited to poultry and game birds.

- Added definitions of humane care and treatment, sufficient water, sufficient food and sufficient shelter, Sec. 3-4 Definitions

A. *Humane care and treatment*: maintaining an animal in an appropriate, sanitary environment. Humane care and treatment also considers the age, size, health problems, hardiness and other characteristics of the individual animal in daily care to prevent avoidable harm and suffering.
B. *Sufficient food*: the provision of food of sufficient quantity and quality to insure property growth or maintenance of body weight appropriate to the age and species of the animal.
C. *Sufficient shelter*: a structure which consists of least three sides, a floor and a roof and adequate in size and design to preserve the animal's body heat and protect the animal from the elements.
D. *Sufficient water*: access to a constant supply of water that is clean, fresh, and visibly free of debris and organic material, or provided at suitable intervals for the species, and not to exceed 24 hours at any interval.

- Lessened the 150-foot minimum distance that permitted livestock, fowl and exotic pets are allowed to be from adjacent households, Sec. 3-36 Permit for keeping

A. No person shall keep livestock and chickens and fowl within 100 feet of any household other than that of the owner of the animal, chicken or fowl.

- Numerous technical changes have been made to the wording of the ordinance for consistency and clarity and in order to make it easier to read.

The animal control ordinance was last revised on September 10, 2002. In an effort to meet public expectations and insure the most up to date ordinance possible, the Asheville Police Department began a review of the ordinance in late 2003. Consistent with City Policy, the Asheville Police Department sought input from organizations such as the Asheville Humane Society, the American Kennel Club, and other local animal welfare groups. In addition, the City held a public forum on May 4, 2005, for citizens to give input.

Pros:

- The fertile animal permit and the restrictions on adopting fertile animals in public locations are steps towards reducing the number of unwanted animals in the City.

- The new fine structure will be more equitable to citizens.

Cons:

- There will be a significant increase in time spent on each Animal Control call for service to enforce the fertile animal permit. This will reduce time spent on handling other Animal Control matters.

- The City will need to create new fields in the Animal Control database to keep track of the fertile animal permits. In addition, there will be significant additional staff time needed to deal with the citations and possible waiver of fines (this includes both Customer Service staff as well as Animal Control staff).

City staff recommends approval of the ordinance amending the existing Animal Control ordinance.

Mr. Euler, along with Ms. Brenda Sears, Animal Control Officer, responded to various questions and comments from Council, some being, but are not limited to: what are the statistics of regarding the number of impounded animals from the City, specifically euthanized (1,333), adopted (280) or returned to owners (495); what is involved with a Dept. of Agriculture license and how much is that type license; what is the adoption rate at the animal shelters; what is the cost to the City to pick up and take an animal to the shelter; what is the cost to spay/neuter; how will this ordinance be enforced; can existing personnel handle the changes; will this ordinance be enforced in the extra-territorial jurisdiction area; and are there subsidies/grant monies available to help with the cost of spaying/neutering.

Mr. Euler explained that this ordinance this is a good step in trying to regulate and reduce the number of unwanted pets by making sure that the pets adopted are spayed or neutered before being turned over to the new owners, as opposed to getting vouchers where there is not a lot of control as to what happens later.

Vice-Mayor Mumpower felt this ordinance would adversely impact the ability of people to facilitate adoption of pets. He particularly pointed out that there is a person who, on a regular basis, sets up in front of Earth Fare and has made an enormous effort to find homes for cats and dogs. He wondered what might be some possibilities (permit or voucher) to allow those types of people to continue to try to facilitate adoptions.

Ms. Sears felt there isn't any reason to make any exceptions to animals going home fertile. She stressed how one fertile animal could negate the work for an entire adoption day just by reproducing. She stressed that we need to be consistent in upholding the standards throughout our entire community. She did point out that the fertile animal regulations (spaying/neutering or a permit) are required for both dogs and cats.

Upon inquiry of Vice-Mayor Mumpower, Ms. Sears said that if the transaction is taking place on city property in a public area, then that is what transactions would be impacted. People can give away pets all day at their private homes. She said that it would be unlawful for a person to sell or trade an animal, unless they are licensed by the Department of Agriculture, in a public venue.

There was considerable discussion about good humanitarian efforts. Ms. Sears said the easy solution would be to have people take the animals to the animal shelter or humane society. They are the professionals at evaluating the adoptability of animals and they will never refuse to take an animal.

Vice-Mayor Mumpower asked staff to meet with people who have a deeper understanding of this issue and see if there is a way to not create an administrative nightmare, but doesn't punish the people who are trying to compassionately affect animals.

Councilwoman Jones asked that an exception to the spaying and neutering requirement be made for service dogs in training.

Mr. David Long, Director of Animal Control for Buncombe County, responded to various questions from Council and recommended Council adopt the spaying/neutering ordinance.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Barbara Marlowe to the Civil Service Board.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Leesa Gibbs to the Firemen's Relief Fund.

Regarding the sunset date of June 30, 2005, for the Sustainable Economic Development Strategic Plan Implementation Task Force, it was the consensus of City Council to invite the Chairman in to give City Council a report of their activities and their recommendation on whether to extend the term of the Task Force.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:49 p.m.

Magdalen Bouleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – May 24, 2005 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor R. Carl Mumpower, Presiding; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr. City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley and Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

The T.C. Roberson High School Air Force ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 05-110 - RESOLUTION OF APPRECIATION TO RETIRING CITY MANAGER JAMES L. WESTBROOK JR.

Vice-Mayor Mumpower read the resolution of appreciation to retiring City Manager James L. Westbrook Jr. On behalf of the City Council, Vice-Mayor Mumpower thanked Mr. Westbrook for his ten years of service he has devoted to the citizens of Asheville.

Resolution No. 05-110 was adopted by acclamation.

RESOLUTION BOOK NO. 29 – PAGE 134

B. PRESENTATION OF ACCREDITED AGENCY STATUS FOR THE ASHEVILLE FIRE AND RESCUE DEPARTMENT FROM THE COMMISSION ON FIRE ACCREDITATION INTERNATIONAL

Chief Paul Brooks, Vice-Chairman of the Commission on Fire Accreditation International, presented the City of Asheville Fire Department with the Accredited Agency Award.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 10, 2005, AND THE WORKSESSION HELD ON MAY 17, 2005

B. MOTION SETTING A PUBLIC HEARING ON JUNE 14, 2005, REGARDING ADOPTION OF THE FISCAL YEAR 2005-06 ANNUAL OPERATING BUDGET

C. RESOLUTION NO. 05-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH WHEELER CONSTRUCTION COMPANY INC. FOR THE 2003-04 ANNEXATION AREAS SANITARY SEWER SYSTEM IMPROVEMENTS PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Wheeler Construction Company, Inc., in the amount of $ 132,950.25, for the project known as 2003-2004 Annexation Areas Sanitary Sewer System Improvements.

This project consists of the installation of approximately 1,200 linear feet of eight-inch diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three bids on Thursday, April 28, 2005, at 2:00 p.m. Three bids were received from Wheeler Construction, Hobson Construction and Huntley construction in the amounts of $ 132,950.25, $ 133,436.00 and $ 199,872.75, respectively. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $ 132,950.25.

The project will be financed with monies from Capital Improvements Fund.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City to meet the requirements for sanitary sewer system service improvements, as established in the 2003 and 2004 Annexation Areas Plan of Services;
- The bid amount of $ 132,950.25 for the construction of the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project is equitable, as compared to the engineer's estimate of $ 135,528.00 and recent construction cost data on projects of the same nature;
- Extension of the sanitary sewer system enhances the environmental quality of the area to be served and prevents water quality problems.
- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land disturbance along the proposed sanitary sewer construction corridor.

Construction of this sewer line is in line with goal # 1 under the Natural and Built Environment focus area of the Strategic Operating Plan of the City of Asheville.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Wheeler Construction Company, Inc., in the amount of $132,950.25, for the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project.

RESOLUTION BOOK NO. 29 – PAGE 136

D. **RESOLUTION NO. 05-113 - RESOLUTION RATIFYING THE CITY MANAGER'S ACTIONS IN APPLYING FOR A GRANT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR A GRANT TO CONSTRUCT RADIO TOWERS TO IMPLEMENT THE VIPER COMMUNICATION SYSTEM WITHIN THE CITY**

Summary: The consideration of a resolution ratifying the City Manager's actions in applying for a grant from the N.C. Dept, of Crime Control and Public Safety to construct radio towers to implement the VIPER communication system.

The N. C. Dept. of Crime Control and Public Safety, through the Governor's Crime Commission, has money available to local governments in order to have its radio system VIPER compliant. The City of Asheville entered into an agreement with the State of North Carolina through the N.C. Dept. of Crime Control and Public Safety for the purchase and installation of VIPER compliant radios for the Fire and Police Departments with endorsement of the Asheville City Council in January 2005. This grant is to construct towers to implement the VIPER system enhancing communication ability and improving interoperability.

The towers and VIPER system will allow emergency responders to communicate with each other and other state agencies involved in an incident with Asheville and in many areas across North Carolina. The towers and VIPER system will allow personnel in Asheville to communicate with our personnel or responding personnel to us in other areas of the State.

The City of Asheville will not receive these funds; instead, we are authorizing the State of North Carolina to spend the $1.5 Million on our behalf. Therefore, no budge amendment is necessary.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure:
Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

PROS:

- The towers would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day.
- The enhanced communication potential would increase effectiveness during emergencies.
- The ability to communicate from Asheville to our personnel or responding mutual aid is and invaluable service.
- If the grant is approved, 100% of the funds, would be supplied by through the N.C. Dept. of Crime Control and Public Safety.

CONS:

- Staff is not aware of a negative consequence to this grant.

City staff recommends City Council approve the resolution ratifying the City Manager's actions in applying for the grant with the N.C. Dept. of Crime Control and Public Safety.

RESOLUTION BOOK NO. 29 – PAGE 137

E. RESOLUTION NO. 05-114 – RESOLUTION ACCEPTING THE NEW STREET NAME OF "REGAN LANE"

Summary: The consideration of a resolution approving Regan Lane as the name for a new street located off Downing Street.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Downing Street without causing emergency response delays.

Pro:

- The street will be utilized to access six new homes. Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Regan Lane to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure:
Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Regan Lane as new street name.

RESOLUTION BOOK NO. 29 – PAGE 138

F. **RESOLUTION NO. 05-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH MCGILL ASSOCIATES, P.A., FOR WATER SYSTEM IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services contract with McGill Associates, P.A.

The Water Resources Department has requested a low interest state loan in the amount of $1,775,000.00 and has approximately $700,000.00 in unused state grant funds for infrastructure improvements.

The Water Resources Department requires a professional engineering firm to prepare the necessary documentation required by the state and appropriate professional engineer civil designed water plans for a project on US 1923 (low interest low request) and to complete the Critical Needs Phase III water system improvement projects. McGill Associates, a local engineering firm has previously worked on the preliminary design and scope of these projects. This contract is to formalize the completion of the project and to prepare all documentation required by the State of North Carolina concerning funding and reimbursement for these projects with the cost of these professional services to be $157,000.00. Funds are available in the current water budget for this expenditure.

PROS:

- These projects will enhance the water system and help create a connection to the Canton, N.C., water system.

CONS:

- There are no cons to these projects, water pressure will be increased and the US 19/23 corridor area will enhance the development potential of an area in the county that currently does not have a water line.

City staff recommends City Council approval of the City Manager signing contract agreement with McGill Associates in the amount of $157,000.00.

RESOLUTION BOOK NO. 29 – PAGE 139

G. RESOLUTION NO. 05-116 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Mumpower said that the term of Gene Bell, as a member of the Civil Service Board, expired May 21, 2005.

At the City Council worksession on May 17, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Barbara Marlowe to the Civil Service Board to serve a two-year term, term to expire May 21, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 140

H. RESOLUTION NO. 05-117 - RESOLUTION APPOINTING LEESA GIBBS TO THE FIREMEN'S RELIEF FUND

Summary: Ms. Eva Williams, member of the Firemen's Relief Fund, recently died, thus leaving an unexpired term until January 1, 2007.

At the City Council's worksession on May 17, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Leesa Gibbs as a member of the Firemen's Relief Fund Board of Trustees, to serve the unexpired term of Ms. Williams, term to expire January 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 141

I. RESOLUTION NO. 05-118 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE MOUNTAINS FUNDRAISER AT JAKE RUSHER PARK ON JUNE 11, 2005

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Rockin' The Mountains fundraiser at Jake Rusher Park.

The Rotary Clubs of Arden and Biltmore have requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at the Rockin' The Mountains fundraising event to be held on Saturday, June 11, 2005, at Jake Rusher Park, formerly known as Royal Pines Park in Arden. The proceeds of this event will go for additional park amenities and beautification projects. This is the second year that these clubs have held this co-sponsored event.

The Asheville Parks and Recreation Department recommends approval of the resolution allowing possession and consumption of malt beverages and/or unfortified wine at the Rockin' The Mountains fundraiser at Jake Rusher Park.

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR BROTHERTON COMMONS, LOCATED AT THE CORNER OF VIRGINIA AVENUE AND BROTHERTON AVENUE, FOR A PROPOSED 44-UNIT HOUSING DEVELOPMENT

On May 12, 2005, a letter was received from Clay Estep, Construction Project Manager for Neighborhood Housing Services of Asheville, N.C., Inc., to Urban Planner Kim Hamel as follows: "Pursuant to our conversation earlier this morning, please withdraw the Brotherton Commons/Greenwood Point Project from Council presentation. As discussed the main reason for the application withdrawal is the separation of principals within the Verdi Group. The designer or record will change from David Hill with the Verdi Group to Mitchel Sorin. Mitchel has been involved with the project extensively and will not move to Charleston with the Verdi Group. We will resubmit our information to TRC for the June meeting."

B. PUBLIC HEARING TO CONSIDER THE SAWYER MOTOR COMPANY BUILDING AT 100 COXE AVENUE AS A LOCAL HISTORIC LANDMARK

Vice-Mayor Mumpower said that this public hearing was scheduled for April 12, 2005; however, the applicants requested a continuance until May 10, 2005. On May 10, 2005, the applicants then requested a continuance until May 24, 2005.

Vice-Mayor Mumpower opened the public hearing at 5:24 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance designating the Sawyer Motor Company Building at 100 Coxe Avenue as a local historic landmark. This public hearing was advertised on April 1 and 8, 2005.

The 2025 Plan calls for continued efforts involving the preservation and enhancement, of historic properties. The Sawyer Motor Company Building has been recommended by the HRC for landmark designation.

The Sawyer Motor Company Building was found to be historically significant in the areas of commerce and architecture. The Sawyer Motor Company was the first automobile dealer to announce plans to build a new showroom on Coxe Avenue in the newly created automotive business district which was developed by E. W. Grove when he filled the deep ravine that existed between Patton and Southside Avenues with the earth obtained from the leveling of the hill where the old Battery Park hotel had stood. The Sawyer Motor Company was founded by Eugene Sawyer who was the first automobile dealer in Asheville, selling his first automobile in 1903.

The structure was completed in 1926 and was built as a grand four-story concrete and steel framed auto showroom and garage. The structure is faced with dark red brick and ornamented with cast concrete trim. Cast concrete names plaques are located at both the corner and at the center of the front entrance as part of an ornamented parapet. The exterior of the

building provides a strong example of the streetscape of Asheville, as it would have existed on Coxe Avenue in the late 1920's. One of the most interesting features of the 60,000 sq. ft. building was the use of the roof, accessed by an interior ramp to an additional 15,000 sq. ft. of parking.

The Sawyer Motor Company Buildings is a contributing structure in the Downtown Asheville National Register District and is part of a cluster of three automobile showrooms that remain standing on Coxe Avenue, including the B& B Motor Company Building and the Conabeer Motors Building located at 162-164 Coxe Avenue.

The Sawyer Motor Company Building has been rehabilitated and developed as condominiums and commercial space. The garage level on the second floor remains relatively intact with the original concrete framing, beams, pipes, electrical conduit and ductwork all exposed. The commercial area on the first floor has been designed to allow the concrete structure of the building and mechanical systems to remain visible overhead and the exterior walls and windows to remain visible.

The ordinance designates the Sawyer Motor Company Building as a local historic landmark. The property included in the designation consists of Sawyer Motor Company Building and the .63 acre parcel on which it is located as identified on the survey. The designation does not include any interior features.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $6,066,600.00. If the property were designated as a local landmark the potential tax savings for the property owners, including city, county and school taxes would be $40,039.56. Each individual owner would have to apply for the exemption. There is a question as to the eligibility of this property for tax deferral as the significant features are exterior only and the property is owned in common as a condominium. The Buncombe County Tax Assessor will determine the applicability.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the economic and industrial history of the area.

Cons:

- This is not a strong candidate for landmark designation.
- If approved, the tax deferral will result in a loss of revenue to the city and county.
- This property has been recognized as part of the downtown National Register district and currently is under no threat of being lost.

Based upon the foregoing, the HRC recommended that the Asheville City Council adopt an ordinance designating the Sawyer Motor Company Building as a local historic landmark.

Staff does not recommend that the City Council adopt the ordinance for landmark designation of the Sawyer Motor Company Building. Staff is concerned that although the HRC found that the property, technically met the minimum requirement for local significance, that the structure is not a strong candidate for landmark designation as the interior of the structure has

lost much of its integrity, as reflected in the minutes from the HRC hearing. Also, The structure is currently well maintained and under not threat of demolition, having recently been renovated and adaptively reused as a mixed-use development. Additionally, the property has little educational value to the community as a whole.

Ms. Merten further explained that there are two key reasons for designating a structure as a local landmark. The first is to provide a financial incentive to preserve a critically important and potentially threatened structure. Since the renovation of the Sawyer Motor Building has been accomplished, this reason does not apply over at least the short term -- it is unlikely that the building is threatened with demolition at this time. The second reason -- and the one that applies in this circumstance -- is to recognize a critically important structure and protect it from future renovations that could threaten its historic integrity.

She reviewed with Council the following list of existing local landmarks in the downtown area of Asheville.

Downtown Local Landmarks	Year Designated
Grove Arcade	1985
Loughran Bldg.	1994
Flat Iron Bldg.	1990
Public Service Bldg.	1990
S & W Cafeteria	1982
Drhumor Bldg.	1998
Kress	1982
Thomas Wolfe House	1998
Market Street & Langren Alley	1985
Old Pack Library	1982
YMI	1981
City Building	1988
Ravenscroft School	1981

A number of these buildings have been renovated and adapted for new uses following their designation as local landmarks. These renovations were reviewed by the HRC in accordance with the Secretary of Interior Standards for Rehabilitation. These reviews have been extremely helpful in protecting the historic integrity of the buildings.

Landmark designation is an honor and it is the highest level of recognition that a property can receive at the local level. It signifies recognition that the property is vitally important to the heritage and character of the community and that its protection significantly enriches the community's residents. In other words, the purpose of local designation is to recognize and protect a structure the community regards as irreplaceable. Ultimately, therefore, the Council must decide if the Sawyer Motor Building belongs in the list of local landmarks and whether its demolition or inappropriate renovation would result in an irreplaceable loss to the character of downtown Asheville and to the citizens of the community as a whole. If the Council agrees with the HRC and feels the Sawyer Motor Building is of comparable character to the buildings on the list, the building should be landmarked. If not, the Council should follow the staff recommendation and not designate the building as a local landmark.

Mr. Fred English felt that this is a tax dodge and urged Council not to designate the building as a local historic landmark.

Mr. Ray Conaway, Sawyer Motor Building (SMB) Condominium, said that landmark designation is an honor. It signifies recognition that a property is important to the heritage and character of the community and its protection enriches all of the community's residents.

The present renovation and reuse of the Sawyer Motor Building has, in fact, made many concessions to preserve and be respectful of the interior integrity of the structure while allowing the building to remain in service. The Sawyer Motor Building rehabilitation project was approved by both the Restoration Branch of the North Carolina State Office and the National Park Service in accordance with the Secretary of the Interior's standards for rehabilitation.

On the first floor, the exposed concrete post and beam construction, mechanical equipment and low-partition walls were aspects of the renovation that contribute to the open atmosphere of the original first floor showroom. The full-height central office area of the old showroom is clearly evident in the interior of the new space. The second floor garage, for the residents of the building includes factory windows, original paint with customer instructions, concrete posts and beams with evidence of the original ramp to the upper floors and fully conveys the historic character of that level.

The partitioning of the third and fourth floors for the residential units does contain some concessions to modern convenience and code requirements for residential use, but again, the ceilings reveal the original steel beams, girders and the concrete floors above. The mechanical systems have been left exposed in order to retain much original character of the building. Original factory windows are found in every residential unit and hallways.

According to the Designation of Historic Landmarks, the property must meet at least one of the following criteria:

(1) It is associated with events that have contributed significantly to our history.

The Sawyer Motor Company was the first automobile dealer to build a new showroom and garage facility on Coxe Ave. in the spring of 1925.

(2) It is associated with the life of a person significant in our past.

Eugene C. Sawyer, President of Sawyer Motor Co., was the first automobile dealer in Asheville, selling his first car in 1903. Two of his early sales of vehicles were to Rutherford P. Hayes, son of the former President, and George W. Vanderbilt, owner of Biltmore House.

(3) It embodies the distinctive characteristics of a Type, Period, or Method of Construction.

During the 1920's population boom in Asheville, the growth of the automobile business was reflected in an impressive number of new structures designed for the sales, maintenance, and storage of these automobiles. In Asheville, the greatest concentration of these buildings occurred on Coxe Ave, which had been promoted as the City's "Automobile Traffic Center".

The Sawyer Motor Building meets not just one, but three of the five listed criteria for Historic Significance.

The N. C. Dept, of Cultural Resources' Division of Historic Resources, Preservation Specialist Rebecca Johnson sent a letter dated July 1, 2004, to the Historic Resources Commission of Asheville and Buncombe County after reviewing the Local Designation Report prepared by Edwards - Pitman Environmental stating the following, "The Sawyer Motor Building,

built from 1925-1926, is presented as an intact example of auto related building construction located on Coxe Ave. The Sawyer Motor Company was the first automobile dealer to announce plans to build a new showroom and garage on Coxe Ave., an area that was advertised as the Automotive Business District of Asheville. The Sawyer Motor Building contributes to the significance of the downtown Asheville Historic District listed in the National Register of Historic places. The designation report, together with the National Register nomination for the district, provides the Historic Resources Commission and Buncombe County sufficient information to determine the Sawyer Motor Building possesses both the special significance and requisite integrity for Landmark Designation."

Landmark designation means the community recognizes this building as an important historical resource worthy of preservation. Any substantial exterior design alterations will be subject to the design review procedures of the local commission. The owners may apply for an annual deferral of fifty percent of the property taxes as long as the property is designated and retains significance and integrity.

Through several meetings, phone conversations and written communications, he felt that the HRC agrees that the building meets three (not just one) of the stated criteria. Staff quotes that the building is not under imminent threat because it is listed on the National Register of Historic Places. According to Rebecca Johnson, Preservation Specialist with State Archives and History, this does not preclude any alterations or changes to the structure such as replacing windows, adding top floors or changing the exterior surfaces. The only control to prevent those changes can be preserved by Local Historic Resources. If the City wants to have control over their historic treasures, they must designate them as Local Historic Resources. That is the import and reason for the Commission.

Although this is a presentation for local historic designation of the Sawyer Motor Building, he would like to point out the new development in this area (the south side of Asheville) that is going on because of the rehab of the Sawyer Motor Building. It has been expressed to me that a pattern of development is now underway because the Sawyer Motor Building has given others the courage to develop in this area. Including the Sawyer Motor Building annex and the Union Transfer Building, that is now underway, a low estimate shows that approximately $23 million will be added to the tax base of the City of Asheville. The development in this area will continue to add revenue to the City by attracting more visitors, investors and future homeowners to Asheville.

In conclusion, Mr. Conaway the City Council has this opportunity to designate the Sawyer Motor Building, a well-qualified historic building of significance to the history and posterity of Asheville. There will probably never be another opportunity to preserve it locally, and after two more years when the federal tax credits expire, changes can and will occur to the building that will forever disqualify it from ever being kept intact as an Asheville historic treasure.

Mr. Alan Ditmore did not support the designation in that the condominiums are too elite.

Vice-Mayor Mumpower closed the public hearing at 5:41 p.m.

Discussion surrounded Ms. Merten's responses to various questions/comments from Council, some being, but are not limited to: how long are the federal tax credits in effect and do the tax credits place restrictions on what can happen to the building; if the building is owned by individuals, how does someone go about changing the exterior; and is it anticipated that there will be changes to the exterior portion of the windows when the federal tax credits expire.

Ms. Merten said that if Council is concerned about the appearance of the building, she felt that a case could be made for local district designation. She explained how that process would work.

Upon inquiry of Councilman Davis, Ms. Kathy Conaway, resident of the Sawyer Motor Building, explained why the developer did not seek local historic designation before the building was renovated.

Councilman Davis asked if staff's recommendation for local landmark designation would have been in support if the designation had been applied for before renovations to the building occurred. Ms. Merten responded that she still didn't think their recommendation would have been in support for landmark historic designation.

Vice-Mayor Mumpower was impressed that Mr. Pilos, the developer, began renovation of the building on Coxe Avenue with no infrastructure support from the City. Ms. Merten agreed that Mr. Pilos made a great contribution, however, receiving no support from the City is not a criteria for landmark designation.

Councilman Davis moved to deny designating the Sawyer Motor Company Building at 100 Coxe Avenue as a local historic landmark. This motion was seconded by Councilman Dunn.

Councilman Dunn felt this building is a great place to live and the property values will rise. However, he felt we would be subsidizing some high income property and would not be able to support this designation.

Councilwoman Jones was not familiar with historic preservation and felt that she would have to rely on the HRC's expertise, which was a unanimous vote in support of the designation.

The motion made by Councilman Davis and seconded by Councilman Dunn to deny the local historic designation carried on a 4-1 vote, with Councilwoman Jones voting "no."

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE BY ADOPTING CONDITIONAL ZONING AS A LAND USE APPROVAL PROCESS

ORDINANCE NO. 3237 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY ADOPTING CONDITIONAL ZONING AS A LAND USE APPROVAL PROCESS

Vice-Mayor Mumpower opened the public hearing at 6:06 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process. This public hearing was advertised on May 13 and 20, 2005.

Conditional or Special Use District (CUD) zoning has been authorized in North Carolina since the mid 1960's. Asheville adopted CUD zoning as part of the UDO in 2000. Despite the benefits of flexibility that CUD zoning provides, its legal and theoretical underpinnings – bifurcating the legislative rezoning from the quasi-judicial conditional use permit – have always been difficult to apply in practice.

In 2001 and 2002, the North Carolina Court of Appeals in two cases (review denied by the Supreme Court) approved the use of "conditional zoning." Conditional zoning is essentially

the same practically and conceptually as CUD zoning in that it is a rezoning based on a site specific development plan, and the applicant is bound by the conditions in the ordinance. Legally, however, it collapses what was an awkward two-step process into a single process.

One important difference for the Planning and Zoning Commission and City Council is that the conditional zoning process requires no specific findings. Decisions should still be based on sound land use guidance principles, however, and this is set forth in the proposed ordinances. It may help to think of conditional zoning as adopting a set of development regulations (building height, setback, etc.) and applying them to a single property or group of properties, creating a single use classification. Procedurally, the process is much less complicated than CUD zoning. The process for appealing a conditional zoning ordinance into the courts would be different as well.

Under the proposed ordinance, the application process would be mostly unchanged from the current process for CUD zoning – requiring that the owner be the applicant, that a site-specific plan be submitted, and that the uses be specified. Also under the proposed ordinance, conditional zoning is not available for classifications such as Urban Village, where a site plan is already required.

The current CUD zoning process would be eliminated for future use. Any CUD zoning designations established by this process, however, would continue to be governed by the CUD ordinance.

History / Prior Actions: After adding the reference to the conditional use standards in Sec. 7-16-2 to Sec. 7-7-8(d)(5), the Planning and Zoning Commission unanimously recommended adoption of the proposed ordinance.

Considerations:

- streamlined process at Planning & Zoning Commission/Council level, and in courts
- increased flexibility in zoning
- less administrative time required to process applications, administer ordinance
- less vulnerability to judicial challenge
- susceptible to over use

City staff recommends City Council amend the Unified Development Ordinance (UDO) by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process.

City Attorney Oast said that Mr. James Judd, with the Coalition of Asheville Neighborhoods, has made some suggestions, which staff agree with. He then reviewed the following recommended changes with Council:

7-7-8(c) - *General requirements.* The following provision shall apply in the administration of Conditional Use Zoning.

* * *

7-7-8(c)(6)c. - Replace current wording with the following: Any other minor modification in accordance with the limitations and procedures prescribed in this Chapter, unless a conditional zoning ordinance adopted pursuant to this section specifies otherwise

City Attorney Oast said that staff will come back to Council at some point in the near future with a proposed ordinance that would establish what a minor modification is and the boundaries that would affect minor modifications.

* * *

7-7-8(c)(9) - If no action has been taken to begin development of the property in accordance with the conditional zoning ordinance within 24 months of its approval by city council, or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification.

7-7-8(c)(10) - If the use or uses commenced pursuant to a conditional zoning ordinance adopted pursuant to this section are abandoned or discontinued pursuant to sections 7-17-5 or 7-17-6; or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification.

* * *

7-7-8(d)(2) - The application and supporting materials shall be reviewed by the technical review committee in accordance with its procedures for reviewing applications for conditional use permits prior to the meeting of the planning and zoning commission at which the application is to be considered. The recommendations and comments of the technical review committee shall be reported to the planning and zoning commission. In addition, the planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Sec. 7-16-2, and shall submit said report at the public hearings on said applications.

City Attorney Oast said that the effective date of the proposed ordinance is July 1, 2005, however, someone has contacted him and would like to take advantage of this ordinance sooner. Therefore, he asked that the ordinance be made effective upon date of adoption by Council, but still keep the date of July 1, 2005, for the repeal of the conditional use district zoning.

Vice-Mayor Mumpower closed the public hearing at 6:16 p.m.

City Attorney Oast responded to various questions/comments from Council, some being but are not limited to: how does the appeal process differ from the conditional use district zoning; and what happens when a prior conditional use zoning have been approved but construction has not begun.

Upon inquiry of Councilman Newman, City Attorney Oast explained how Council will have a broader degree of flexibility with adoption of the conditional zoning ordinance.

Vice-Mayor Mumpower said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3237. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 88

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. **ORDINANCE NO. 3238 - ORDINANCE AMENDING THE EXISTING ANIMAL CONTROL ORDINANCE**

ORDINANCE NO. 3239 - ORDINANCE AMENDING APPENDIX B (SCHEDULE OF CIVIL PENALTIES) THE CODE OF ORDINANCES RELATING TO THE ANIMAL CONTROL ORDINANCE

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance regarding animal control.

The Asheville Police Department is seeking to improve public safety and the humane treatment of animals by reviewing and updating the animal control ordinance. Many of the amendments are technical in nature.

The following are the major revisions to the ordinance:

- City Council will have to decide between adopting a differential licensing or fertile animal permit scheme: (The proposed ordinance is drafted with the Fertile Animal Permit)

  A. Differential licensing fees for fertile and unfertile dogs, Sec. 3-5 Annual Registration for Dogs

     1. Annual registration for spayed/neutered dogs will be less than that for fertile dogs.
     2. Owner must provide proof of sterilization when initially registering a dog
     3. The Fees and Charges Committee will set the annual fertile and unfertile license fees.

  B. The Fertile Animal Permit

     1. The owner of a fertile animal will have to pay the City a one-time $100.00 permit fee to keep a fertile animal within the City.
     2. The City will only enforce this section if the Animal Control Officer is investigating another violation of the ordinance.
     3. If the owner if found to have a fertile animal without a permit, the fine is $200.00
     4. If the owner gets the animal spayed or neutered within 30 days of the issuance of the fine, the City will waive the fine.

- Waiver of Registration Fees for licensed service dogs and working law enforcement dogs

- Fine structure has been amended – Appendix B

  A. There is a cap on the amount of fines a person may receive before it is turned over to debt collections
  B. The fine will accrue monthly, not weekly

- Specific regulations placed on the tethering of an animal, Sec. 3-12 Animal Care

  A. Restraint must be at least 15 feet in length
  B. Restraint shall not become tangled or prevent the dog from moving freely or having access to food, water or shelter.

- Changes providing more agreement with state law, such as the requirement to immediately report an animal bite to the Police Department, Sec. 3-13 Animal Bite

- Adoption of fertile animals in public prohibited, Sec. 3-12 Animal Care
- Prohibits the giving away of animals as a prize. Sec. 3-12 Animal Care
- Selected serious offenses made Criminal, Sec. 3-20 Penalties

  A. Interference with Animal Control Officer, Concealment of Animal, Sec. 3-8 Inspection, Interference or Concealment
  B. Animal Fighting, Sec. 3-12 Animal Care
  C. Failure to report an animal bite, Sec. 3-13 Animal Bite
  D. Failure to comply with an order of seizure, Sec 3-30 Seizure and Disposition of Animals

- Clarified definition of terms, Sec. 3-4 Definitions

  A. *Bona fide farm*: use of one's real property for a farming business or enterprise, zoned or grandfathered for agricultural use; must comply with all applicable federal, state and local laws.
  B. *Exotic pet*: any animal that is not classified as domesticated, livestock or a wild animal; does not include feral animals.
  C. *Feral animal*: an animal of a species normally domesticated that has reverted back to a wild state.
  D. *Fowl*: any bird traditionally associated with sport, farming or production; including but not limited to poultry and game birds.

- Added definitions of humane care and treatment, sufficient water, sufficient food and sufficient shelter, Sec. 3-4 Definitions

  A. *Humane care and treatment*: maintaining an animal in an appropriate, sanitary environment. Humane care and treatment also considers the age, size, health problems, hardiness and other characteristics of the individual animal in daily care to prevent avoidable harm and suffering.
  B. *Sufficient food*: the provision of food of sufficient quantity and quality to insure property growth or maintenance of body weight appropriate to the age and species of the animal.
  C. *Sufficient shelter*: a structure which consists of least three sides, a floor and a roof and adequate in size and design to preserve the animal's body heat and protect the animal from the elements.
  D. *Sufficient water*: access to a constant supply of water that is clean, fresh, and visibly free of debris and organic material, or provided at suitable intervals for the species, and not to exceed 24 hours at any interval.

- Lessened the 150-foot minimum distance that permitted livestock, fowl and exotic pets are allowed to be from adjacent households, Sec. 3-36 Permit for keeping

  A. No person shall keep livestock and chickens and fowl within 100 feet of any household other than that of the owner of the animal, chicken or fowl.

- Numerous technical changes have been made to the wording of the ordinance for consistency and clarity and in order to make it easier to read.

The animal control ordinance was last revised on September 10, 2002. In an effort to meet public expectations and insure the most up to date ordinance possible, the Asheville Police

Department began a review of the ordinance in late 2003. Consistent with City Policy, the Asheville Police Department sought input from organizations such as the Asheville Humane Society, the American Kennel Club, and other local animal welfare groups. In addition, the City held a public forum on May 4, 2005, for citizens to give input.

Pros:

- The fertile animal permit and the restrictions on adopting fertile animals in public locations are steps towards reducing the number of unwanted animals in the City.
- The new fine structure will be more equitable to citizens.

Cons:

- There will be a significant increase in time spent on each Animal Control call for service to enforce the fertile animal permit. This will reduce time spent on handling other Animal Control matters.
- The City will need to create new fields in the Animal Control database to keep track of the fertile animal permits. In addition, there will be significant additional staff time needed to deal with the citations and possible waiver of fines (this includes both Customer Service staff as well as Animal Control staff).

City staff recommends approval of the ordinance amending the existing Animal Control ordinance and the ordinance amending Appendix B (Schedule of Civil Penalties) relating to the animal control ordinance.

Mr. Euler said that pursuant to Council's directions at the May 17, 2005, Council worksession, staff has made the following amendments to the Revised Ordinance:

1. In Sec. 3-5(e) service dogs and service dogs in training will be exempted from paying the animal registration fee provided that the handler gives the City the service dog's and/or training dog's service registration number.

2. Staff did make some cosmetic changes to Sec. 3-12(k) in that the N.C. Department of Agriculture only regulates dogs or cats when they are sold, traded or put up for auction. Hence the City will prohibit the buying, selling or trading of dogs or cats without a permit from the Department of Agriculture. However, the City will keep the broader definition of "animal" (i.e. any nonhuman vertebrate creature) for pet adoptions taking place in a public area.

3. As to the issue of restricting pet adoptions in public places, the City's proposed ordinance is consistent with Buncombe County and no revisions to the proposed ordinance have been made. However, he did note that he has been working on this issue with other groups involved and feels that they have reached a compromise. He suggested dropping the 501 (c) (3) designation and just require that the group be a valid active non-profit North Carolina corporation. This would still not allow the individual citizen to take their box of kittens to Wal-Mart to do the adoption, but on the other hand, it would allow a lot of well-meaning animal groups to conduct public auctions without having to go through the burden of getting their 501 (c) (3) designation.

At the request of Vice-Mayor Mumpower, Mr. Euler explained why we are amending the ordinance at this time. He said that (1) the existing ordinance has been in effect for 2-3 years and it is time for an update, (2) the City needs to be consistent with the County animal control

ordinance; and (3) the community expressed concern about pet over-population as a problem and this ordinance addresses that concern.

Mr. John Van Wezel, volunteer puppy raiser with Southeastern Guide Dogs Inc., urged City Council to exempt both the guide dog puppies in training as well as guide dog breeders from the provisions of the ordinance – both licensing and the spay/neutering provision. He explained that it can take up to two years for the Southeastern Guide Dogs Inc. to decide whether a guide dog puppy in training can become a breeder or not. It depends on the lineage of that puppy and how it is performing.

Mr. Mary Parker, representing Forever Friends and Merry Paws, hoped that discussions on this ordinance will continue to help the City manage the problem of killing healthy, adoptable animals in the City. She hoped there is an ongoing process to evaluate whether particular provisions help or hurt the overall goal. She felt we need more information on where the animals that are breeding are really coming from. She supported the ordinance amendment that allows a state non-profit corporation conduct adoptions. She said there is a big problem with pet stores selling animals and would like to work with Council to get the State to enforce stricter standards. She explained that there are a number of people that will not take animals to the shelter and unless there are organizations like Forever Friends and Merry Paws, they will dump them somewhere. She asked Council to work with her organizations on this issue.

Ms. Leslie Armstrong urged City Council to not change the existing ordinance regarding exotic animals in the City. Our existing ordinance prohibits the private possession of exotic wild animals. The draft ordinance will make a distinction between wild and exotic animals and allow exotic animals to be kept if a permit is obtained. Exotic animals require special care and special maintenance and private individuals cannot do that. Exotic animals pose health and safety risks. She urged City Council to not change the existing ordinance but to keep the strong law that we already have regarding exotic wild animals.

Mr. Alan Burger echoed Ms. Armstrong's comments regarding prohibiting the private possession of exotic wild animals in the City.

Ms. Ann Johnston, private owner of show dogs, said it would be a tragedy if she had to pay $100 for each of her four dogs and she doesn't want them spayed/neutered because the American Kennel Club does not permit people to show dogs that have been spayed or neutered. She suggested Council set up a separate group of dog owners and let them try to work out the problem and then they will submit their recommendation Council.

Ms. Marta Stoneman, Legislative Chair of the Asheville Kennel Club (AKC), presented City Council with materials regarding their response to the proposed ordinance. In summary of one concern, they felt that the proposed mandatory spay/neuter requirement is an attempt to address a problem that has not been adequately defined. While this change will certainly have a negative impact on many responsible pet owners, there is little evidence that it will have a positive impact on reducing the shelter population on the number of adoptable animals euthanized by the shelter. Numerous more positive and more effective alternatives exist. They recommended that the licensing fee for intact animals be removed from the proposed ordinance changes and tabled pending a one year analysis of the shelter population. The AKC offers its services, along with the resources of the AKC, to assist in constructing and conducting this analysis. The resulting report will be presented to City Council detailing the results of the analysis, suggested solutions, and the anticipated cost and effectiveness of each solution. Another concern is that the following sentence should be reinserted in the proposed ordinance to protect the rights of our citizens: "The animal control officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed." The final concern

is that the appeals process has been redirected from the Chief of Police to the Director of Animal Control. The AKC is concerned that this does not provide appropriate checks and balances and requests that the language not be changed from the existing ordinance of "Chief of Police."

Rev. Nancy Clark, President of the Asheville Humane Society, explained that this ordinance works as seen during the past year with the County's adoption of their animal control ordinance. She said they have seen an incredible decrease in the number of animals euthanized and the number of animals adopted has held almost the same. Regarding show dogs, she explained that the ordinance targets animals and their owners that are the problem. They will only enforce the spay/neuter clause if the animal is in violation of another clause in the ordinance. Therefore, it's the dogs that are running loose that will be targeted. She encouraged Council to keep strong language denying any permits for exotic animals.

Mr. Stewart David, representing Carolina Animal Action, explained how he felt this ordinance is a big step in the right direction.

Vice-Mayor Mumpower closed the public hearing at 7:12 p.m.

Discussion surrounded Mr. Euler's and Ms. Brenda Sears', Animal Control Officer, responses to various questions/comments from Council, some being, but are not limited to: is the ordinance enforceable; is the success of the County ordinance based on education enforcement or enforcement efforts; how much does it cost to get your animal spayed/neutered and are there agencies that can assist low income people; how many employees does the County have to enforce their ordinance; how many exotic animals are permitted and what are they; should permits be higher for exotic animals; what is the appeal procedure; and what is the procedure for impounding animals from cars.

Upon inquiry of Councilman Dunn, Ms. Shelly Moore, Executive Director of the Asheville Humane Society, said that the County's Animal Services Department supplied her with the following statistics: Since adoption of the County's ordinance, there have been a total of 187 citations issued, in conjunction with another violation of the ordinance. Of those, 41 people paid or complied (bought a permit or paid the fine), 83 were dismissed (people got their animal spay/neutered), and 63 are pending (they have an appointment to get the animal spayed/neutered or they have not complied and they are following up on compliance).

Upon inquiry of Councilwoman Jones, discussion took place as Ms. Sears explained the reasoning behind permitting exotic animals and how the City will enforce the permit.

At the request of Vice-Mayor Mumpower, Mr. Euler explained a scenario of the animal control officer being called to a home.

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the ordinances and they would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3238. This motion was seconded by Councilwoman Jones.

Councilwoman Jones asked to amend the motion to include the following language in Section 3-12- (k): "In addition, it shall be unlawful to adopt any animal in a public place within the city unless the entity placing the animal is an active North Carolina non-profit corporation, and prior to adoption of the animal, the animal is spayed/neutered and has all of the necessary vaccinations set forth by state law."

ordinance; and (3) the community expressed concern about pet over-population as a problem and this ordinance addresses that concern.

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Councilman Dunn accepted the amending. Therefore, the amended motion carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 94

Councilman Dunn moved for the adoption of Ordinance No. 3239. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 117

VI. OTHER BUSINESS:

Councilman Davis announced various board and commission vacancies.

City Attorney Oast handed to Council a letter just received from County Attorney Joe Connolly, dated May 24, 2005, regarding the "Consolidated Water and Sewer Authority." As each Council member spoke about the need for the City's review of the content prior to response, Councilman Newman briefly stated that he has reviewed the proposal and personally feels there are serious problems in it from the City's perspective. There were several very important issues that City Council was interested in when we started the process of creating a new water agreement for the future of our water system. One of the main reasons was that we wanted to provide relief for families in Asheville who pay the highest water rates in North Carolina. As far as he can tell, the County's proposal does nothing to address that concern. City Council also wanted to create a plan to fix our water system and to stop diverting water revenues towards other governmental purposes. The County's plan would actually increase the level of diversion of water revenues to non-water purposes in local government. The current plan diverts 7.5% of water revenues to other governmental purposes and the County's plan would actually divert approximately 12% of water revenues to non-revenue purposes. Those revenues would come to City government, but 60% of the water customers already live in Asheville so asking those water customers to give City government more money for non-water purposes is not attractive. City Council also was interested in a more reasonable process for annexing large new developments that are being built around Asheville city limits. The County's proposal does not address that in any meaningful way beyond what existing State law already allows. In addition, City Council wanted to assure that Asheville's perspective is fairly represented in the future governance of the water system - the majority of customers live in Asheville and Asheville owns almost all of the water assets. The County's proposal actually places Asheville in a permanent minority position in the future of governance of our water system, which is unacceptable. City Council is working hard to reach out and find an agreement that addresses these concerns, as well as addressing concerns we have heard from our County Commissioners. However, it is his sense that the County plan presented today does not do a very effective job of finding that common ground.

Vice-Mayor Mumpower thanked the County Commissioners for taking the lead this year on the Memorial Day celebration and urged citizens to attend this event.

Vice-Mayor Mumpower also reported on the For Our Kids Day event which took place at Klondyke Apartments. He also praised the work of the Hillcrest community who undertook a major clean-up effort in their community.

The following claims were received by the City of Asheville during the period of April 15-May 12, 2005: Valerie Y. Harper (Fire), Emily Tiffany-Davis (Sanitation), Wally King (Parks & Recreation), John Reed (Water) and Walter Robertson (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross urged City Council to investigate police behavior. During her comments, a motion was made by Councilman Newman and seconded by Councilwoman Jones (which carried on a 4-1 vote, with Vice-Mayor Mumpower voting "no") to allow Ms. Ross to have an additional three minutes to complete her comments.

VIII. ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 8:20 p.m.

Magdalen Burleson
CITY CLERK

Charles B. Worley
MAYOR

Tuesday – June 14, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Mumpower led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

ADDITION TO THE AGENDA

At the request of City Attorney Oast, it was the consensus of City Council to add a resolution regarding a power line easement to Progress Energy under the "Consent Agenda."

A brief discussion was held about the substance of a closed session following this meeting. Vice-Mayor Mumpower felt that if the subject matter will be to talk about compromise plans regarding the Water Agreement then it should be held in open session. City Attorney Oast said that the reason for the closed session was to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation.

I. PROCLAMATIONS:

A. RECOGNITION OF EXCELLENCE IN PUBLIC SERVICE AWARD WINNERS

Mayor Worley read the certificates honoring the City of Asheville Excellence in Public Service Award Winners for 2005 and presented each one with a Certificate.

B. PRESENTATION OF THE SONDLEY AWARD TO ZOE RHINE AND ANNE WRIGHT

Mayor Worley recognized Scott Riviere, Chairman of the Asheville-Buncombe Historic Resources Commission. Mr. Riviere said that the Historic Resources Commission gives the Sondley Award to an individual(s) in the community who by word or deed has kindled among the citizenry of Asheville and Buncombe County an appreciation for the history or historic resources of the area. He presented this year's Sondley Award to Ms. Zoe Rhine and Ms. Anne Wright.

C. RECOGNITION OF MC COMMUNICATIONS IN SWANNANOA RIVER CLEAN-UP DAY

Mayor Worley commended MC Communications' volunteers who worked diligently to clean up the Swannanoa River in mid-March, 2005. He presented the recognition certificate to Ms. Toni Fisher of MC Communications.

D. PROCLAMATION PROCLAIMING JUNE 2005 AS "APHASIA AWARENESS MONTH"

Councilwoman Bellamy read the proclamation proclaiming the month of June 2005 as "Aphasia Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Edna Tipton and Ms. Robin Jones who briefed City Council on some activities taking place during the month.

E. RECOGNITION OF CITY CLERK MAGDALEN BURLESON

Mayor Worley recognized City Clerk Burleson for obtaining the Master Municipal Clerk status from the International Institute of Municipal Clerks. This professional designation represents the Institute's highest recognition for Clerk achievement. City Clerk Burleson is the first City Clerk in Asheville's history to receive the designation.

II. CONSENT AGENDA:

Mayor Worley announced that Consent Agenda Items "E" and "F" would be pulled from the Consent Agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 24, 2005

B. RESOLUTION NO. 05-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH VAUGHN & MELTON CONSULTING ENGINEERS FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Vaughn & Melton Consulting Engineers for the project known as East Oakview Road Bridge Replacement Project for professional consulting engineering services.

The East Oakview Road Bridge Replacement Project consists of the provision of professional consulting engineering services for the preparation of the required planning document, engineering design, right-of-way and easement acquisition assistance, bidding and award assistance, construction inspection services and construction administration services associated with the construction of a new permanent bridge on East Oakview Road over Hominy Creek. The new bridge will be constructed to replace the existing temporary bridge that was put in place after structural failure of the old original bridge.

The City's Engineering Department requested qualification proposals from several consulting engineering firms from a list of approved N.C. Dept. of Transportation (NCDOT) design firms. The Engineering Department received and evaluated seven different proposals. City staff selected Vaughn & Melton Consulting Engineers as the most qualified firm along with NCDOT's approval.

The Project will be financed with monies from the City's Capital Improvements Fund. The NCDOT will reimburse the City 80% of the approved allowable Project costs from Federal Highway Administration funds.

The Project is in line with "Partnerships to Improve Critical Services and Infrastructure" focus area of the Strategic Operating Plan of the City.

The pros of executing the contract are:

- The process will commence to provide permanent access to residents of East Oakview Road.
- The professional services contract and cost amount of $ 318,376.92 has been approved by all applicable agencies.

The con of executing the contract is:

- The temporary land and creek disturbance that will be brought about by construction activities.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a professional consulting engineering services contract with Vaughn & Melton Consulting Engineers for the project known as East Oakview Road Bridge Replacement Project, not to exceed the budgeted amount.

RESOLUTION BOOK NO. 29 – PAGE 144

C. RESOLUTION NO. 05-120 – RESOLUTION TO APPROVE LOAN FROM THE CITY'S HOUSING TRUST FUND

Summary: The consideration of a resolution allocating a $150,000 Housing Trust Fund (HTF) loan to Tim and Wendy Vorst for affordable housing development.

The balance of Housing Trust Funds currently available to lend is $395,000. We have received an application from Tim and Wendy Vorst requesting a $150,000 HTF loan for the development of 6 units of affordable housing on Patton Avenue (corner of Mimosa Drive).

The building will consist of six 1-bedroom units to be rented for $525 each per month. The developer successfully completed the construction of an identical 6-plex on Hendersonville Road in 2002 using HTF dollars and continues to have success leasing that property at affordable rents.

The application was evaluated by staff and scored well against the HTF criteria, particularly for developer qualifications and cost-effectiveness. The Housing and Community Development Committee reviewed the application on May 23, 2005, and has recommended a loan of $150,000 for 30 years at an interest rate of 2%.

This action supports Housing Opportunities Goals 3 and 4 of the Strategic Operating Plan.

Advantage: Assists the development of 6 units of affordable rental housing

Disadvantages: None

City staff recommends approval of the HTF loan to Tim and Wendy Vorst, in the amount of $150,000.

RESOLUTION BOOK NO. 29 – PAGE 145

D. RESOLUTION NO. 05-121 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER CITY-OWNED PROPERTY ON CAUBLE STREET TO SET SAIL DEVELOPMENT INC. FOR A PRIVATE RESIDENTIAL SEWER LINE

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Cauble Street to Set Sail Development Inc. for a private residential sewer line.

The City owns property (PIN No. 9649.13-14-0658) located on Cauble Street. The property, which is part of the Reed Creek Greenway, is located about 200' west of the intersection of Cauble Street and Broadway. It is irregular in shape following the meandering of Reed Creek and containing approximately 0.32 acre. It is generally level with the street and forms a grassy plain along the bank of the creek.

Set Sail Development Inc. owns property on Cauble Street, comprised of two residential lots, which adjoins the City's property on Cauble Street. Set Sail proposes to build a house on each lot. Due to the location of the sewer main, the most direct and efficient route to provide sewer to the new houses is across a portion of the City's property. The requested easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the use of the easement area for a greenway, which is the proposed use of the property. The portion of land encumbered by the permanent easement comprises approximately 1,277 square feet

The City recently acquired the property on Cauble Street at a price of $31,100 reflecting a per square foot value of $2.23. The easement comprises and area of 1,277 square feet. The easement value is calculated at 50% of the land value rendering an easement value of $1,424.

The advantages of conveying the easement are:

- The easement will enable Set Sail to proceed with construction of two new homes on his property which will increase the tax base, generate economic activity, further smart growth objectives of urban densification and provide needed housing.
- The easement will provide the most practical and efficient access to the public sewer.

The disadvantage is the land within the easement area (1,277 sq. ft.) cannot be built upon or planted with large trees; however, that is mitigated by the fact that the land within the easement area is within the building set back area and cannot be built upon anyway.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Cauble Street to Set Sail Development Inc. for a private residential sewer line.

RESOLUTION BOOK NO. 29 – PAGE 146

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR A GRANT FROM THE U.S. DEPT. OF INTERIOR, NATIONAL PARK SERVICE, FOR HAYWOOD ROAD NATIONAL REGISTER DISTRICT NOMINATIONS

This item was removed from the Consent Agenda.

F. BUDGET AMENDMENT FOR GRANT FROM THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR PREPARATION OF THE WEST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT AND EAST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT NATIONAL REGISTER NOMINATIONS

This item was removed from the Consent Agenda.

G. RESOLUTION NO. 05-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE EXCHANGE OF PROPERTY BETWEEN CHRISTOPHER J. PETERSON AND THE CITY OF ASHEVILLE FOR ACCESS INTO RICHMOND HILL PARK VIA RICHMOND HILL DRIVE

Summary: The consideration of a resolution authorizing the City Manager to approve the exchange of property between Christopher J. Peterson and the City of Asheville for access into Richmond Hill Park via Richmond Hill Drive.

The City of Asheville Parks and Recreation Department and Legal staff have been working for several months on acquisition to the Richmond Hill Park from Richmond Hill Drive. A purchase option agreement was signed in February, 2005, between the City of Asheville and Christopher J. Peterson. This purchase option agreement deals with the exchange of approximately one acre of property owned by Mr. Peterson and valued at approximately $35,000. The City wishes to exchange an equal value of property to Mr. Peterson for the one acre that will allow access into the park. Staff is requesting City Council approval to give Mr. Peterson notice of exercise of this option in order to move forward with this exchange.

Pros:

- This exchange of property will allow for extension of the Richmond Hill Drive into Richmond Hill Park for the purpose of development of the National Guard Armory and other park features.
- This access meets the conditions of the conditional use permit approved by City Council.

Cons:

- The City will be exchanging approximately five to six acres of property from the Richmond Hill Park site

The Parks and Recreation Department recommends City Council approval for the City Manager to exercise the purchase agreement option dated February 17, 2005, in order to proceed with the exchange of property by Christopher J. Peterson and the City of Asheville to allow access into Richmond Hill Park via Richmond Hill Drive.

RESOLUTION BOOK NO. 29 – PAGE 147

H. ORDINANCE NO. 3240 - BUDGET AMENDMENT FOR FIRE DEPARTMENT U.S. DEPT. OF HOMELAND SECURITY GRANT

Summary: The consideration of a budget amendment, in the amount of $77,117, to receive grant money from the U.S. Dept. of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) Fiscal Year 2004 Assistance to Firefighter's Grant Program, for procurement of fire and safety education equipment and computers and associated fire inspection supplies.

The City of Asheville Fire and Rescue Department, with endorsement of the Asheville City Council in November, 2003, requested $71,126 from the U.S. Dept., of Homeland Security to fund educational material for children attending public elementary schools and day care centers, public service announcements for fire and life safety education, and personal field use computers for fire prevention and inspection activities. The Federal grant was for 70% of the costs with the City to match 30%, or $23,135. Staff was successful in obtaining those Federal funds.

The goal of the project is to reduce the number of deaths and injuries to the residents of Asheville by at least 10% over a five-year period. The focus of the program benefits those individuals most likely to be affected by fire. Public safety spots, produced by the City, will be

aired on local television at times the public is watching TV. The announcements will cover topics such as holiday safety, use of smoke detectors, the importance of home fire escape plans, fire extinguisher use, fire drills and more, including topics of interest to children. Mobile interface capability through new handheld computers and printers will address the redundant procedure now in use by Deputy Fire Marshals. They will be able to complete the inspection form while performing the inspection and print the form for the occupant while at the building site. The procedure will streamline the inspection process, improve communication with occupants, and provide a safer environment for the occupants, residents, and visitors.

Pros:

- Increased public awareness and education will decrease the number of deaths and injuries to the residents of the City of Asheville.
- The increased efficiency and increase communication with the handheld computers will benefit the building owners, the occupants, and staff.

Cons:

- The City of Asheville's share of the matching grant.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure:
Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council approve the budget amendment to receive grant money from the U.S. Dept. of Homeland Security.

ORDINANCE BOOK NO. 22 – PAGE 119

I. RESOLUTION NO. 05-123 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE FILM COMMISSION

Summary: At the City Council meeting on May 10, 2004, it was the consensus of City Council to appoint Mary Trimarco, AdvantageWest Film Commissioner, to the next vacancy on the Film Commission. Mr. David Shulman has resigned, this leaving an unexpired term until November 1, 2007. Therefore, Mary Trimarco will be appointed to fill the unexpired term of Mr. Shulman, term to expire November 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 148

J. ORDINANCE NO. 3241 – BUDGET AMENDMENT FOR REIMBURSEMENT INCOME

Summary: The consideration of a budget amendment, in the amount of $765,000, for insurance recovery reimbursement.

The City has incurred health care expenses this year that are eligible to be reimbursed. This budget amendment adds the reimbursements to the Fiscal Year 2004-05 budget in order to replenish our accounts.

The City operates a self-funded health care program whereby the City is responsible for paying employee medical expenses directly with funds included in the City's budget. In order to protect the City from large health care claims, and provide a cap for the cost of our health plan on a yearly basis, the City's health care budget includes a "stop-loss coverage" policy, which sets a limit on the amount the City has to pay on any individual health care claim. Eligible health care expenses above the established limit are reimbursed by our stop-loss insurance provider.

In the current fiscal year, the City has incurred higher-than-normal medical claim expenses, which has caused the medical claims budget to be overspent. However, due to these higher than normal expenses, the City has received additional stop-loss coverage reimbursement revenue, over and above what was budgeted as well. In order to cover the overspent medical claims account, staff requests an amendment adding $765,000 to our medical claims expense budget to be funded with an additional $765,000 in stop-loss reimbursement revenue that will be received by June 30. There is no net cost to the City associated with this amendment.

City staff recommends the budget be amended to add revenue received from insurance recovery and investment earnings to offset higher than anticipated health care expenses.

ORDINANCE BOOK NO. 22 – PAGE 121

K. RESOLUTION NO. 05-124 - RESOLUTION AUTHORIZING THE CITY TO CONVEY AN EASEMENT FOR LOCATION OF ELECTRIC POWER FACILITIES

Summary: The consideration of a resolution authorizing the City to consider an easement for power line location at Azalea Park

Since last summer, the City has been proceeding with the development of the park facility on Azalea Road; this work was interrupted by the hurricanes in September. In connection with this work, Progress Energy is installing some power lines, and needs an easement for the installation and any ongoing maintenance or repair. The exact location is unknown, and may change as our needs change, but Progress Energy will work with the Parks and Recreation Department as to the location of these lines and the easement will so provide.

Considerations:

- This is a routine request and will benefit the City.
- The easements are necessary to the use and enjoyment of the park
- Progress Energy will work with the City to minimize interference with activities.

If Council approves of this conveyance, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 149

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

ANNEXATION PUBLIC HEARINGS

Planning & Development Director Scott Shuford explained that purpose of these hearings is for the City to explain the plan for extending City services to the proposed annexation areas, and to give all persons resident or owning property within the areas, and all residents of the City, the opportunity to be heard.

On April 12, 2005, the City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Two Town Square, and Town Square East. The Annexation Services Plan was approved on April 26, 2005, and a public information meeting was held on May 31, 2005. Approximately 7 persons affected by the proposed annexations attended this meeting. On June 28, 2005, City Council will consider adoption of the ordinances extending the corporate limits, with an effective date of Ridgefield Business Park, Two Town Square and Town Square East being September 30, 2005, and the effective date of the Ascot Point Village area, the Long Shoals Road area and the Airport Road area being December 31, 2005.

Urban Planner Julia Cogburn advised Council that she would be bringing forward, at the June 28, 2005, meeting, a resolution amending the plan for services. Said amendment will consist of minor corrections and updates to the revenue estimates based on newer data.

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE RIDGEFIELD BUSINESS PARK AREA

Mayor Worley opened the public hearing at 5:37 p.m.

Ms. Cogburn reviewed with Council the specifics of the Ridgefield Business Park area.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:38 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ASCOT POINT VILLAGE AREA

Mayor Worley opened the public hearing at 5:39 p.m.

Ms. Cogburn reviewed with Council the specifics of the Ascot Point Village area.

Mr. Eric Gorny felt that density does not equal community, and City Council should take care of the existing infrastructure, etc. in the City before trying to bring in more people.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for

this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan, the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:41 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE LONG SHOALS ROAD AREA

Mayor Worley opened the public hearing at 5:42 p.m.

Ms. Cogburn reviewed with Council the specifics of the Long Shoals Road area.

Mr. A.B. Wexler felt that this annexation does not meet the density requirements. He felt that the City of Asheville caters to developers and does not support existing businesses or residents. He strongly expressed his dissatisfaction in this annexation process.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:47 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE AIRPORT ROAD AREA

Mayor Worley opened the public hearing at 5:48 p.m.

Ms. Cogburn reviewed with Council the specifics of the Airport Road area.

Ms. Carolyn Baity, co-owner of Baity's Precision Machining on Glen Bridge Road, spoke in opposition to the annexation of this area. She said they have all the services they need. She felt this is a heavy tax burden on small businesses and felt they should be been allowed to vote on whether to be annexed or not.

Mr. Eric Gorny felt that density does not equal community. He felt City Council should take care of the existing infrastructure, etc. to make it more appealing to be a City resident.

Ms. Frances Briggs, resident on Long Shoals Road, spoke against annexation. She felt annexation pushes businesses out of the area. She felt it was not the County's responsibility to clean up Asheville's problems.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:54 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF TWO TOWN SQUARE

Mayor Worley opened the public hearing at 5:55 p.m.

Ms. Cogburn reviewed with Council the specifics of the Two Town Square area.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:56 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF TOWN SQUARE EAST

Mayor Worley opened the public hearing at 5:57 p.m.

Ms. Cogburn reviewed with Council the specifics of the Town Square East area.

Mr. A.B. Wexler spoke in opposition to this annexation.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner II Blake Esselstyn and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of

impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:58 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 28, 2005.

At 5:59 p.m., Mayor Worley announced a short recess.

B. PUBLIC HEARING ON THE FISCAL YEAR 2005-06 ANNUAL OPERATING BUDGET

Mayor Worley opened the public hearing at 6:08 p.m.

Budget Director Ben Durant said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 2005-06 Annual Operating Budget was presented to City Council on May 2, 2005. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 3 and June 10, 2005. Adoption of the Budget Ordinance is scheduled for June 28, 2005, at the City Council meeting.

The Fiscal Year 2005-06 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.53 per $100 assessed value.

A copy of the Budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

City staff requests City Council conduct the public hearing on the City of Asheville Fiscal Year 2004-05 Annual Operating Budget and include public input in consideration of the budget.

Two residents on South French Broad Avenue urged City Council to not eliminate traffic calming on South French Broad Avenue. They urged Council to finish their traffic calming on the south end of French Broad Avenue.

Councilman Newman explained that City Council is not eliminating traffic calming, just expanding the definition to include pedestrian safety measures into the traffic calming terminology.

Mr. David Bailey, CEO of United Way of Asheville and Buncombe County, updated City Council on the United Way 211 Call Center and asked for support on their outside agency funding request.

Ms. Leslee Kulba urged City Council to proceed with termination of the Water Agreement.

At 6:21 p.m., Mayor Worley closed the public hearing.

After a lengthy discussion on the budget process to date and the next step, it was the consensus of City Council to ask City staff to come back at the June 21, 2005, worksession with funding options for other initiatives.

Mayor Worley announced that on June 28, 2005, City Council will take all comments into consideration and consider the adoption of the Fiscal Year 2005-06 Annual Operating Budget.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3242 - ORDINANCE TO ENACT OR CHANGE SPEED LIMITS ON VARIOUS STREETS AND TO ENACT THROUGH TRUCK PROHIBITIONS ON SPECIFIC CITY STREETS

Mr. Anthony Butzek, Traffic Engineer, said that this is the consideration of an ordinance to enact or change speed limits and enact through truck prohibitions on specific city streets.

The streets listed below have been identified for speed concerns or truck concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions. Streets with requests for truck prohibitions have been reviewed for appropriateness. The Police Department supports these recommendations.

Through Truck Prohibitions

The following streets are streets on which it is recommended that through trucks be prohibited. All are residential, with the exception of Page Avenue and Maxwell Street. Page Avenue is a commercial street that was not designed to accommodate large vehicles. Maxwell Street is a mixed-use street on which it is desirable to discourage use by trucks.

1. Maxwell Street, between Broadway and Chestnut Street
2. Overbrook Road, between Tunnel Road and Governors View Road
3. Page Avenue, between Battery Park Avenue and Battle Square
4. Springside Road, between Hendersonville Road and Overlook Road
5. Sunset Terrace, in its entirety
6. Woodlink Road, in its entirety

15 Miles Per Hour

The following streets are narrow residential streets with extreme street geometry problems, including severe and frequent crests and curves, and heavily used on-street parking. These streets warrant a significantly lower speed limit than the typical 25 mph. The recommended safe operating speed on these streets is 15 mph:

1. Dundee Street, in its entirety

20 Miles Per Hour

The following streets are narrow residential streets with street geometry problems or business district streets. NCDOT has adopted a matching speed limit on Biltmore Avenue. Street geometry problems on residential streets include frequent crests and curves. The recommended safe operating speed on these streets is 20 mph:

1. Biltmore Avenue (US 25), between Hilliard Avenue and Aston Street (NCDOT)
2. Cane Street, in its entirety
3. College Street, between Charlotte Street and Valley Street
4. Sweetspire Ridge, in its entirety

25 Miles Per Hour

Most of the following streets are typical local residential streets without significant street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. Cedar Street and Wood Avenue are collector residential streets with character and geometry warranting lower than typical collector speed limit. Roberts Street is a mixed-use street warranting a speed limit higher than a typical business district street but lower than a typical collector street. The recommended safe operating speed on these streets is 25 mph:

1. Allen Street, between State Street and Haywood Road
2. Altamont View, in its entirety
3. Burton Street, between Haywood Road and Florida Avenue
4. Carrier Street, between Sulfur Springs Road and Baker Place
5. Cedar Street, between Wood Avenue and Fairview Road
6. Courtland Avenue, in its entirety
7. Dortch Avenue, between Hillside Street and Mount Clare Avenue
8. Druid Drive, between Patton Avenue and Mitchell Avenue
9. East Maple Drive, between New Haw Creek Road and the dead end
10. East Oakview Road, in its entirety
11. Finalee Avenue, in its entirety
12. Gashes Creek Road, between Azalea Road and the dead end
13. Haw Creek Circle, in its entirety
14. Kenilwood Place, in its entirety
15. Klondyke Avenue, in its entirety
16. Lakeside Drive, between Old Haywood Road and Appalachian Way
17. Langwell Avenue, in its entirety
18. Mann Road, in its entirety
19. Maple Drive, between Old Haw Creek Road and New Haw Creek Road
20. McDade Street, in its entirety
21. Morningside Drive, in its entirety
22. Old Stone Gate Place, in its entirety
23. Olmsted Drive, between Dearborn Street and Columbine Road
24. Pressley Road, in its entirety
25. Racquet Club Road between Hendersonville Road and Boddington Court
26. Rhododendron Place, in its entirety
27. Roberts Street, between Craven Street and Lyman Street
28. Samayoa Place, in its entirety
29. Senator Reynolds Road, in its entirety
30. Trinity Chapel, between New Haw Creek Road and Old Haw Creek Road
31. West Maple Drive, between Old Haw Creek Road and Hillview Road
32. Wilmington Street, in its entirety
33. Winthrop Road, in its entirety
34. Wood Avenue, between Cedar Street and end of City maintenance

30 Miles Per Hour

The following streets have features that warrant operating speeds less than the typical collector street speed limit of 35 mph. These features include residential character, narrow widths, and roadside obstructions. The recommended safe operating speed on these streets is 30 mph:

1. Azalea Road, in its entirety
2. Edwin Place, in its entirety
3. Florida Avenue, between Burton Street and Patton Avenue
4. Gerber Road, in its entirety
5. Hill Street, between Montford Avenue and US 19-23-70
6. Kimberly Avenue, in its entirety
7. London Road, between Bellview Road and West Chapel Road
8. Lyman Street, between Riverside Drive and Amboy Road
9. Pinecroft Road, in its entirety
10. River Hills Road, in its entirety
11. Riverside Drive, between Interstate 240 and Lyman Street
12. Royal Pines Drive, in its entirety
13. Shelburne Road, in its entirety
14. Spooks Branch Road, in its entirety
15. State Street, in its entirety

Mr. Butzek said that at the May 17, 2005, City Council worksession, Council requested staff to review the speed limits on Edwin Place and Kimberly Avenue for conformance with standard speed limit adoption practices. Included in this ordinance is a recommendation for increasing these limits from 25 mph to 30 mph.

The Engineering Department requests that City Council approve the ordinance amending these speed limit and through truck prohibition changes.

The following residents urged City Council to not raise the speed on Kimberly Avenue and Edwin Place for several reasons, some being, but are not limited to: Edwin and Kimberly are residential streets being used as north/south major thoroughfares to Merrimon Avenue; no other streets in Asheville averages over 10,000 vehicles a day; Kimberly Avenue has more pedestrian traffic than other streets in Asheville, other than the downtown streets; raising the speed limit will give people permission to go faster; Merrimon Avenue is the real problem, not Kimberly Avenue; and the speed on Kimberly and Edwin work fairly well now and should remain 25 mph

Ms. Barbara Hodgson, resident on the corner of Evelyn and Kimberly
Ms. Judi Williams, resident on Kimberly Avenue
Ms. Stacy Ibrahim, resident on Kimberly Avenue
Mr. Dennis Hodgson, resident on the corner of Evelyn and Kimberly
Mr. Peter Luther, resident on Kathryn Place

When Councilman Dunn asked if Kimberly Avenue is slated for traffic calming, Mr. Butzek responded that a portion of Kimberly Avenue and Edwin Place are slated for traffic calming in conjunction with the Grove Park Inn expansion. He said that $375,000 will be spent by the developer, which will be spent on a number of City streets as well as sidewalk and engineering associated with that.

Vice-Mayor Mumpower said that he was the person who raised the issue about the speed limit on Kimberly and Edwin. He doesn't really have an advocacy position on what that speed limit would be, but he has been hearing for years that staff has recommended one speed limit, but for political or other reasons, previous councils have elected to put an artificially low speed limit on those streets. It is his belief that we should not make our decisions on the basis of political pressures or people's personal preferences. He believes we should treat all streets the same and have the same kind of policies regardless of who lives there. People who live there resent the fact that this is a major thoroughfare, but it is. We rely heavily on Kimberly and Edwin to move people in the City.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that typically there is a balance between efficiency and safety when setting speed limits on particular streets. Higher speeds are generally always going to lead to reduction in safety, but increasing efficiency. Lower speed limit results in improved safety with a decrease in efficiency. Setting artificially low speed limits can generate enforcement problems. At this point, staff does not see a severe safety problem with either the 25 mph or 30 mph speed limit. However, given the fact that Kimberly Avenue is a collector street in a residential neighborhood, staff would typically recommend 30 mph for that type of street.

Councilwoman Jones noted that Kimberly Avenue has a vast amount of pedestrian traffic on it all the time and hoped that would be a factor considered in setting speed limits.

Councilwoman Jones moved to adopt Ordinance No. 3242, deleting the increase of the speed limit on Kimberly Avenue and Edwin Place to 30 mph. This motion was seconded by Councilwoman Bellamy.

Upon inquiry of Vice-Mayor Mumpower, Police Department Capt. Splain said that in the past 12 months they have issued 82 citations on Kimberly Avenue and the majority of those were speed violations. Capt. Splain said that they have an on-going plan regarding speed enforcement on Kimberly Avenue, which is managed through the North District Traffic Officer.

As Mr. Butzek responded to various questions from Council, discussion was held regarding the issue to raise or continue the existing speed limit on Kimberly and Edwin.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

The motion made by Councilwoman Jones and seconded by Councilwoman Bellamy carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 123

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced vacancies on various boards for the month of June and urged citizens to apply.

On behalf of City Council, Mayor Worley congratulated Councilman Dunn on becoming a grandfather. Councilman Dunn proudly announced the birth of his grandson today, Bryce Cooper Davidson.

Vice-Mayor Mumpower urged citizens to come forward and volunteer for the For Our Kids Clean-Up at Pisgah View Apartments on Saturday, June 18, 2005.

City Council expressed their sincere sympathy to Councilwoman Bellamy upon the passing of her grandmother.

As this was City Manager Westbrook's last formal meeting before retirement, City Council thanked him for his 11 years of service with the City of Asheville.

The following claims were received by the City of Asheville during the period of May 13-26, 2005: Deanna Frisbee (Sanitation), George Frisbee (Sanitation), Dennis E. Eatmon (Transit Services), Tracy Crowe (Transit Services), Curtis Crooks (Police), Diane Dalton (Water),

BellSouth (Water), Carol Schell (Streets), Juanita Grantham (Transit Services) and Marcia Egan (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar spoke to Council about traffic calming.

Ms. Leslee Kulba, speaking on behalf of the Libertarian Party of Buncombe County, expressed their opinions regarding the negotiations on the water agreement.

Closed Session

Councilwoman Bellamy left the regular meeting and was not present during the closed session, but had not been excused.

At 7:56 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 9: 05 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Vice-Mayor Mumpower moved for Council to request the Buncombe County Board of Commissioners to honor their commitment to have a public meeting with the City Council to discuss the Water Agreement, and authorized the Mayor to send the Board a letter renewing this request. There was a brief discussion regarding the content of the letter, and specifying that the meeting should occur on or before June 28, 2005. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Davis informed City Council that it looked like no agreement would be reached with the Asheville Aces hockey team for the next season.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:15 p.m.

Magdalen Bowlesson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 21, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Interim City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Street Acceptance of Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision

Summary: The consideration of a resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Hoyle Lane and Treetop Road are developer constructed streets that have an average paved width of 23 feet and a length of 0.14 and 0.10 miles respectively for a total length of 0.24 miles. The City of Asheville staff inspected the construction of these roadways and certified they were built in accordance with City standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as a City maintained streets.

Provisions for Possession of Malt Beverages and/or Unfortified Wine at Various Events

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Asheville Welcomes the World, scheduled for July 5, 2005, in the grassy knoll next to the Biltmore Building. This is an event to acknowledge Asheville's Sister Cities.
- City of Asheville Tennis Tournament Picnic, scheduled for July 21 and 22, 2005, at Aston Park. This is a hospitality picnic for the spectators and players.
- Clues, Carats and Grapes, scheduled for September 22, 2005, in the grassy knoll next to the Biltmore Building. This is a benefit for the American Cancer Society.

City staff recommends City Council approve these resolutions on behalf of the applying organizations.

Budget Amendment for FEMA Reimbursements

Summary: The consideration of a budget amendment which adds FEMA reimbursements to the Fiscal Year 2004-05 budget to replenish various departmental budgets that incurred storm related expenses.

Several departments incurred extraordinary expenses this year as a result of major clean-up efforts that the City had to undertake after the impact of hurricanes Ivan and Francis. Clean-up expenses for major tropical storms or hurricanes are typically not included in the City's an annual budget since they generally do not represent recurring annual expenses; as such, departments had to redirect resources that were initially earmarked for the provision of basic services to storm-related clean-up. The City has applied for and received FEMA for reimbursements for most of these expenses. The amendment will add $599,610 to the General Fund and $549,252 to Parks Capital Project budgets to replenish various departmental operating line items that were used to cover clean-up costs.

City staff recommends the budget be amended to add revenue received from FEMA to the Fiscal Year 2004-05 to cover the City's storm-related clean-up costs.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

REQUEST FROM MOUNTAIN AREA INFORMATION NETWORK

Grants Specialist Laurie Sexton said that this is the consideration of a request from Mountain Area Information Network (MAIN) for a grant to offset the license fee for the installation of two antennas on one of the City's towers at White Fawn Reservoir, along with space in the equipment building at no cost.

The City typically charges other organizations, including nonprofit organizations, for this service. As in other cases where a nonprofit has asked for the waiver of a fee, City staff analyzed MAIN's request as if it were an Outside Agency Grant request.

The request is for a minimum of $12,000 initially, based on MAIN's list of equipment. (For future years, there is a 4% per annum increase in the license fee.)

The application submitted by MAIN did not provide all the information required of outside agencies and needed by staff to perform a comparable analysis. MAIN could not provide a strategic plan, or operating goals and objectives. The lack of a plan is a concern given the fast-changing technology of MAIN's field. MAIN also did not provide the requested audit, and their current year financial statements were incomplete; as such, standard financial ratios could not be calculated to determine the agency's financial health, history and stability. The City typically does not fund agencies if it can't adequately assess their financial health or determine their goals and objectives.

She said that Mr. Wally Bowen, Executive Director of Mountain Area Information Network (MAIN), has provided City staff today with the financial information. She requested City staff be given the opportunity to review the financial information in order to present City Council with a more informed recommendation. She also noted that Mr. Bowen would provide City staff with their Strategic Operating Plan.

She said that MAIN's overall mission and community network, however, do appear to support the City of Asheville's focus in the area of economic and community development.

Pros
- MAIN's service provides economic value especially to low income citizens, nonprofits, and micro-enterprises.
- MAIN has broad support from the community.
- The Town of Bakersville has set a precedent by providing free access to its tower.

Cons
- The opportunity cost of the grant ($12,000 minimum per year), foregoing the potential revenue from renting the space to another customer.
- Staff has unresolved questions about MAIN's financial statements and the goal of the requested funding, as well as concerns about management practices.
- MAIN was not able to demonstrate as requested the extent to which it serves low-income people even though they have 425 subsidized subscribers, referred by disability organizations, and support 504 nonprofit websites.

At this time, based upon City staff not being given the opportunity to review the financial statements, City staff recommends the City of Asheville not make the grant award to MAIN to offset the license fee for space on the City's tower. Again, she requested City staff be given the opportunity to review the financial information in order to present City Council with a more informed recommendation.

Mr. Wally Bowen, Executive Director of Mountain Area Information Network (MAIN), requested City Council waive the $12,000 license fee for their installation of two antennas, along with space in the equipment building, at White Fawn Reservoir. He explained that their sole reason for not incorporating the cost of the antenna space into their rate structure is that they cannot meet their organizational mission of "affordable access" for at-risk citizens and small businesses if they increase their rates to pay commercial rates for tower access.

Throughout discussion, Mr. Bowen responded to various questions/comments from Council regarding MAIN's mission, the merits of the proposal, what the benefits would be to our community; and what kind of access will be provided in the Asheville area.

Vice-Mayor Mumpower expressed a personal concern in that he felt MAIN (per their website) supports a political agenda and he would not support subsidizing the request with City tax dollars.

It was the consensus of City Council to bring this request back to City Council on July 12, 2005, in order to allow staff time within which to (1) review their financial documents and their Strategic Operating Plan; (2) provide Council with information on how much space is available on the tower; and (3) review of the quality of service they could provide to the City of Asheville.

RESOLUTION NO. 05-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE DEPT. OF HOMELAND SECURITY TO ASSIST WITH THE HIRING AND RETENTION OF FIREFIGHTERS

Fire Chief Greg Grayson said that this is the consideration of a resolution to apply for funds through the Dept. of Homeland Security Office for Domestic Preparedness for a five-year grant to pay a portion of the salaries of three firefighters.

A Staffing for Adequate Fire and Emergency Response (SAFER) Grant would fund the salaries and associated benefits for new firefighters hired to increase Asheville Fire Rescue's capability, specifically so that AFR might more adequately comply with the minimum staffing standard for the first-arriving engine (or company) to initiate suppression.

These grants require the City to match an increasing proportion of the salary over a four-year period; in the fifth year of the grant, the City must absorb the entire cost of any positions awarded as a result of the grant. Once a SAFER funded position is filled, the funded position must remain filled until the end of the period of performance. The grant would fund 90 percent of the actual costs (up to $36,000 per position) in the first year; 80 percent in the second year; 50 percent in the third year; 30 percent in the fourth year; and zero in the fifth year.

Asheville Fire Rescue would like to request $272,265.00 in funding over four years from the Office for Domestic Preparedness for three new firefighter positions. The grant requires a 10% match in the first year, or $10,890.60. The match is available from the Fiscal Year 2005-2006 operating budget of Asheville Fire and Rescue Department. The required match in subsequent years would be $21,781.20 year two; $54,453.00 year three; $76,234.20 year four; and $108,906.00 in year five.

This action coincides with the City of Asheville's Strategic Operating Plan under the focus area of Partnerships To Improve Critical Services & Infrastructure.

Pros
- The project will improve public safety by enabling Asheville Fire Rescue to comply with the minimum staffing standard for the first-arriving engine to initiate fire suppression.
- This grant would allow the City to increase staffing quickly while phasing in the cost of the new positions over five years.
- This grant will reduce overtime costs when meeting staffing minimums and keeping units in service.

Cons
- The cost of the match.

The Fire Rescue Department recommends the City of Asheville apply for grant funds to pay a portion of the salaries and benefits, for four years, for three new firefighter positions.

Chief Grayson responded to various questions from Councilwoman Bellamy.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Davis and carried unanimously.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-125. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 150

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on July 12, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Procedures and Standards for Subdivisions

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of amending the procedures and standards for subdivisions.

City staff is proposing this wording amendment concerning the procedures and standards for subdivisions to accomplish three things:

- To clarify the procedures and standards to which "exempt subdivisions" must adhere.
- To codify a staff interpretation concerning access to small (four or fewer lot) subdivisions.
- To place access standards in both the subdivision (by reference) and general development standards of the UDO so that there is no question that all subdivided properties (exempt or nonexempt) must comply with these standards in order to obtain development permits.

The UDO sets forth regulations in Article XV for the division of land within its jurisdiction. In accordance with the N. C. Gen. Stat. sec. 160A-376, certain divisions of land are set forth in Article XV as "exempt subdivisions" and therefore, are not subject to the regulations authorized by the State and contained in Article XV of the UDO.

While the City has long had established procedures for handling these "exempt subdivisions" it was determined that these practices needed to be codified for the benefit of all reading this section of the ordinance. The proposed amendment sets out the statutorily determined situations that constitute an exemption (7-15-1(b)(1)) and also specifies (7-15-1(b)(2) that consecutive "exempt land divisions" of the same tract or parcel, created as a means of circumventing the subdivision standards, will not be permitted if occurring within five (5) years of each other. These two sections are substantively unchanged from the current UDO, except for the clarifying addition of the five (5) year time limitation. The proposed amendment goes on to require that a certification of exemption be received prior to the recordation of an exempt subdivision in order for staff to confirm the exempt status of the proposed division of land. The most important clarification found in this amendment is contained in proposed Section (7-15-1(b)(4)) that outlines the effect of a certification of exemption. This proposed provision clarifies that while an "exempt subdivision" may be recorded without review and without compliance with the City's subdivision regulations, a building or zoning permit will only be issued for subdivided property if that property meets the standards for development set forth in the UDO. In practice, although it will not be required, staff plans to encourage those proposing an exempt subdivision to bring in a plat which can be reviewed both for the certification of exemption and for compliance with all City regulations.

This amendment also adds wording to Article XV (Subdivisions), by reference, and Article XI (Development and Design Standards) to codify a staff interpretation concerning small (four lots or fewer) subdivisions. This interpretation/proposed amendment states that where there is a division of land into not more than four (4) lots for development for single-family purposes, such subdivisions need not comply with the requirement that all residential lots abut a public street or private street developed to City standards. As an alternative, such subdivisions must provide for a recorded minimum twenty (20) foot right-of-way off of a city- or state-maintained road. Such rights-of-way shall contain a private drive meeting construction specifications concerning materials, the need for a turnaround, and the slope of the road. The ability to create these small subdivisions is limited, in the amendment, to those not coming from a parcel in the same ownership. Additionally, the amendment sets forth a spacing requirement to reduce the proliferation (in a single area) of these exceptions to the subdivision regulations.

The final element of this proposed amendment involves moving the access requirements (both commercial and noncommercial) currently found in the subdivision regulations (Article XV) to the City's general development standards (Article XI) with reference in the subdivision regulations. This amendment serves to clear up any confusion as to whether or not exempt subdivisions must comply with the access requirements of the UDO.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment clarifies and codifies the City's practices with respect to exempt subdivisions and adds a requirement for certification of exemption.
- The amendment sets forth an allowance for small single-family subdivisions to have access off a private drive meeting certain standards. Adding such a provision can facilitate infill development.
- The amendment clarifies that all lots, whether in exempt or nonexempt subdivisions, must meet the City's access standards.

Cons-

- Certifying exemption may be viewed as an unnecessary exercise for those subdividing properties.
- Private drives may be seen as insufficient access to developed properties.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Ms. Cogburn responded to various questions from Councilwoman Bellamy regarding this amendment.

New Light Industrial District

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to create a Light Industrial District.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for limited industrial development.

The amendment fills a gap between higher intensity industrial zoning districts and heavy commercial districts.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros –

- Several goals and strategies of the 2025 Plan will be implemented.
- A wider range of land uses would be available to property owners.

Con – None noted.

The Planning and Zoning Commission recommended approval of this amendment on April 6, 2005, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Mr. Shuford responded to various questions from Council regarding this amendment.

Open Space Standards Revisions

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the open space standards to ensure a more uniform application of the standards and to provide for a fee-in-lieu option.

This code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan related to the Natural and Built Environment. The Strategic Operating Plan proposes enhanced recreational facilities, especially greenways, as well as a fee-in-lieu program.

The UDO currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern.

The ordinance applies open space requirements to a broader range of land uses, including smaller nonresidential projects, and smaller residential developments. In most circumstances, it allows a developer to opt to pay a fee-in-lieu of open space instead of providing the open space. It caps the amount of open space required at 10% for residential and 5% for nonresidential and mixed use development; this eliminates the "penalty" that affects denser or more intensive developments in the current ordinance. It requires the City to expend open space fee dollars in areas reasonably proximate to where they are collected. It broadens the types of areas that can be used for open space. In the event that "excess" land area is required to implement the Greenway Master Plan, density or intensity bonuses are provided.

The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies. Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

The amendment has been routed to the Downtown Commission, CAN, CREIA, and CIBO for review and comment.

Pros –

- Several goals and strategies of the Strategic Operating Plan will be implemented.
- The amendment will provide for a more effective provision of meaningful open space.
- There is greater developer flexibility.

Con –

- The amendment applies to a wider range of land uses and therefore may be considered more restrictive than current requirements (possibly a pro).

Planning and Zoning members opposed to the amendment noted concerns that included a failure to see the benefit of requiring open space as a regulation in general, concern about the effect on smaller developments, and opposition to the fee-in-lieu concept.

The Planning and Zoning Commission recommended approval of this code amendment on June 1, 2005, by a vote of 4-3. City staff recommends approval of the proposed code amendment, as well.

During discussion of this amendment, Mr. Shuford responded to various questions from Council.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these public hearings on the July 12, 2005, City Council agenda.

RESOLUTION NO. 05-126 - RESOLUTION AUTHORIZING THE CITY MANGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PURCHASE OF PROPERTY FOR A MULTI-MODAL TRANSPORTATION CENTER

Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to enter into a Municipal Agreement with the N.C. Department of Transportation (NCDOT), Rail Division, to participate and expend funds in the amount of $140,000 for the purchase of a future multi-modal transportation site on the southeasterly side of Thompson and Decatur Streets.

Resolution No. 04-112, adopted on May 11, 2004, authorized the City Manager to enter into a municipal agreement with NCDOT for the purchase of three tracts of property in the Biltmore Village Shopping Center for the purpose of establishing a multi-modal transportation center. The state was not able to purchase this property, and an alternative site was sought.

The NCDOT Rail Division has located a 3.05 acre improved site on Thompson Street, immediately adjacent to the above site. The new site is accessible from Thompson and Decatur Streets, and is along the Norfolk Southern rail tracks. This site is superior to the former site in both access and size.

The purchase price for this property is approximately $1,700,000 less the value of a three-year lease-back (approximately $300,000) to Granieri Properties LLC, the current owners. There are provisions to extend this lease if the state agrees to do so. Granieri will be responsible for all insurance, maintenance, taxes and utilities.

The City of Asheville will hold a 10% undivided fee simple interest in this property and will contribute $140,000 to the purchase. This amount is in the Fiscal Year 2004-05 budget, and will not require a budget amendment.

The NCDOT Rail Division will undertake and be responsible for all management of the property.

The due diligence has been done by the NCDOT Rail Division, and reviewed in house by the City of Asheville. No problems or issues were found related to this site.

Advantage:

- Secure site for possible Inter-modal Rail Station

Disadvantage:

- Ties up $140,000 for the next three years.

This action complies with the City Council Strategic Operating Plan in the Natural and Built Environment, Goal 3, Support Passenger Rail Service to the Region.

City staff recommends City Council authorize the City Manager to enter into a municipal agreement with NCDOT to participate in the purchase of the new site.

Vice-Mayor Mumpower asked if this agreement obligates the City to participate in the construction on the new site. While responding to various questions from Council, Mr. Black noted that this agreement does not tie up the City in terms of rail service itself. However, Interim City Manager Westbrook felt it was fair to say that the State would expect the City to be a partner in anything that may come up there in the future if it works out financially.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-126. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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At 5:00 p.m., Mayor Worley announced a short recess.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to (1) re-advertise for the West resident position; (2) reappoint Tim Flora (North) and John Burchfield (Central); and (3) arrange interviews for Davidson Jones, Donald Swaby and Mary Ann LaMantia for vacancies on the Citizens/Police Advisory Committee.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Max Alexander and appoint Jean Ann Taylor to the Civic Center Commission.

It was the consensus of City Council to instruct the City Clerk to (1) appoint Councilwoman Bellamy; (2) reappoint Bill McGuire; and (3) arrange interviews for Bill Kelley and Nancy Ray. After a brief discussion, the City Clerk was instructed to contact the Board of Directors to see if they would be willing to entertain a Police Department liaison role on the Board. If there would be a concern with that, then City Clerk Burleson was instructed to also arrange an interview for Lt. Kevin West.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Diane Duermit and John Cram to the Historic Resources Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Eleanor Campbell and Jim Drummond; and (2) arrange interviews with Matthew Davis, Susan Birkholz, Geoffrey Ferland and Andrew Gall for vacancies on the Recreation Board.

The majority of City Council instructed City Clerk Burleson to prepare the proper paperwork to appoint T. Clark Brown as Chair of the Civil Service Board.

BUDGET WORKSESSION

City Council reviewed the budget prior to adoption on June 28, 2005.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:45 p.m.

Magdalene Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 28, 2005 - 3:00 p.m.

Special Meeting on Water Agreement Negotiations

Asheville City Council
Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Coms

Buncombe County Commissioners
Present: Chairman Nathan Ramsey, Presiding; Vice-Chair David Gantt; Commissioner Bill Stanley; Commissioner Carol Peterson; and Commissioner David Young; and County Manager Wanda Greene

Mayor Worley and Chairman Ramsey opened their respective meetings.

Vice-Chair Gantt said that the goals of the County Commissioners have always been to fix the water system. They want to treat the rate-payers the same and they want to create a board that has minimal political influence. He reviewed the history of the water system, going all the way back to the 1920's. A year ago City Council notified the County that they wanted to terminate the Water Agreement. He said the County and the City have met by letters, met in person, in staff, by managers, and by e-mail. The first offer was February 3, 2005, when the County Commissioners sent a proposal that said they want an independent water authority and we need to have an independent recreation board. They wanted to fix the Civic Center through the recreation board. On March 14, 2005, the County held a public hearing and a majority of City Council attended and told them what they thought about the water agreement. On March 27, 2005, City Council responded to their offer and basically rejected it and said the County's facts were incorrect. On April 27, 2005, the County and the City spent 16 hours in mediation. There were 3 main County proposals. We made an offer of $9.6 Million to the City and we proposed to take over the Civic Center and repair it. That offer was rejected. After mediation there have been many proposals back and forth between individual members of each board. The County received a City Council proposal on May 10, 2005, that water be a City-run department and require the County to pay $3.5 Million. Then on May 24, 2005, there was a County offer to do consolidated water and sewer authority which was indirectly enforced by the Chamber of Commerce. We received a letter from the City on June 7, 2005, which said City Council was disappointed with our proposal but did not give a counter-offer. On June 8, 2005, Councilman Dunn made a proposal that suggested a City-run water department, no deferential rates and money to be reinvested in the water system. On June 23, 2005, the County unanimously accepted that offer, however, they still felt an independent board is the best way. He said that presently around 30% of the water is lost. Based on a study, $350 Million of repairs and maintenance will be required over the next 30 years. According to a 2004 audit, there is $12.9 Million sitting in the account of the Water Authority and $11.4 Million of bond money that has not been spent. We have some of the highest rates and have been asked to raise the rates five different times in the past couple years. We have passed some and some we have not. The County has two proposals on the table. One proposal is to consolidate the water and sewer. We think it will save the rate-payers money and we think that water is a regional asset and the financial responsibility for fixing it should be a regional responsibility. We feel we could save money with N.C. Dept. of Transportation non-betterment and betterment repairs. The other proposal is Councilman Dunn's proposal. We will support either one of the two proposals. We hope we can work an agreement, even at this late hour.

Mayor Worley agreed that we want to fix the water system. That has been a commitment to the entire Council. We want to be able to move ourselves into a position as quickly as possible to return all of the water revenues to do just that. We also want to treat the rate-payers the same,

however, we differ in how we want to go about that. We recognize that there is a cost of service differential between the more dense urban area and the much-less dense rural area – it does cost more to provide service and perform the maintenance on a per customer basis in the rural areas. We want a system that is accountable to the public and we think the best way to provide accountability is through the governing body board that is controlling and making policy decisions that respond to the will of the people and that can be replaced if they don't respond to the will of the people. The City gave notice of termination a year ago and the City had every right to do so. The water agreement is a contract which has provisions on how the contract can be terminated and the City followed that contract He felt what disappointed City Council was how the "playing field," in terms of negotiating and dealing with the termination of that contract, has gone far beyond the bounds, with introduction, with the County Commissioner's assistance, of the legislation that seeks to go well beyond maintaining the status quo. That has clearly made these negotiations much more difficult and probably has prevented us from reaching an agreement long before now. One of the reasons set forth for that legislation was to bring us to the table. There has been a lot of allegations that we have not been at the table and not been negotiating. He put together a timeline, which started on July 13, 2004. A lot of meetings, which City Council and County Commissioners agreed to informally, took place between our staffs. Those meetings took place August 6, August 7, August 12, August 24, 2005, August 26, etc. There are almost four pages of dates when we have had various types of meetings, negotiations, and proposals back and forth until September and then picking up again in early December and January. The hiatus between September and November was at the County Commissioner's request, because the Commissioners were facing an election. When you look through the timeline, it is obvious that the City Council, within the parameters that it has set forth, had a couple of main goals in giving notice of termination. One was to achieve a more equitable rate structure and the other was to take control of the water line extension policy in terms of growth and in terms of the City's own growth. Secondly, the City wants to provide a little more accountability to fix a system that was convoluted in the way it was operating and it was not serving our needs. Those were our main goals. Within the parameter of our main goals, one, two or three members of Council or Commissioners came up with proposals. When you look at those over the course of the last year, certainly it is City Council's position that the City has bent over backwards to find every conceivable combination of things where we might make concessions and get to achieve some of our goals. It has not been for lack of effort on our part. We are continuing in our efforts to find a solution with the right combination, that will give us some of things we need with limitations and restrictions and to satisfy some of the County's needs. Our effort has been to find a solution as well. In any controversy, solutions are found with compromise and that is what we are trying to do and we hope we can continue and find that common ground with the County Commissioners.

Commissioner Peterson, member of the Regional Water Authority, spoke of the highly qualified appointees on the Water Authority. However, the way the organization is structured, the Water Authority has little authority. She explained why the Commissioners recommend the model of the Metropolitan Sewerage District ("MSD") be adopted.

Councilwoman Bellamy felt this was the time to not just state our positions, but to negotiate.

There was a brief discussion about the recreational facilities; however, Commissioner Young felt that if we are able to give the City and County Manager time they would be able to come up with a compromise. Commissioner Peterson felt it was very important that we realize the water agreement has so many facets she that didn't think the Commissioners are in a position today to take anything off the table because they are looking at the total picture.

Councilman Davis spoke in support in giving Asheville the opportunity to plan for future growth at a natural rate as other cities in North Carolina are allowed to do.

Commissioner Young explained why he supported the excellent water/sewer authority model in Orange County and Chapel Hill.

Councilman Dunn said that his proposal consists of three basic parts: (1) the City runs the water system; (2) no deferential rates; and (3) we put back as much money back into the water system as we can. He felt we needed to focus on water and work out the issues on the recreation facilities and the Civic Center at a later date.

Chairman Ramsey felt understands that if the County wants an independent authority then the County has to give up some things that are very important to them. Same thing with the City. If the City wants to run the water system as a City department, the City has to make some large concessions to accomplish that for us to reach an agreement. He feels the independent water/sewer authority would be very beneficial to the City taxpayers. The focus on deferential rates is unnecessary and not healthy for the City.

Upon inquiry of Councilman Newman, Chairman Ramsey confirmed that all the water lines outside the City of Asheville will be maintained by the County.

Councilman Newman said that Asheville just wants to be treated like all the other cities in North Carolina that operate municipal water systems. He did think there are some merits to the independent water authority idea, the N.C. Dept. of Transportation line replacement cost issue being probably being the most compelling one. He wished the County had put forth a proposal for an independent system that actually addressed enough of the City's concerns that City Council would have given serious consideration to. He also wished the County would have been more open to a City-run system. He supported the idea of solving the recreational piece of this puzzle today. He felt that if we gave ourselves additional time maybe the City, County and legislators could work together to solve some difficult issues.

Vice-Mayor Mumpower explained why he felt that this meeting, like the entire process is a charade. Our legislators' involvement has skewed our ability to create a fair and reasonable negation. We have further impaired ourselves by having closed negotiations. Every proposal that has come before City Council so far that has been seriously considered has involved Asheville taking a much larger step than the County. There is no way that the City Council could surrender the assets of the City without fair compensation or accept an agreement that doesn't represent a middle ground blank compromise. We can't even agree on the basic facts. How do you negotiate to a good point if you can't agree on basic facts, like what is the value of the water system? He would be in support of a 30-day delay.

Councilwoman Jones felt it was not fair that the citizens of Asheville pay the highest water rates in North Carolina. We may not be able to fix that in five years, but hopefully will be able to in 10-15 years. She suggested negotiations continue later this evening after both bodies hold their respective formal meetings. She felt hoped that at least the City and Council will agree on the recreation facilities piece today and get those out of the water agreement negotiations.

Chairman Ramsey said that from his perspective he felt the City should operate the Nature Center and Recreation Park.

Mayor Worley said that the nothing would prevent the City and County to negotiate an agreement after July 1, other than perhaps the passage of the two Sullivan Acts. Mayor Worley asked the County if they would be willing to continue negotiations.

Commissioner Gantt said the General Assembly, at the County's request, got involved and he felt that was a good thing for the people of Buncombe County because it started the two governing bodies to start talking. He would not be in favor of asking the General Assembly to

delay action on the two Sullivan Acts because he thinks that is what is best for the people of Buncombe County.

Chairman Ramsey said that if Councilman Dunn's proposal is adopted and we do it for a term of 35 years, he personally be willing to request that the General Assembly, if Sullivan Acts II and III pass, withdraw those two local bills.

Mayor Worley said there is some room in Councilman Dunn's proposal in some of the collateral issues and some willingness to give on Council, but there needs to be some willingness to give on the Commissioner's part as well. He hoped these discussions can continue in order to reach an agreement.

There was a brief discussion amongst the Council and Commissioners about what will happen if the Sullivan Act bills are adopted.

At 4:20 p.m., Mayor Worley and Chairman Ramsey adjourned their respective meetings.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

CHANGES TO THE AGENDA

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion since it related to the Water Agreement. In addition, he requested a discussion regarding the negotiations of the Water Agreement be added under "Other Business."

I. PROCLAMATIONS:

A. CERTIFICATE OF APPRECIATION TO ROBERT L. CAMBY JR.

On behalf of City Council, Councilman Davis, liaison to the WNC Regional Air Quality Agency, read the certificate of appreciation to Robert L. Camby, Jr., Executive Director of the Western North Carolina Regional Air Quality Agency, who will be retiring after several years of service

B. PRESENTATION OF TELLY AWARDS

Mayor Worley said that the Telly Awards were founded in 1979 and is the premier award honoring outstanding cable television programs and commercials, as well as the finest video and film productions. Award recipients represent the best work of the most respected advertising agencies, production companies, television stations, cable operators, and corporate video departments in the world. With a 25-year history of recognizing creative excellence, the Telly Awards is a widely known and highly respected international competition. The 26th Annual Telly Awards received over 10,000 entries from all 50 states and numerous countries. This was the first time the City of Asheville submitted programming for judging, and as a result, The Asheville Channel was recognized with two awards for the programs, "Asheville City Limits: Fire Rescue", and "Asheville City Limits: Sanitation and Recycling."

On behalf of City Council, Mayor Worley congratulated Jeff Reble, Cable Access Coordinator, Kelley Webb and Richard Grant for their work on these productions.

II. CONSENT AGENDA:

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion since it related to the Water Agreement.

Councilwoman Bellamy asked that Consent Agenda Item "J" be removed from the agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 14, 2005, AND THE WORKSESSION HELD ON JUNE 21, 2005

B. RESOLUTION NO. 05-127 - RESOLUTION ACCEPTING HOYLE LANE AND TREETOP ROAD IN LAKESHORE HILLS SUBDIVISION AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as a City maintained streets.

Section 7-15 1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Hoyle Lane and Treetop Road are developer constructed streets that have an average paved width of 23 feet and a length of 0.14 and 0.10 miles respectively for a total length of 0.24 miles. The City of Asheville staff inspected the construction of these roadways and certified they were built in accordance with City standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as a City maintained streets.

RESOLUTION BOOK NO. 29 – PAGE 152

C. RESOLUTION NO. 05-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR A GRANT FROM THE U.S. DEPT. OF INTERIOR, NATIONAL PARK SERVICE, FOR HAYWOOD ROAD NATIONAL REGISTER DISTRICT NOMINATIONS

Summary: The consideration of a resolution & budget amendment to enter into an agreement with the North Carolina State Historic Preservation Office (NCSHPO) to accept a federal grant from the US Department of Interior, National Park Service via the NCSHPO in the amount of $4,140 for the purpose of the preparation of the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District National Register Nominations and to receive the local match of $2,760 from SAW Ventures, LLC.

The project is to prepare two National Register nomination forms for the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District. The proposed West Haywood Road District includes approximately 27-28 properties on 3 ½ blocks running roughly between Dunwell Avenue and Brevard Road to the east past Mildred Avenue to the west. The proposed district was added to the North Carolina Study List in February of 2005, as the Haywood Road Historic District. The proposed East Haywood Road District includes approximately 12 properties on roughly two blocks and runs roughly between Michigan Avenue to the east and Hanover Street to the west. It was added to the North Carolina Study List in 1999 as the Haywood Road/ Westwood Commercial Historic District. A consultant who meets the qualifications outlined in 36 CFR 61 will be hired to prepare the nomination according to the

guidelines outlined in National Register Bulletin 16A. The complete and final draft will be submitted to the NCSHPO no later than August 31, 2006.

The total cost for the project is $6,900. The grant is for $4,140. SAW Ventures, LLC has agreed to provide the local match of $2,760. The City will not be responsible for the local match, although the HRC would like to reimburse Saw Ventures for a portion of the match, if possible. The grant period is from 7/1/2005-8/31/2006.

Pros:

- If the nomination is approved for listing on the National Register, no obligations or restrictions will be placed on the property
- If listed on the National Register privately owned buildings in the district will be eligible for a 20% federal income investment tax credit and a 20% state tax credit
- The local match will be provided by the SAW Ventures, LLC

Cons:

- National Register listing does not prevent demolition of structures or inappropriate alterations.

This architectural study will document the architectural and cultural history of the Haywood Road Corridor, which is vital to understancing the history of West Asheville. The preservation of this area further acknowledges the importance of cultural and architectural heritage in maintaining Asheville's unique "Sense of Place", which is identified as a Focus Area in the City's Strategic Operating Plan.

City staff recommends that the City of Asheville enter into an agreement with the State Historic Preservation Office and adopt a budget amendment to receive grant funds and local matching funds from SAW Ventures, LLC, to hire a consultant to complete the nomination report for the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District National Register Nominations.

Planning & Development Director Scott Shuford responded to some questions from Councilman Davis regarding this grant.

RESOLUTION BOOK NO. 29 – PAGE 154

D. ORDINANCE NO. 3243- BUDGET AMENDMENT FOR GRANT FROM THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR PREPARATION OF THE WEST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT AND EAST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT NATIONAL REGISTER NOMINATIONS

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 22 – PAGE 126

E. ORDINANCE NO. 3244 - BUDGET AMENDMENT FOR FEMA REIMBURSEMENTS

Summary: The consideration of a budget amendment which adds FEMA reimbursements to the Fiscal Year 2004-05 budget to replenish various departmental budgets that incurred storm related expenses.

Several departments incurred extraordinary expenses this year as a result of major clean-up efforts that the City had to undertake after the impact of hurricanes Ivan and Francis. Clean-up expenses for major tropical storms or hurricanes are typically not included in the City's an annual budget since they generally do not represent recurring annual expenses; as such, departments had to redirect resources that were initially earmarked for the provision of basic services to storm-related clean-up. The City has applied for and received FEMA for reimbursements for most of these expenses. The amendment will add $599,610 to the General Fund and $549,252 to Parks Capital Project budgets to replenish various departmental operating line items that were used to cover clean-up costs.

City staff recommends the budget be amended to add revenue received from FEMA to the Fiscal Year 2004-05 to cover the City's storm-related clean-up costs.

ORDINANCE BOOK NO. 22 – PAGE 128

F. RESOLUTION NO. 05-129 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Summary: The consideration of appointing the Chair to the Civil Service Board.

It is City Council's responsibility to appoint a Chair to the Civil Service Board annually.

At the City Council's worksession on June 21, 2005, it was the consensus of City Council to appoint T. Clark Brown as Chair to the Civil Service Board, to serve at the pleasure of City Council.

RESOLUTION BOOK NO. 29 – PAGE 155

G. RESOLUTION NO. 05-130 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Summary: The term of Max Alexander, as a member of the Civic Center Commission, will expire on June 30, 2005. In addition, Charlie Cole has resigned as a member, thus leaving an unexpired term until June 30, 2006.

At the City Council worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Max Alexander to serve an additional three year term, term to expire June 30, 2008, or until his successor has been appointed.

Also at the June 21, 2005, worksession, City Council instructed the City Clerk to prepare the proper paperwork to appoint Jean Ann Taylor to fill the unexpired term of Mr. Cole, term to expire June 30, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 156

H. RESOLUTION NO. 05-131 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The terms of Diane Duermit and John Cram, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2005.

At City Council's worksession on June 19, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Diane Duermit and John Cram to each serve a

three-year term respectively, terms to expire July 1, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 157

I. **RESOLUTION ALLOW THE EXECUTION OF DOCUMENTS NECESSARY TO COMPLY WITH THE COVENANT REQUIREMENTS OF THE CITY'S WATER SYSTEM REVENUE BONDS, SERIES 2001 FOR TERMINATION OF THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT**

This item was removed from the Consent Agenda for an individual discussion.

J. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT PICNIC**

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLUES, CARATS & GRAPES AMERICAN CANCER SOCIETY EVENT

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE WELCOMES THE WORLD SISTER CITIES EVENT

These items were removed from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 05-132 - RESOLUTION ALLOW THE EXECUTION OF DOCUMENTS NECESSARY TO COMPLY WITH THE COVENANT REQUIREMENTS OF THE CITY'S WATER SYSTEM REVENUE BONDS, SERIES 2001 FOR TERMINATION OF THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT

City Attorney Oast said that this is the consideration of a resolution allowing the execution of documents necessary to comply with the covenant requirements of the City's Water System Revenue Bonds, Series 2001 for termination of the Restated and Amended Supplemental Water Agreement.

The City Council has given notice of its intention to terminate the Restated and Amended Supplemental Water Agreement effective June 30, 2005. The bond documents for the Water System Revenue Bonds, Series 2001 contain a covenant, which must be deleted in order to allow the termination of the Water Agreement. There may also be other documents legally required to allow the termination of the Water Agreement. The resolution allows for the execution of the necessary documents to allow for the termination of the Water Agreement.

PROS:

- All necessary documents will be executed to allow for termination of the Water Agreement

CONS:

- None noted.

City staff recommends Council adopt the resolution allowing the execution of documents necessary to comply with the covenant requirements of the City's Water System Revenue Bonds, Series 2001 for termination of the Restated and Amended Supplemental Water Agreement.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-132. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 158

RESOLUTION NO. 05-133 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT PICNIC

RESOLUTION NO. 05-134 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLUES, CARATS & GRAPES AMERICAN CANCER SOCIETY EVENT

RESOLUTION NO. 05-135 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE WELCOMES THE WORLD SISTER CITIES EVENT

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Asheville Welcomes the World, scheduled for July 5, 2005, in the grassy knoll next to the Biltmore Building. This is an event to acknowledge Asheville's Sister Cities.
- City of Asheville Tennis Tournament Picnic, scheduled for July 21 and 22, 2005, at Aston Park. This is a hospitality picnic for the spectators and players.
- Clues, Carats and Grapes, scheduled for September 22, 2005, in the grassy knoll next to the Biltmore Building. This is a benefit for the American Cancer Society.

City staff recommends City Council approve these resolutions on behalf of the applying organizations.

Councilman Newman moved for the adoption of Resolution No. 05-133. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 160

Councilman Newman moved for the adoption of Resolution No. 05-134. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 162

Councilman Newman moved for the adoption of Resolution No. 05-135. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 164

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3245 - ORDINANCE TO REZONE 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Julia Cogburn, Urban Planner, said this is the consideration of an ordinance to rezone 1451 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District to Commercial Industrial District. This public hearing was advertised on June 10 and 17, 2005.

The owners, Narrell E. and Billie S. Owenby, have petitioned the City for rezoning property located on Sweeten Creek Road in South Asheville, which presently contains a single-family residence. The property backs up to Edgewood Road, a predominately residential street that intersects with Rock Hill Road. Sweeten Creek runs through the back of this property. As a result, a little over half of the property is in the regulatory flood area. The immediate back portion of the property is in the floodway.

The zoning surrounding the site is varied. Zoning to the west is RS-8; to the south RM-16; to the east RS-4; and to the north, CI.

The property immediately south of this property is wooded and vacant. Farther south there are a mix of residential uses. To the west, the land use is predominately single-family residential as you cross Edgewood Road although the Asheville Bit and Steel operation is located to the northwest of the subject property across Edgewood Road. Land uses to the north along Sweeten Creek Road are primarily commercial and commercial/industrial in nature from this property to the intersection of Sweeten Creek with I-40. To the east, across Sweeten Creek Road from the subject property, the land use is predominately residential. The Biltmore Church of God is located immediately northeast across Sweeten Creek Road.

CI zoning does not allow for single-family dwellings, so the existing structure would become nonconforming with this rezoning. CI zoning does, however, permit multi-family dwellings.

Sanitary sewer and water are available to this property.

Pros

1. The property is in an appropriate area for commercial development and is served by water and sewer. It is a level piece of property located along a busy road just south of the intersection of this road with an interstate highway.

2. Sweeten Creek provides a natural delineation point for the transition between commercial and residential development along Sweeten Creek Road as just south of this lot is where two streams converge into the creek.

Cons

1. This rezoning could be viewed by some as a continuation of strip commercial development along Sweeten Creek Road.
2. The properties surrounding the subject property in every direction, except to the north, are predominately developed for residential purposes.

The Planning and Development staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on April 6, 2005, the Planning and Zoning Commission had a split vote of 3-3 on this petition. The applicant has appealed to the Asheville City Council.

Ms. Cogburn presented City Council with a copy of a petition which contained approximately 35 signatures from members of the Stockwood Association who are opposed to the proposed rezoning.

Mr. W. Louis Bissette Jr., attorney representing the petitioner, presented City Council with a petition which contained approximately 75 signatures of people who support the rezoning to Commercial Industrial District. He said that this property has been in Mr. Owenby's family since around 1925. He showed City Council pictures of the property which showed the close proximity of other Commercial Industrial uses. He felt the rezoning would have a very mimimal impact on the Stockwood Subdivision. He urged City Council to rezone the property and noted that with all the restrictions on the property, they would not be able to get anywhere near 16 residential units built. In addition, he felt residential would not be attractive on the site due to the close proximity of other industrial and commercial uses and the fact that it is on a major thoroughfare.

Mrs. Hazel Edwards, resident on Stockwood Road and owner of property adjoining the subject property, did not oppose the rezoning.

The following individuals spoke in opposition to the proposed rezoning for various reasons, some being, but are not limited to: there will be a negative impact on the residential quality and integrity of the Stockwood community; the proposed property to be rezoned is kiddy-corner from the only entrance to the Stockwood community; various uses can be built on the property is the property is rezoned to Commercial Industrial; other properties along Sweeten Creek Road are likely to request to be rezoned Commercial Industrial as well; area residents bought their homes because other residential property was around them; property values of the residential homes will be reduced since they will be able to see industrial from their homes; City Council should stop rezoning residential property; if Council does want to rezone the property, they should wait until the widening of Sweeten Creek Road is completed; and more traffic will be added to Sweeten Creek Road if zoned Commercial Industrial:

Mr. Douglas Johnson, resident on Stockwood Road
Ms. Martie Hillyer, resident on Stockwood Road
Mr. Kevin Blanton, resident on Stockwood Road
Ms. Nancy Taylor, resident on Stockwood Road
Mr. Paul McNeil, resident on Stockwood Lane

Mr. Bissette pointed out that for commercial zoning, they are required to have a 35-foot setback, which is a great deal more than the residential required setback. He felt the setback would help buffer the building from the road and from the neighborhood.

Mayor Worley closed the public hearing at 5:50 p.m.

At the request of Councilwoman Bellamy, Ms. Cogburn read the permitted uses allowed in the Commercial Industrial District.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3245. This motion was seconded by Vice-Mayor Mumpower.

Vice-Mayor Mumpower felt this would be a limited intrusion on the neighborhood but a reality of a growing city.

Councilwoman Bellamy agreed that the Sweeten Creek Road area is changing, however, this property is basically surrounded by residential. She felt that if the property was brought to Council as a conditional use permit, then Council could place restrictions on it. However, a straight rezoning allows too many unknowns.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

Mayor Worley said that due to the number of votes received in favor of this ordinance, it would require a second reading, which will be held at the next formal meeting on July 12, 2005. He said that there will be no public comment allowed at the second reading.

ORDINANCE BOOK NO. 22 – PAGE 133

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON KENILWORTH KNOLL, KNOWN AS THE BEAUCATCHER CONDOMINIUMS, FOR A PROPOSED 106-UNIT CONDOMINIUM PROJECT

ORDINANCE NO. 3246 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON KENILWORTH KNOLL, KNOWN AS THE BEAUCATCHER CONDOMINIUMS, FOR A PROPOSED 106-UNIT CONDOMINIUM PROJECT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:58 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Kenilworth Knoll, known as the Beaucatcher Condominiums, for a proposed 106-unit condominium project.

On April 29, 2005, the Kassinger Development Group and their representative Gerald Green submitted a conceptual master plan for the construction of a 106-unit condominium project proposed on approximately 5.2 acres off of Kenilworth Knoll (Attachment to City Exhibit 3 – Aerial Map). The project site involves two parcels; the former McGuffy's Restaurant site and the Visions Healthclub site, each zoned Highway Business. The properties surrounding the site are all zoned Highway Business and include the following uses: an assortment of retail, restaurant and lodging facilities along the north and west sides of the property, a high-density multi-family complex to the south and Interstate 240, to the east.

The conceptual master plan and development of the site will include (Attachment to City Exhibit 3 – Site Plan):

- Demolition of the McGuffy's restaurant and Visions Healthclub facilities;
- A 14,400 square foot parking deck consisting of 48 spaces;
- A 36, 210 square foot off-street surface parking area consisting of 116 spaces;
- Sidewalks will be provided from the development to Tunnel Road;
- Transit shelter will be provided at the existing bus stop located at Tunnel Road and Kenilworth Knoll;
- Construction of a 163, 600 square foot building, housing 106 condo units;
    - 74 – 2 bedroom units, and 32- 1 bedroom units
    - Building will consist of 4-stories at a height of 50-feet

The elevations included in the plan submittal are for the front and rear facades of the building (Attachments to City Exhibit 3 – East Elevation and Rear Elevation Drawings). It illustrates craftsman style architecture with details such as: porches, chimneys, gabled rooflines with moderate to deep overhangs and double-hung windows. A list of proposed building material includes: stonework, hardi-plank siding, painted wood trim and cedar shake siding.

On May 16, 2005, the Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report and with the following added conditions: (1) The applicant address right-of-way and property discrepancy issues; (2) Sidewalk shall be installed along Kenilworth Knoll Drive down to Tunnel Road; and (3) Pedestrian signals shall be required at Kenilworth Knoll Drive and Tunnel Road.

The plans have been revised to address several TRC conditions outlined in the TRC Staff report including: setbacks, landscaping, open space and parking. Additional comments will be addressed upon final submittal to the TRC, should the project be approved by City Council.

On June 1, 2005, the Planning and Zoning Commission voted 7-0 in favor of approving the project subject to conditions by the TRC, staff and the following condition: The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed use of the property is a multi-family residential project. Prior to the issuance of any permits, the TRC will review the final detailed plans to insure technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety, are met.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project site consists of two developed parcels that will be excavated in order to construct the proposed development. Additional grading of the site will occur along portions of the western side of the property where the land begins to drop in elevation, excluding the steeper parts of the bank. This is necessary to accommodate both the parking deck and portions of the building that are proposed below grade. A single retaining wall structure will only be necessary around the sidewalk proposed on the northern end of the building. The required landscaping in this area, however, will mask the height of the structure.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The project site and the surrounding properties are all zoned Highway Business district and consist of both low to high impact commercial uses and high density residential uses. The building is being designed with high-quality, long lasting building materials with enhanced architectural features and is likely to have a positive affect on adjoining and abutting properties. In addition, landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The development will be compatible with the immediate and surrounding area that is zoned Highway Business district where a wide range of uses and a mixture of both small and large scaled buildings exist. The site is not only being developed at a density below what is permitted, but is also being developed in a manner that preserves the steeper slopes on site. In addition to the perimeter landscaping required for the project, both the

parking deck and portions of the residential building are proposed below grade in order to assist in providing visual relief of the full scale and height of the structures. Lastly, the proposed building is designed with enhanced architectural features and long lasting building materials that is likely to add character to the surrounding area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and transportation goals. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City Limits. The site is also located within very close proximity of transit service, potential employment centers, restaurants and shopping centers.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   A transit stop currently exists along the north side of Kenilworth Knoll and Tunnel Road. Additionally, any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The sito is served by a traffic signal at the intersection of Kenilworth Knoll and Tunnel Road. Comments received from Engineering staff at the Technical Review Committee meeting did not foresee any undue traffic congestion or hazards being created from this development.

Pros

- The site is appropriately zoned for this type of development.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development, and transportation goals.
- The proposed development will provide a high-quality infill site on several properties, one of which has remained vacant for a period of time.
- The density proposed for the development can be supported by the existing infrastructure and is in close proximity to transit service, potential employment centers and shopping venues, which makes the development attractive and appropriate at this location.
- The project will provide housing for people with a range of incomes and needs. Proposed pricing of the units range from $143,000k to $300,000.

Cons

- It is noted that staff did not find any "cons" with the proposed development.

Based on the seven findings, staff recommends approval of the conditional use permit with the conditions outlined by the TRC and the following added conditions (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned

on the site plan; and (3) The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that City Council does not have a role in the contractual issues between the operator of the health club and the patrons.

Mr. Gerald Green, representing the developer, spoke in support of the conditional use permit. They hope to strengthen the residential core in that area. This project will provide a wide-range of home ownership for people in our community.

After rebuttal, Mayor Worley closed the public hearing at 6:15 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3246, granting a conditional use permit for property located on Kenilworth Knoll, known as the Beaucatcher Condominiums, subject to the conditions outlined by the TRC and the following added conditions: (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan; and (3) The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 135

C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS ON HAYWOOD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3247 - ORDINANCE TO REZONE TWO LOTS ON HAYWOOD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:20 p.m.

Mr. Alan Glines, Urban Planner, said this is the consideration of an ordinance to rezone two lots on Haywood Road from Community Business II District to Central Business District. This public hearing was advertised on June 10 and 17, 2005.

The owners of 797 Haywood Road, Paul and Margaret Nichols, with a lease purchase option to SAW Ventures Haywood LLC, were given a letter of violation regarding grading activity without an approved permit on the two lots that are a part of the rezoning request. This is related to renovation work being done at 797 Haywood Road to excavate the basement of the existing building.

This project and property came to the attention of the Planning and Development staff because of grading activity on the two parcels adjacent to the Nichols Furniture building at 797 Haywood Road. The new owners of this building are SAW Haywood Ventures, LLC who are renovating the building. They also have a lease purchase agreement for the two adjacent parcels. The parcels provided parking for Nichols Furniture when it operated there. In order to use the basement of the former Nichols Building, the owners began to excavate soil in order to

lower the floor level. The soil material was placed on these adjacent lots and the grading began. The Unified Development Ordinance outlines that grading activities require a permit.

After meeting with staff, SAW Haywood Ventures decided to seek a rezoning for the two parcels to provide consistent zoning for the properties that are under their control. A rezoning to CBD will also provide some relief to the landscape bufferyard requirements for the CBD parcels. This is consistent with the historic pattern of development for the downtown business section of the Haywood Road. Properties are often developed parcel line to parcel line without a large landscape buffer area. However, if a parking lot were developed, a minimum five foot wide parking lot landscape strip would be required which includes a row of trees interspersed with shrubs. Additional parking lot landscaping may be required if internal parking lot aisles are provided.

Staff is considering some rezoning action along the Haywood Road corridor. Based on the high level of redevelopment activity along Haywood, staff is interested in selecting a suitable zoning district. It seems clear that the older development pattern with the building placed at the street front with a commercial storefront would be a successful pattern for new development along the corridor. A recent report produced by students from UNC-Chapel Hill also recommended a consistent pattern for commercial uses along the corridor. Zoning options considered by staff for Haywood Road have included the Neighborhood Corridor District, Urban Place District or a special district created for Haywood Road. The study by staff for this area is just getting underway and we are not ready to provide a complete recommendation for what zoning district will be most suitable at this time.

The Central Business District (CBD) is provided to reinforce the downtown as the center of commerce for the region. It also allows a wide variety of uses including office, retail, residential and commercial uses. It is likely that parts of Haywood Road were zoned CBD because this was the best fit for existing buildings and uses along the corridor. More of the properties are conforming with the CBD zoning in place. Also the Haywood Road corridor is historically the main commercial street for west Asheville and provides a similar function that the central business district does. Buildings are required to be set just behind the sidewalk in the Central Business District zoning areas. There are also some building development standards for new projects in this district.

The Community Business II District (CBII) allows medium to high density business and service uses serving several residential neighborhoods. CB II is also expected to serve as a workplace for many residents in the surrounding neighborhood and also be pedestrian and auto friendly. A wide variety of office, retail and residential uses are allowed in the CB II district. Although buildings can be placed anywhere on the lot, locating the building to the front of the lot is encouraged and parking is allowed to the side or rear of the building but not in front.

Pros

- The rezoning provides zoning consistency for this property and other adjoining properties under the same ownership.
- The historic development pattern is maintained and consistent with the surrounding area.
- A zoning change to CBD provides an efficient development pattern with some additional development standards for new buildings.

Cons

- The rezoning request removes the requirement for the landscape bufferyard, which is based on compatibility of uses.

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The Planning and Zoning Commission at their June 1, 2005, meeting voted 7-0 to recommend approval of the rezoning request. City staff concurs with that recommendation.

Mr. Austin Walker, applicant, was pleased to see what is happening in west Asheville and urged City Council to support his rezoning.

Councilwoman Bellamy said that the subject lots are deeper than the surrounding ones on Haywood Road and asked that as plans are developed, that they work with City staff to ensure that the houses are shielded from excess traffic and noise.

Mayor Worley closed the public hearing at 6:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3247. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 141

D. PUBLIC HEARING TO CONSIDER THE REZONING OF FOUR LOTS ON CLINGMAN AVENUE AND ADJOINING RIGHT-OF-WAY FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

ORDINANCE NO. 3248 - ORDINANCE TO REZONE FOUR LOTS ON CLINGMAN AVENUE AND ADJOINING RIGHT-OF-WAY FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Worley opened the public hearing at 6:28 p.m.

Ms. Julia Cogburn, Urban Planner, said this is the consideration of an ordinance to rezone four lots on Clingman Avenue and adjoining right-of-way from RM-8 Residential Multi-Family Medium Density District to Urban Residential District. This public hearing was advertised on June 10 and 17, 2005.

The owners, Mountain Housing Opportunities, Inc., have requested the rezoning of property located on the western side of Clingman Avenue immediately south of the developing Prospect Terrace area. The properties are currently vacant. The area proposed for rezoning abuts Clingman Avenue. It is proposed that one property be split zoned so that only the portion that abuts Clingman is rezoned to URD (leaving the portion abutting Jefferson as RM8). A small creek runs through a deep ravine in the property. Fill and piping will be necessary to develop the site. An unopened right-of-way has been included in this rezoning. MHO plans to petition to close this right-of-way in the future.

Zoning and land use surrounding the site are predominately higher density residential in nature. The zoning to the west is RM8; to the south RM8 with CI further down Clingman; to the east, the zoning is RM8 and to the north the zoning is mostly RM16.

The property immediately to the south of the subject properties is vacant. The Silver Dollar Restaurant is on property further south along Clingman as you approach the commercial/industrial section of the West End/Clingman neighborhood at the river. Properties to the north, west and east are predominately higher density single-family residential in character.

The RM8 District is intended to permit a full range of medium density multi-family housing types including single-family detached and attached residences.

The URD District is established to complement existing residential neighborhoods by providing an improved diversity of housing types, scale, affordability and character in areas where they can best be served by city services and infrastructure and is intended to be located on significant transit corridors and/or high growth areas. It is designed to provide new development and redevelopment opportunities that encourage urban scaled residential structures that relate to the street and character of Asheville's urban areas. A density of 32 units per acre is permitted.

Access to the properties is off of Clingman Avenue and Owens Bell Road. Sanitary sewer and water are available.

Pros

- The property is an appropriate area for higher density residential development as it is located in an area close to downtown with infrastructure to support such development.
- The plans for the West End/Clingman area promote higher density residential development in the residential core of the neighborhood.
- Surrounding development is predominately higher density residential in nature.

Cons

- Large ravine on the property will make development difficult.
- Non-residential development allowed in the URD District as part of a mixed use development may be considered by some to be inappropriate for this residential area.

The Planning and Development staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on June 1, 2005, the Planning and Zoning Commission unanimously (6-0) voted to recommend approval of this rezoning to City Council.

Mr. Mike Vance, representing Mountain Housing Opportunities, urged City Council to support their rezoning request.

Mayor Worley closed the public hearing at 6:30 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3248. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 143

E. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 13 SUMMERLIN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 9,000 SQUARE FOOT**

BUILDING EXPANSION AND AN ADDITIONAL 24-SPACE SURFACE PARKING LOT

ORDINANCE NO. 3249 - ORDINANCE REZONING PROPERTY LOCATED AT 13 SUMMERLIN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE

ORDINANCE NO. 3250 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 13 SUMMERLIN ROAD FOR A PROPOSED 9,000 SQUARE FOOT BUILDING EXPANSION AND AN ADDITIONAL 24-SPACE SURFACE PARKING LOT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:36 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at 13 Summerlin Road from RM-6 Residential Multi-Family Low Density District to Institutional/ Conditional Use, and a request to issue a conditional use permit for a proposed 9,000 square foot building expansion and an additional 24-space surface parking lot.

The owners of the property, Clear Channel Communication, have requested the conditional use zoning of property located in the City's extraterritorial jurisdiction area (ETJ) and unnamed neighborhood in West Asheville, north of Patton Avenue (Attachment to City Exhibit 3 – Location Map). The property is relatively large with a significant natural woodland surrounding the developed portion of the site. The existing building and parking area is accessed off of the dead-end of Summerlin Drive where City maintenance ends at the edge of the property (Attachment to City Exhibit 3 – Aerial Map). The property is surrounded by a few different zoning districts with the majority of the adjacent zoning being multi-family residential (RM-6 & RM-16); the property south of the subject site is single family residentially zoned (RS-2). Also located on the site are four communication broadcast towers scattered throughout.

The current use, radio broadcast studios and offices, is currently a "grandfathered" non-conforming use due to the existing RM-6 zoning in which business and office uses are not permitted. Non-conforming uses are not allowed to expand and any consideration of expansion would require a rezoning to a district that would allow the use as a "permitted use". The applicant is requesting a rezoning to the INST-CUZ designation in order to allow for the expansion but to also ensure that there will be limits on this, and any future development, in order to secure some compatibility with the adjacent properties.

The proposed Master Plan shows the existing 6,733 square foot building and existing 39 space parking lot (Attachment to City Exhibit 3 – Site Plan). Also shown on the Master Plan are two building and parking lot expansions. The first expansion (Phase 1) is for 9,000 square feet and an additional 24 parking spaces. The applicant is also seeking conceptual approval for a second building expansion (Phase 2) of an additional 5,200 square feet and 39 parking spaces (that would absorb the previous 24 spaces). Phase 1 would result in the maximum amount of parking permitted; Phase 2 would reduce the parking ratio to be within the minimum and maximum amount of parking permitted for the entire project area. Also associated with the project will be landscaping and other site compliance required for the parking areas (City Exhibits 4 and 5 – Existing Parking Photos). The proposed project will result in a medium impact use; when a medium impact use is adjacent to low or medium density residential a 25' Type 'C' landscape is required. This buffer may be reduced by approximately 40% when a distance separation of over 100 linear feet exists. Due to this separation and the amount of existing woodland that will remain, an alternative compliance that preserves the existing woodland edge will be considered as an alternative that is "equal to or better" than normal compliance. In areas where the surrounding woodland does not meet the minimum standard, additional plant material will be installed to meet the requirements of Section 7-11-2 of the Unified Development Ordinance.

At their May 16, 2005, meeting, the Technical Review Committee (TRC) met to review the project and made a motion to approve the rezoning and Conditional Use Permit request with the conditions outlined in staff's report. The majority of the revisions were minor revisions of clarification.

At their June 1, 2005, meeting, the City of Asheville Planning and Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and voted unanimously to recommend approval to the Asheville City Council, stipulating that the applicant meet all outstanding TRC conditions. In the intervening month the applicant has submitted a revised Master Plan that does appear to address the majority of the TRC comments, in addition to a formal letter of alternative compliance.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

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2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed building expansion will be located in the portion of the property where topography is very mild and only a relatively small amount of site disturbance is expected.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The existing use and proposed expansion are centrally located on the site with a substantial distance and vegetative buffer in place. No new access points for the project are proposed and it is anticipated that the expansion will be barely detectable by adjacent properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The proposed expansion is considered to be small (one story; 15,200 square feet total), relative to the size of the subject property (over 61 acres). In addition, as a result of the proposal a significant vegetative buffer will remain in place which will aid in preserving the character of the residential areas by buffering them from the non-residential use.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The ***Asheville City Development Plan 2025*** describes the need for the city to move away from "smokestack" type industries while attacting high-tech businesses. It also states that as a goal of the *Sustainable Economic Development Strategic Plan* that effort must be made to insure that Asheville's urban planning, zoning, and permitting processes, facilitate sustained and positive development (p. 200). Approval of this project would allow for the expansion of a "smokeless" high-tech business while the adoption of the associated masterplan would help insure compatibility with the adjacent residential uses.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers on Patton & the New Leicester Highway. In addition, the proposed project will only require a relatively small expansion to the existing water and sewer service and preliminary review has not revealed any problems with providing future service to the building expansion.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

Although the proposed building expansion is 1 ½ times the size of the existing building, the parking area is not being expanded to the same ratio. No new access points for the project are being proposed and the use is not expected to generate at significant amount of traffic. Lastly, the City Traffic Engineer has reviewed the proposal and has not identified any traffic hazards.

Pros

- Allows for the expansion of a high-tech business.
- Retains a significant distance and vegetative buffer to adjacent properties.

Cons

- Allows for the expansion of a currently non-conforming use.
- Reduces the potential for the property to be redeveloped for a multi-family residential development.

For the reasons outlined, City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change from RM-6 to Institutional/Conditional Use and approval of the associated conditional use permit with detailed Master Plan.

Mr. Jeff Glasscock, architect representing Clear Channel, urged City Council to support the conditional use zoning.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:38 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located at 13 Summerlin Road from RM-6 Residential Multi-Family Low Density District to Institutional/Conditional Use. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 145

Vice-Mayor Mumpower moved to adopt Ordinance No. 3250, to issue a conditional use permit for property located at 13 Summerlin Road for a proposed 9,000 square foot building expansion and an additional 24-space surface parking lot, subject to the applicant addressing all outstanding TRC conditions before final zoning approval. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 147

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 05-136 -RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2005 Annexation Areas to reflect revisions to the revenue estimates.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Ridgefield Business Park, Ascot Point Village, Long Shoals Road, Airport Road, Two Town Square, and Town Square East areas to City Council on April 26, 2005. The report included a financing plan with estimates for revenues and expenditures included. The City Council adopted the Plan on this date.

The staff is now proposing that three pages of this plan be amended (those dealing specifically with revenue estimates) for two reasons. The first is to revise these revenue figures to reflect last minute changes to the qualifications numbers (population and acreage) that we failed at final publishing of the Plan to transfer to the revenue section of the plan. Secondly, the Budget and Research Division has provided us with new estimates for a few of the revenue figures, based on more current data. These revisions/corrections result in a net increase to the revenue estimate for these annexations of $53,550.00

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to reflect revisions/corrections to the revenue estimates.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-136. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 166

B. ORDINANCE NO. 3251 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE RIDGEFIELD BUSINESS PARK AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ridgefield Business Park area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Ridgefield Business Park area, with an effective date of September 30, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3251. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

Councilman Dunn said that he has voted against every annexation since being elected because he did not feel that the City was addressing some major issues, such as the water agreement, police presence, drug enforcement, and the issue of an increased room tax. As long as those issues were not addressed, he would not vote for annexation because we are not taking care of things we should be taking care of. Hopefully with the budget soon to be adopted, Council will be addressing some of those major issues and he would start supporting annexation.

Vice-Mayor Mumpower said there are strong arguments for annexation; however, he is principally against the idea of forced annexation. In addition, he said that we have a demonstrated willingness to annex manufacturing industry and he is opposed to that. Finally, he thinks it's unfair to annex County residents and not be able to give them any lower rates to help compensate for those added taxes.

Councilman Newman felt that annexation is about fairness in taxation. While the involuntary nature of the annexation process is not pleasing, it's even less fair to require the citizens and businesses who are located in the City of Asheville to pay twice the level of taxation. The families and businesses in the City of Asheville are paying for infrastructure and services that are important to the City of Asheville but are also important to all of Buncombe County and Western North Carolina. As the areas around the City limits become just as urbanized and just as developed as the areas across the street that are in the City limits, then to require the people who live in the City to pay double of what the others pay, is not fair.

ORDINANCE BOOK NO. 22 – PAGE 152

C. ORDINANCE NO. 3252 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ASCOT POINT VILLAGE AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ascot Point Village area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to

extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Ascot Point Village area, with an effective date of December 31, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Newman moved for the adoption of Ordinance No. 3252. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 155

D. ORDINANCE NO. 3253 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE LONG SHOALS ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005. .

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Long Shoals Road area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Long Shoals Road area, with an effective date of December 31, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Davis moved for the adoption of Ordinance No. 3253. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 158

E. ORDINANCE NO. 3254 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AIRPORT ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Airport Road area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Airport Road area, with an effective date of December 31, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3254. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 161

F. ORDINANCE NO. 3255 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE TWO TOWN SQUARE

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to Two Town Square.

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On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for Two Town Square, with an effective date of September 30, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Newman moved for the adoption of Ordinance No. 3255. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 164

G. ORDINANCE NO. 3256 – ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE TOWN SQUARE EAST

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Town Square East area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Town Square East area, with an effective date of September 30, 2005.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Davis moved for the adoption of Ordinance No. 3256. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 167

At 7:05 p.m., Mayor Worley announced a short recess.

H. ORDINANCE NO. 3257 - ORDINANCE ADOPTING THE FISCAL YEAR 2005-06 ANNUAL OPERATING BUDGET

Assistant City Manager Jeff Richardson said that this represents the Fiscal Year 2005-06 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal Year 2005/2006 Annual Operating Budget was presented to City Council on May 2, 2005. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 3 and June 10, 2005. The City Council conducted a public hearing on the budget on June 14, 2005.

The Fiscal Year 2005/2006 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.53 per $100 of assessed valuation, which reflects no increase over the current property tax rate. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at $103,926,947, which includes a General Fund appropriation of $74,392,126. This budget includes several changes that were made by Council at the June 21 Council meeting. Those changes are summarized below:

- Council added a total of $672,710 to the budget to support various new programs and initiatives. Those initiatives included $100,000 in annual debt service payments to finance the replacement of the Civic Center roof; $165,000 for repairs and renovations at the Reid Center and other recreation centers; $115,000 for the widening of Yorkshire Street; and $292,710 to hire five additional police officers, fund necessary training and equipment expenses, and purchase 3 additional police cars.

- In addition, $55,000 has been added to the budget to cover the cost of an additional Project Engineer position. This position was requested in the Proposed Budget; however, no funds were included to cover its cost, as funding was contingent upon Council approval of an increase to the Plans Review fee for Water Line Extensions. Council subsequently approved the fee increase; thus revenue and expenditures associated with the Project Engineer have been added.

- A portion of the aforementioned new initiatives was funded by identifying $245,813 in revenue adjustments. Specifically, $7,500 in revenue was added by increasing Adult Athletic Fees; $35,000 by increasing Co-sponsored group fees; $115,000 by transferring savings from the Affording Housing Infrastructure Project to the General Fund; $36,000 from increased MPO matching support from other jurisdictions; and $52,313 was added by

adjusting sales tax revenue estimates.

- The remaining portion of the new initiatives was funded by reducing expenditures by $426,897 in various areas of the budget. Specific reductions are as follows:

Remove Pack Square Consultant Cost	$12,500
Re-bid Recycling Contract	$11,000
Reduce Free Transit Pass Budget	$17,000
Eliminate 3 Vacant Telecommunicators	$105,261
Eliminate Vacant GASB Accountant	$40,000
Bring Minority Affairs In-House	$50,000
Reduce Azalea Park	$50,000
Reduce Memorial Stadium	$50,000
Reduce Contingency	$91,136
Total	**$426,897**

- Outside Agency funding is presented in accordance with the Outside Agency Committee recommendations. Several changes were made to Outside Agency appropriations for Fiscal Year 2005-06.

- Various changes or increases to fees & charges are presented in accordance with the Fees & Charges Committee recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance. Changes to the Affordable Housing Rebate program have been made to make it consistent with the standards used for the Affordable Housing Trust Fund Program.

Staff requests that Council review the FY 2005/2006 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Discussion surrounded Councilman Newman's proposed amendment to the stormwater program. He suggested investing more funds into the Priority Capital Projects ($50,000 increase) for infrastructure and reducing education/outreach ($15,000 reduction), public participation ($5,000 reduction) and stormwater planning ($30,000 reduction).

City Engineer Ball could support reducing the education/outreach and public participation by $20,000 and putting that into Priority Capital Projects, however, she explained the need for the existing $200,000 in stormwater planning. She said that any savings will be folded into the capital projects.

To address Councilman Davis' concern about people who have gone the extra mile to comply with stormwater regulations, Ms. Ball said there is the opportunity for people to get up to a 60% credit. City Manager Jackson said that since this is the first year of the stormwater mandated program, staff would report back in 6 months to update Council on how the policies and implementation of the program is proceeding.

Discussion surrounded Councilman Newman's proposed amendment to move forward with the Police take-home car policy in light of the significant budget reductions previously agreed to and with a modest reduction in the municipal salary increase (3% average pay increase but not the 1% cost-of-living). He explained four significant benefits: (1) creating a significant "perk" for our law enforcement officers; (2) improving the retention of good officers; (3) creation of a strong incentive for officers to consider living in Asheville; and (4) it will free up additional parking spaces

in downtown. Discussion of Police moral and vehicle maintenance surrounded this suggested amendment.

Discussion surrounded Councilman Newman's proposed amendment regarding the deletion of the 1% cost-of-living increase. He felt a 3% average increase is a fair and positive increase, given the state employees are expecting a 2.5% increase. He also felt that in light of the uncertainty of the water agreement Council should be careful to limit the expansion of government spending which will create permanently recurring costs. Discussion surrounded this suggested amendment.

Councilwoman Bellamy supported the Police take-home car policy; however, not at the expense of deleting the 1% cost-of-living increase for all City employees. She suggested the amount for the take-home car policy come out of Fund Balance.

Councilman Newman moved to approve a 3% average increase and a .5% cost-of-living increase for City employees and implement the 4-year lease program for the Police take-home car policy. This motion was seconded by Vice-Mayor Mumpower. Said motion failed on a 3-4 vote, with Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

Discussion surrounded other areas (Housing Trust Fund, Fund Balance) to find the necessary funds to implement the 4-year lease program for the Police take-home car policy.

City Manager Jackson said here is merit to the take-home car policy if the cars stay within the City limits. However, he would not recommend any cut of non-recurring funding for this policy direction. He said that staff will update Council in 90 days on sales tax data, the revenue picture and the overall budget position along with providing some other options on how to implement this program.

Mayor Worley felt there is a majority support for the take-home car policy, but the real concern is the budgetary implications. After a short discussion, it was the consensus of Council to support the Police take-home car policy and leave it up to City staff to implement.

After a discussion initiated by Councilwoman Bellamy, it was the consensus of City Council to co-sponsor the Parks & Recreation events in the amount of $35,000.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved to adopt Ordinance No. 3257, with the following changes (1) in the stormwater program budget, reducing the education/outreach and public participation by $20,000 and reallocating it into Priority Capital Projects; (2) implement the Police take-home car policy; and (3) reinstate the $35,000 for the co-sponsor of Parks and Recreation events. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 170

V. NEW BUSINESS:

A. RESOLUTION NO. 05-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE ASHEVILLE TOURISTS FOR THE USE OF MCCORMICK FIELD

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the City Manager to enter in to a lease agreement with the Asheville Tourists for the use of McCormick Field.

The Asheville Tourists of the South Atlantic Baseball League have used McCormick Field for many years and wish to continue this arrangement. The use of the facility is governed by a lease agreement between the Tourists and the owners of the facility.

With the transfer of McCormick Field from Buncombe County to the City of Asheville upon the termination of the 1981 Water Agreement, the current lease agreement between the Asheville Tourists and Buncombe County is no longer in effect. A new lease agreement has been negotiated between the City of Asheville and the Asheville Tourists. The new lease agreement will be effective July 1, 2005, for a period of nine years and eleven months.

Pros:

- Allows for the continued use of McCormick field by the Asheville Tourists for a significant period of time.
- Allows for cooperative efforts between the City and the Asheville Tourists to encourage greater community use of the facility, especially in terms of youth baseball.

Cons:

- Failure to enter into the agreement would cause the Asheville Tourists to find another facility for baseball, possibly away from Asheville.

This action relates to City Council's Strategic Operating Plan of improved water system governance that better serves City of Asheville goals; Objective A: Gain control of growth by disengaging from the existing Water Agreement.

City staff recommends that City Council authorize the City Manager to enter into a lease agreement with the Asheville Tourists for the use of McCormick Field.

Because of the water agreement negotiations, Mr. Brinson said that City Council has not had the opportunity to review this item at a worksession. He then responded to various questions from Council regarding this lease, some being, but are not limited to: maintenance of the facility; parking; how long has the Asheville Tourists been in their current contact; what is the lease amount and does that amount increase in future years; has consideration been given to a shorter term than 9 years; and has the City looked at what other cities do in terms of minor league baseball franchises.

City Manager Jackson suggested this matter be deferred until City Council has had an opportunity to get more background information and review the terms of the lease. Mr. Brinson explained that the lease will expire on July 1, 2005, depending the outcome of the water agreement termination.

Mayor Worley said that members of City Council have been furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-137. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 170

B. RESOLUTION NO. 05-138 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A PROPERTY TAX COLLECTION AGREEMENT WITH BUNCOMBE COUNTY TO CONTINUE COLLECTION OF THE CITY OF ASHEVILLE'S PROPERTY TAXES

Interim Finance Director Ben Durant said that this is the consideration of a resolution authorizing the Mayor to sign a property tax collection agreement with Buncombe County to continue collection of the City of Asheville's property taxes.

As part of the Restated and Amended Supplemental Water Agreement, Buncombe County has collected and remitted property tax payments on behalf of the City of Asheville. The property tax collection process is a long, involved process which utilizes staff specifically trained in that function. If the City Council decided to begin to collect City property taxes within the City, it would require significant staff time and expense to prepare for implementation of the collection process and to perform such a process effectively. The proposed agreement would allow for continuation of the current property tax collection process for the City while the Council decided either to begin such a collection process within the City or to negotiate a long-term agreement with the County or some other service provider.

The Buncombe County Board of Commissioners approved this on June 21, 2005.

PROS:

- The City's property tax collection rate would remain high, as it mirrors the collection rate of Buncombe County
- The proposed agreement continues until terminated on a year-to-year basis and does not lock the City into a long-term agreement
- The proposed agreement would allow time for Council to decide to perform the process in-house or for a more favorable agreement with the County to be negotiated

CONS:

- None noted.

City staff recommends City Council authorize the Mayor to sign a property tax collection agreement with Buncombe County to continue collection of the City of Asheville's property taxes.

Councilman Dunn wondered how much it would cost for the City to begin collecting the property taxes. Mr. Durant said that we could probably do it for half of what the County is charging us; however, there are other issues to be considered, one is the logistical sort out that would need to occur and we just didn't have an opportunity in this budget year to do that. Next year when we renegotiate this contract, we will look for a better rate.

Mayor Worley said that members of City Council have been furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-138. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 171

VI. OTHER BUSINESS:

DISCUSSION REGARDING NEGOTIATIONS OF THE WATER AGREEMENT

RESOLUTION NO. 05-139 – RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, REGARDING TERMINATION OF THE WATER AGREEMENT WITH BUNCOMBE COUNTY

Considerable discussion surrounded Councilman Newman's proposal if there is not an agreement reached between the City and the County. He addressed some of the following concerns: (1) concern customers who live outside the City feel there may be some sudden and dramatic changes to their water bills if there is no agreement is reached and the City resumes full management and governance of the water system; (2) concern about different rates for customers inside and outside Asheville; and (3) concern the current water customers might be required to annex into Asheville as a condition of continuing to receive water service. He suggested that if there is no agreement reached between the City and County that the City Council would agree for a period of at least 12 months to not institute any rate deferential between customers inside the City and outside the City of Asheville. In addition, the City would make it a policy that existing water customers outside the City of Asheville would never be annexed into the City of Asheville as a condition of continuing to receive water service. These proposals would allow us some additional time to continue to talk to the County Commissioners to see if there are some ways that we can reach agreement about water policies into the future. The final element of the proposal, would be that even if we don't reach an agreement this week that we would communicate our willingness to impose these restrictions on ourselves to provide reassurance to all parties and that we would request that we establish a regular time for open public meetings with our County Commissioners to continue to seek a final mutually acceptable resolution to the water issues in our community. If, however, the State of North Carolina passes either of the two anti-Asheville bills, this agreement would be null and void because the City would be forced at that point to defend the interests of the people of Asheville through appropriate legal measures.

Mayor Worley said that it never has been the City's intent or policy and is not and will not be our policy that existing water customers outside the City of Asheville would have to be annexed into the City of Asheville as a condition of continuing to receive water service.

Councilman Dunn explained why he did not want to box ourselves into a 12 months of not instituting any rate deferential between customers inside the City and outside the City of Asheville.

Vice-Mayor Mumpower explained why would be able to support the resolution for a shorter period of time.

Councilman Newman explained why he is proposing the 12-month period of refraining from implementing any rate deferential, which is basically to give opportunities for public negotiations between the City and the County.

Councilman Newman moved to adopt Resolution No. 05-139 as follows: WHEREAS, the Water Agreement between Asheville and Buncombe County will expire at midnight on June 30, 2005; and WHEREAS, there are pending in the North Carolina General Assembly two local acts affecting Asheville known as Sullivan Act II and Sullivan Act III; and WHEREAS, Asheville and Buncombe County have been negotiating over the issues surrounding the termination of the Water Agreement, which negotiation has been severely hampered by the pending legislation; and WHEREAS, there have been misunderstandings about the intent of the City of Asheville with regard to continued water service for water customers of the City of Asheville system living outside the corporate limits of Asheville; and WHEREAS, there is a desire on the part of the Asheville City Council to have regular, periodic meetings with the Buncombe County Commissioners to seek a resolution of the issues surrounding the termination of the Water Agreement; NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF

ASHEVILLE THAT: (1) The City of Asheville does hereby agree not to charge or attempt to charge a rate differential to water customers of the City of Asheville system living outside the corporate limits of Asheville at any time prior to July 1, 2006, provided that the pending legislation known as Sullivan Act II and Sullivan Act III is not enacted into law; (2) The City of Asheville further reaffirms that it has never been its intent, is not its intent and will not be its policy in the future to require any existing customer of the Asheville water system residing outside the corporate limits of Asheville to annex into the City of Asheville as a condition of continuing to receive water; and (3) The Asheville City Council further requests that the Buncombe County Commissioners establish a regular, periodic open meeting schedule with the Asheville City Council for the purpose of seeking a resolution to the issues surrounding the termination of the Water Agreement. This motion was seconded by Councilwoman Bellamy.

Ms. Leslee Kulba felt the City should not cave into Buncombe County. She didn't see where the County is negotiating with the City and the City should re-think another strategy.

Councilwoman Jones felt that it is clear that the citizens care about the water issue and they don't want it to be resolved at all costs. She spoke about the City's commitment and willingness to continue this meeting until later this evening to work on the water agreement.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

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MISCELLANEOUS

Vice-Mayor Mumpower thanked Capital Fitness which donated fitness equipment to the Fire Department.

Vice-Mayor Mumpower spoke about the success of the For Our Kids event in Pisgah View Apartments.

Vice-Mayor Mumpower also applauded Jean McCloud for her work in litter clean-up.

CLAIMS

The following claims were received by the City of Asheville during the period of May 27-June 9, 2005: Lori Becker (Streets), David Freeland (Police), Duraline Imaging (Fire) and 29 Haywood Street (Parks & Recreation).

The following claims were received by the City during the period of June 10-23, 2005: Christopher Hollifield (Police), Dan Zavoras (Water), Carol Haack (Parking Garage), Abraham Adams (Police) and Franklin Fountain (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

CONTINUATION OF REGULAR MEETING

At 9:30 p.m., Mayor Worley continued the regular meeting until Thursday, June 30, 2005, at 4:00 p.m., in the Council Chamber of the City Hall Building.

Continuation of Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: Vice-Mayor R. Carl Mumpower

At 4:00 p.m., Mayor Worley reconvened the regular meeting.

Mayor Worley said that City Council has worked very hard with the Buncombe County Commissioners over the last year to negotiate an appropriate resolution to the water agreement. Council has been absolutely dedicated to advocating for the best interests of the City residents that we serve. He recapped the reasoning and history of the termination process of the water agreement. He then reported on his and City Attorney Oast's meeting with the General Assembly yesterday before the Senate Committee on Local Government that was considering the Sullivan II and III bills. We found that one of the bills had been substantially altered from what we had previously seen. The altered bill made is very clear that water could not be used in any manner or method to promote growth of the City's boundaries. It also said there would be no transfers of any funds from the Water Fund to the General Fund. Actually, City Council wanted the revenue from the assets of the water system to go back into the water system to meet the needed maintenance requirements. We have consistently talked about doing that, but we talked about doing a phasing in period of five years. We approved our budget on June 28 including those funds ($1 Million) and now find that the legislature took that away from us. He explained the terms of the resolution Council passed Tuesday night to the Local Government Committee. He asked the Committee to defer action on the bills, leave them in place, and if we can't come to an agreement, then the legislature would be free to take whatever action they deem most appropriate with respect to the bills. He stressed there was no need to rush through them right now. The Committee, the Senate, and the House, however, quickly approved both bills.

City Manager Jackson said that we have a very well thought out transition plan and have been communicating closely with the County for a smooth transition. Interim Water Resources Director David Hanks spoke on how the water system transfer will occur and Parks and Recreation Director Irby Brinson spoke on how the recreation facilities transition will occur.

City Manager Jackson spoke about the transition of the maintenance of water lines in the County. With the agreement termination those become a County maintenance responsibility. It is his preference for all the operation and maintenance of the water system to be a City responsibility and it would be a better-managed system if all the operation and maintenance of that system would be done in one place. The question is what would be the fair compensation to the City for managing and operating those assets, which are no longer a City responsibility. Those discussions between him and the County Manager will continue.

City Manager Jackson said that we basically have a $1.1 to $1.2 Million budget question. Through City staff, he is developing a series of cost-cutting alternatives that he will bring back to Council in 60-90 days. They would like to have the time to evaluate not only the impact of this legislative change and the timing of it, but also to re-evaluate our revenue generation options and get direction from Council on potential operating impact reductions, etc. In an interim period, he suggested Council implement the budget as approved by Council on June 28, with the exception that we implement what we can administratively, without impacting services or making any policy changes, such as, postpone hirings, postpone acquisition of equipment, entering into contracts

that are not time-sensitive or mission critical. We will challenge ourselves to close this gap administratively while we develop a very comprehensive budget amendment package that Council might consider. Council has the ability today to proceed under the budget document that Council approved on June 28 and to weigh your alternatives for potential amendments in the future. That is made possible because the City, under Council's leadership, has established a significant Fund Balance.

It was the consensus of Council to have the City Manager bring back a proposed budget balancing plan in 60-90 days.

Each Council member briefly commented on their perspective of the water agreement negotiations.

Mayor Worley responded to various questions from the media.

Closed Session

At 4:58 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Gannett Pacific Corporation d/b/a Asheville Citizen-Times Publishing Company, an Hawaii Corporation; Chesapeake Television, INC., d/b/a WLOS-TV, a Maryland Corporation; City of Asheville; and County of Buncombe, and to discuss potential litigation The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 6:10 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Charles D. Worley
MAYOR

Tuesday – July 12, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 11-18, 2005, AS "SWEET ADELINES INTERNATIONAL WEEK"

Mayor Worley read the proclamation proclaiming July 11-18, 2005, as "Sweet Adelines International Week" in the City of Asheville. He presented the proclamation to Ms. Lee Hines, Chair of the local chapter Song O' Sky. The local chapter also gave City Council a short performance.

II. CONSENT AGENDA:

Due to a conflict of interest, Councilwoman Bellamy asked that Consent Agenda items "D" and "E" be removed for individual votes.

A. RESOLUTION NO. 05-140 - RESOLUTION ADOPTING "TRIPLE H DRIVE" AS A NEW STREET NAME LOCATED OFF SAND HILL ROAD

Summary: The consideration of a resolution adopting Triple H Drive as the name for the new street located off Sand Hill Road.

The owners of property located off of Sand Hill Road have requested a new street name of "Triple H Drive." Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structure from Sand Hill Road without causing emergency response delays.

Pros:

- The street will be utilized to access twelve (12) new homes.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Cons:

- There are no negative affects of for assignment of Triple H Drive to this new road.

This action complies with the City's Strategic Operating Plan as it validates levels of emergency services provided for our citizens. This is found in the Critical Services and Infrastructure, Goal 3 – Strong City and County Partnerships, Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; and Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends adoption of the resolution establishing Triple H Drive as the name for the new street located off Sand Hill Road.

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B. RESOLUTION NO. 05- 141 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER TO PREPARE REDEVELOPMENT PLANS FOR THREE AREAS ALONG THE SWANNANOA AND FRENCH BROAD RIVERS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Rural Economic Development Center to prepare redevelopment plans for three areas along the Swannanoa and French Broad Rivers, and approval of the accompanying budget amendment, in the amount of $40,000.

In response to last fall's flooding, the General Assembly provided grant funding through the Rural Economic Development Center for communities that suffered flood damage. This funding includes planning monies (the subject of this report) as well as future implementation monies of up to $700,000 per redevelopment area.

The City of Asheville applied for funding for three areas along the Swannanoa and French Broad Rivers. One area, the Biltmore Village area, was specifically earmarked in the legislative allocation. The other two areas – East Swannanoa and French Broad – were pursued by staff and determined eligible for funding by the Rural Center. We have received a total of $40,000 for planning in the three areas.

Staff has been analyzing these areas in anticipation of market-driven and flood-related redevelopment and these funds will enable us to enhance our research. We will have a draft product for Council consideration by the end of July in accordance with the provisions of the grant agreement.

Pros:

- Allows us to develop an enhanced redevelopment plan for each of these areas.
- Provides a potential source of plan implementation funding.

Cons:

- None noted.

City staff recommends City Council adopt the resolution authorizing the City to enter into the redevelopment planning grant agreement with the Rural Economic Development Center, and approval of the accompanying budget amendment.

C. **ORDINANCE NO. 3258 - BUDGET AMENDMENT TO ACCEPT GRANT FROM THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER TO PREPARE REDEVELOPMENT PLANS FOR THREE AREAS ALONG THE SWANNANOA AND FRENCH BROAD RIVERS**

Summary: See Consent Agenda Item "B" above.

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D. **RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETSCAPE AND GREENWAY – PHASE II**

This item was removed from the Consent Agenda for an individual vote.

E. **BUDGET AMENDMENT FOR AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETSCAPE AND GREENWAY – PHASE II**

This item was removed from the Consent Agenda for an individual vote.

F. **RESOLUTION NO. 05-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.**

Summary: The consideration of a resolution authorizing the City Manager to enter into a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past two years with excellent results.

Benefits to contracting with F.I.R.S.T. Inc. include:

- Reduced costs in recruiting, hiring, and benefits for full-time workers.
- There is a savings realized in management costs.
- The City is guaranteed all F.I.R.S.T. personnel requested enabling operations to be fully productive at all times.

A negative aspect of using F.I.R.S.T. Inc. is that the City of Asheville must negotiate an annual contract for this service.

City staff recommends approval of the Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 05-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETSCAPE AND GREENWAY – PHASE II

Councilman Newman moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with North Carolina Department of Transportation (NCDOT) for an Enhancement Grant for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2, and the accompanying budget amendment, in the amount of $235,120.

In June 2004, the City of Asheville partnered with various organizations to make application to NCDOT for a TEA-21 Enhancement Grant for various projects. The grants can only be awarded to a local government. NCDOT awarded the grant in the amount of $235,120 for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2. Mountain Housing Opportunities is responsible for the 20% match for the grant.
The is the second phase of the project which includes enhancements on Clingman Avenue and the development of a parallel greenway through Clingman Forest as well as major pedestrian improvements to Clingman Avenue and Haywood Road.

Pros:

- Mountain Housing Opportunities will receive $235,120 with a 20% match to make improvements to the West-End Clingman area.

Cons: There are not negative considerations of this project.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for an Enhancement Grant for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2, and the accompanying budget amendment for enhancement agreement with NCDOT for the TEA 21 Enhancement Grant.

Councilman Newman moved for the adoption of Resolution No. 05-143. This motion was seconded by Councilman Dunn and carried unanimously.

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ORDINANCE NO. 3259 - BUDGET AMENDMENT FOR AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETSCAPE AND GREENWAY – PHASE II

Councilman Newman moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: See Resolution No. 05-143 above.

Councilman Newman moved for the adoption of Ordinance No. 3259. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 187

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON TUNNEL ROAD, KNOWN AS THE FOUR SEASONS PLAZA, IN ORDER TO CHANCE ACCESS AND INCREASE THE PARKING AREA

ORDINANCE NO. 3260 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON TUNNEL ROAD, KNOWN AS THE FOUR SEASONS PLAZA, IN ORDER TO CHANCE ACCESS AND INCREASE THE PARKING AREA

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located on Tunnel Road, known as the Four Seasons Plaza, in order to change access and increase the parking area.

Regarding the City Council's Strategic Operating Plan, the proposed project would improve sidewalk connectivity and set aside open space. In addition, it has the potential to provide services within a short distance of neighboring residential areas. This revision to the concept plan also would preserve the residence on the southwest parcel, further increasing its compliance with the Strategic Operating Plan.

This review concerns a proposed project, which was approved for a conditional use rezoning earlier this year. The project requires a second review because the master plan has been modified slightly and now involves another parcel on which an easement has been

obtained. Additional modifications to the plan do not substantially change the character of the proposed development, and are summarized below.

The subject properties (owned by Mediterranean Property Management, LLC) are being considered for a retail and office development with associated parking, located on 1.94 acres on the south side of Tunnel Road (Attachment to City Exhibit 3 – Location Map). The area on which the proposed project would be built consists of five parcels within the City of Asheville's corporate limits. All parcels are zoned HB or HB-CUZ (Attachment to City Exhibit 3 – Aerial Map). The applicants have obtained an easement on the parcel added to the concept plan, and the area in that easement will be used for shared access to parking. The project has a total building area of 22,000 square feet, placing it within the acceptable structure size standards and exempting it from open space requirements. Sidewalks are shown as required by Sec. 7-11-6 of the Unified Development Ordinance (UDO).

The major modifications from the previous plan are the following (Attachments to City Exhibit 3 – Rendering and Site Plan):

- The proposed building has been shifted closer to the street, moving it farther from the residential areas to the south, and allowing for the preservation of the single family residence in the southwest lot.
- The parking areas have been rearranged to allow for another ingress/egress (involving the aforementioned easement). Note also that the existing driveway to the northwest will now serve only the house (in the previous submission it had been an exit for the whole project).

At their May 16, 2005, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. Please note that the plans accompanying this report have been revised since the TRC meeting to address a number of the conditions mentioned in the TRC staff report:

1. Streams on or near property must be shown and labeled.
2. Calculations for parking spaces must be included.
3. Setbacks and encroachments must be shown and labeled.
4. Detailed information for landscape design (including required street trees and buffers) must be included.
5. The street address listed on the plans for the project should be corrected.
6. Clarification of the use for the existing residence must be provided.
7. Sidewalk and grass strip will be required along Tunnel Road, and Sidewalk or fee-in-lieu-of will be required along Swannanoa River Road.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina

Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

Though some grading and site disturbance will be required, the proposed project's design will mostly preserve the existing topographic relationships. Provided the applicant employs proper erosion control measures and the proposed landscaping and mitigation, the nearby streams should not be adversely affected.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed use would provide an upgrade from the existing commercial development along the southern side of Tunnel Road, providing a likely improvement in value for neighboring commercial property. The orientation of the project towards Tunnel Road, as well as its position at a different vertical level than the adjacent residential lots would minimize any effect it would have on those properties' values.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The existing Sonic restaurant to the west and retail complex to the northeast are uses of a similar scale, bulk, and coverage to the proposed development. The residential areas to the south and west are of a different character, but the topography mentioned above arguably puts the two uses in somewhat different plane. Required landscaped buffering will further separate the differing uses. The proposed project would mostly represent a modernization of commercial terrain with a perceptible, though less significant, expansion into the area of the property currently used only for residential purposes.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required, complying with another of the plan's goals. In addition, the project has the potential to provide services within a short distance of neighboring residential areas. The revisions submitted for this permit preserve a single family residence, increasing its compliance with the plan compared to the previous version.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project's location on Tunnel Road and near Swannanoa River Road ensures access to major transportation facilities and other services. Transit routes 13 and 28 serve the area. In addition, technical review from other departments has not revealed any problems for serving the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed entrances and exits are similar to those currently in place.

Pros

- Upgrade of existing commercial area
- Furthering of Plan 2025 goals as mentioned above
- Potential to provide services convenient to neighboring residents

Cons

- Commercial presence will be more visible to adjacent residential areas than is currently the case.

Staff recommends approval of the revised Conditional Use Permit concept plan subject to the conditions mentioned above.

Mayor Worley closed the public hearing at 5:34 p.m.

Upon inquiry of Councilwoman Bellamy about buffering between the new building and the existing residence on the property, Mr. Esselstyn said that the existing house is owned by the applicant and buffering is used to separate properties.

Ms. Linda Melissotis, owner of the property, said that a family member will be living in the existing house and they will keep as much of the existing vegetation as possible.

Using an earlier site plan (City Exhibit 4), Mr. Esselstyn reviewed the buffering requirements of this property with the adjoining properties.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3260, granting a conditional use permit adopting the proposed Master Plan for property located on Tunnel Road, known as the Four Seasons Plaza, subject to the following conditions: (1) Streams on or near property must be shown and labeled; (2) Calculations for parking spaces must be included; (3) Setbacks and encroachments must be shown and labeled; (4) Detailed information for landscape design (including required street trees and buffers) must be included; (5) The street address listed on the plans for the project should be corrected; (6) Clarification of the use for the existing residence must be provided; and (7) Sidewalk and grass strip will be required along Tunnel Road, and Sidewalk or fee-in-lieu-of will be required along Swannanoa River Road. This motion was seconded by Councilman Dunn and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED EMPLOYEE PARKING LOT

Mr. Dennis Ponder, representing Harry's Cadillac, said that yesterday they learned that there was community opposition (a valid protest petition) and requested this public hearing be continued until July 26, 2005, in order to meet with the community to discuss the plans.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

Mr. Nathan Merchant, resident on Hazel Mill Road, spoke against the continuance. He said this issue has been going on since last fall and nothing with the project has changed.

Mr. Clifton Means, resident on Hazel Mill Road, spoke against the continuance as the neighborhood has been in attendance at every meeting and they already understand the project.

Mr. Ponder said that at the earlier meetings he didn't have some of the renderings. He said that he feels that it will be beneficial to the neighborhood to see what the final produce will actually look like.

Upon inquiry of Councilman Newman, Mr. Ponder said that the neighborhood meeting will not only be to review the information, but there may be modifications to the plans to address the neighborhood concerns.

After a brief discussion, Vice-Mayor Mumpower moved to continue the public hearing until July 26, 2005. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilman Newman voting "no."

C. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR PROCEDURES AND STANDARDS FOR SUBDIVISIONS**

ORDINANCE NO. 3261 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR PROCEDURES AND STANDARDS FOR SUBDIVISIONS

Mayor Worley opened the public hearing at 5:41 p.m.

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of amending the procedures and standards for subdivisions. This public hearing was advertised on July 1 and 8, 2005.

City staff is proposing this wording amendment concerning the procedures and standards for subdivisions to accomplish three things:

- To clarify the procedures and standards to which "exempt subdivisions" must adhere.
- To codify a staff interpretation concerning access to small (four or fewer lot) subdivisions.
- To place access standards in both the subdivision (by reference) and general development standards of the UDO so that there is no question that all subdivided properties (exempt or nonexempt) must comply with these standards in order to obtain development permits.

The UDO sets forth regulations in Article XV for the division of land within its jurisdiction. In accordance with the N. C. Gen. Stat. sec. 160A-376, certain divisions of land are set forth in Article XV as "exempt subdivisions" and therefore, are not subject to the regulations authorized by the State and contained in Article XV of the UDO.

While the City has long had established procedures for handling these "exempt subdivisions" it was determined that these practices needed to be codified for the benefit of all reading this section of the ordinance. The proposed amendment sets out the statutorily

determined situations that constitute an exemption (7-15-1(b)(1)) and also specifies (7-15-1(b)(2) that consecutive "exempt land divisions" of the same tract or parcel, created as a means of circumventing the subdivision standards, will not be permitted if occurring within five (5) years of each other. These two sections are substantively unchanged from the current UDO, except for the clarifying addition of the five (5) year time limitation. The proposed amendment goes on to require that a certification of exemption be received prior to the recordation of an exempt subdivision in order for staff to confirm the exempt status of the proposed division of land. The most important clarification found in this amendment is contained in proposed Section (7-15-1(b)(4)) that outlines the effect of a certification of exemption. This proposed provision clarifies that while an "exempt subdivision" may be recorded without review and without compliance with the City's subdivision regulations, a building or zoning permit will only be issued for subdivided property if that property meets the standards for development set forth in the UDO. In practice, although it will not be required, staff plans to encourage those proposing an exempt subdivision to bring in a plat which can be reviewed both for the certification of exemption and for compliance with all City regulations.

This amendment also adds wording to Article XV (Subdivisions), by reference, and Article XI (Development and Design Standards) to codify a staff interpretation concerning small (four lots or fewer) subdivisions. This interpretation/proposed amendment states that where there is a division of land into not more than four (4) lots for development for single-family purposes, such subdivisions need not comply with the requirement that all residential lots abut a public street or private street developed to City standards. As an alternative, such subdivisions must provide for a recorded minimum twenty (20) foot right-of-way off of a city- or state-maintained road. Such rights-of-way shall contain a private drive meeting construction specifications concerning materials, the need for a turnaround, and the slope of the road. The ability to create these small subdivisions is limited, in the amendment, to those not coming from a parcel in the same ownership. Additionally, the amendment sets forth a spacing requirement to reduce the proliferation (in a single area) of these exceptions to the subdivision regulations.

The final element of this proposed amendment involves moving the access requirements (both commercial and noncommercial) currently found in the subdivision regulations (Article XV) to the City's general development standards (Article XI) with reference in the subdivision regulations. This amendment serves to clear up any confusion as to whether or not exempt subdivisions must comply with the access requirements of the UDO.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment clarifies and codifies the City's practices with respect to exempt subdivisions and adds a requirement for certification of exemption.
- The amendment sets forth an allowance for small single-family subdivisions to have access off a private drive meeting certain standards. Adding such a provision can facilitate infill development.
- The amendment clarifies that all lots, whether in exempt or nonexempt subdivisions, must meet the City's access standards.

Cons-

- Certifying exemption may be viewed as an unnecessary exercise for those subdividing properties.
- Private drives may be seen as insufficient access to developed properties.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 5:49 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3261. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 194

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CREATING A NEW LIGHT INDUSTRIAL DISTRICT

ORDINANCE NO. 3262 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CREATING A NEW LIGHT INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 5:51 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to create a Light Industrial District. This public hearing was advertised on July 1 and 8, 2005.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for limited industrial development.

The amendment fills a gap between higher intensity industrial zoning districts and heavy commercial districts.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros –

- Several goals and strategies of the 2025 Plan will be implemented.
- A wider range of land uses would be available to property owners.

Con – None noted.

The Planning and Zoning Commission recommended approval of this amendment on April 6, 2005, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 5:53 p.m.

Mr. Shuford responded to Councilman Newman's question about properties that would desire this zoning designation.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3262. This motion was seconded by Councilman Davis and carried unanimously.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING OPEN SPACE STANDARDS REVISIONS

Mayor Worley opened the public hearing at 5:57 p.m.

Planning and Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to revise the open space standards to ensure a more uniform application of the standards and to provide for a fee-in-lieu option. This public hearing was advertised on July 1 and 8, 2005.

This code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan related to the Natural and Built Environment. The Strategic Operating Plan proposes enhanced recreational facilities, especially greenways, as well as a fee-in-lieu program.

The UDO currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern.

The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies. Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

The amendment has been routed to the Downtown Commission, CAN, CREIA, and CIBO for review and comment.

Pros –

- Several goals and strategies of the Strategic Operating Plan will be implemented.
- The amendment will provide for a more effective provision of meaningful open space.
- There is greater developer flexibility.

Con –

- The amendment applies to a wider range of land uses and therefore may be considered more restrictive than current requirements (possibly a pro).

Planning and Zoning members opposed to the amendment noted concerns that included a failure to see the benefit of requiring open space as a regulation in general, concern about the effect on smaller developments, and opposition to the fee-in-lieu concept.

The Planning and Zoning Commission recommended approval of this code amendment on June 1, 2005, by a vote of 4-3. City staff recommends approval of the proposed code amendment, as well.

Mr. Shuford said that City Council's Strategic Operating Plan calls for enhanced recreational facilities, especially greenways, as well as an open space fee-in-lieu program. City

staff has development an ordinance intended to help implement these Strategic Operating Plan objectives, as well as some of the goals and strategies of the 2025 Plan.

The ordinance applies open space requirements to a broader range of land uses, including smaller non-residential projects, and smaller residential developments. In most circumstances, it allows a developer to opt to pay a fee in-lieu of open space instead of providing the open space. It caps the amount of open space required at 10% for residential and 5% for non-residential and mixed use development; this eliminates the "penalty" that affects denser or more intensive developments in the current ordinance. It requires the City to expend open space fee dollars in areas reasonably proximate to where they are collected. It broadens the types of areas that can be used for open space. In the event that "excess" land area is required to implement the Greenway Master Plan, density or intensity bonuses are available. He then reviewed a table, which provided a very abbreviated comparison between current and proposed requirements in residential, non-residential and mixed use zoning districts.

Mayor Worley closed the public hearing at 6:20 p.m.

After discussion and responses from Mr. Shuford, it was the consensus of City Council to instruct Mr. Shuford to bring this matter back to a future worksession at which time he will respond to the issues raised, some being, but are not limited to: (1) additional information concerning the threshold concept, including the relative extent of the impact based on past development trends; (2) density/intensity incentive for cases where extra area for greenways was needed; and (3) the creation of some incentives for development that exceed the required open space other than the incentives proposed for excess greenway space; and (4) additional information on the fee-in-lieu of option.

Councilman Dunn moved to lay this matter on the table until such time as City staff brings it back to Council. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

IV. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3245 - ORDINANCE TO REZONE 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley announced that the public hearing on this matter was held on June 28, 2005. Because of the number of votes received, a second reading was required.

Councilman Dunn moved for the final adoption Ordinance No. 3245. This motion was seconded by Councilman Davis and carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

ORDINANCE BOOK NO. 22 – PAGE 133

V. NEW BUSINESS:

A. REQUEST FROM MOUNTAIN AREA INFORMATION NETWORK FOR WAIVER OF LICENSE FEE FOR ANTENNA SPACE

Grant Specialist Laurie Saxton said that this is the consideration of a request from Mountain Area Information Network (MAIN) for a grant to offset the license fee for the installation

of two antennas on one of the City's towers at White Fawn Reservoir, along with space in the equipment building at no cost.

MAIN's mission is to help bridge the "digital divide" by providing affordable Internet access to underserved citizens and communities. MAIN currently provides high-speed Internet access in Madison, Yancey and Mitchell Counties, in addition to Buncombe County. Their goal is to build a "managed" community wireless network to compete with broadband access. MAIN has two existing wireless antennas covering parts of west and north Asheville, and the proposed White Fawn antennas would cover northeast to southwest Asheville. MAIN has requested a grant to offset the license fee ($9,600) for the installation of the two White Fawn antennas.

The City typically charges other organizations, including nonprofit organizations, for this service. As in other cases where a nonprofit has asked for the waiver of a fee, City staff analyzed MAIN's request as if it were an Outside Agency Grant request. The analysis was made by staff from both the Information Technology (IT) and Budget departments.

New or revised information:

- The request is for a minimum of $9,600 initially for four spaces on the tower, based on MAIN's list of equipment. (The initial estimate was $12,000 for five spaces.) There is a 4% annual increase in the fee.
- If Council approves MAIN's request, staff estimates that 1 to 7 open spots will remain at the White Fawn tower site. Tower capacity depends upon the height, weight and direction of antennas.
- The City's IT Director has made an assessment of MAIN's technology maturity and concluded that MAIN uses appropriate technology and software for their services.
- MAIN has now submitted the requested financial information; their current ratio and unrestricted net assets ratio are in line with other organizations receiving outside agency funding, although MAIN was projecting a small deficit at the end of Fiscal Year 2004/05.

MAIN's mission and community network appear to support the City of Asheville's mission in the area of economic and community development. There is potential for MAIN to provide the City with no-cost Internet access in some community centers. If Council wishes to pursue this, it would have to be tested; computer procurement and maintenance would have to be addressed as well. If successfully implemented, this program could save the City $5,160 per year.

Pros

- MAIN's service provides economic value especially to low income citizens, nonprofits, and micro-enterprises.
- MAIN has broad support from the community.
- Allowing MAIN access to the tower could be helpful in keeping broadband prices competitive in our area.
- Potential savings of approximately $5,000 per year if wireless Internet access can be provided to five community centers.

Cons

- The opportunity cost of the grant ($9,600 minimum per year), foregoing the potential revenue from renting the space to another customer.
- Other nonprofits currently pay for space on the tower and might request the same treatment.
- MAIN has not demonstrated the extent to which it serves people with low incomes; however, the possibility of providing Internet access to community centers would increase this service.

City staff recommends the City of Asheville make the grant award to MAIN to offset the license fee for space on the City's tower.

Mr. Bill Fishburne, Ms. Leslee Kulba and Mr. Fred English spoke in opposition of the City waving the license fee.

Mr. Wally Bowen, Executive Director of MAIN, spoke in support of and responded to various questions/comments from Council regarding his request for Council to waive the $9,600 license fee. He spoke about the customers that MAIN serves and the grant they are seeking with City schools for some laptops for low income and at-risk students. He shared some thoughts on why the community should support his proposal.

Considerable discussion surrounded many issues, some being, but are not limited to: how the application was reviewed and if granted, how would it be reviewed in the future; does the community benefit, and if so, how; is Council setting a precedence by waving fees for a non-profit to use public infrastructure; how much does the Housing Authority pay a month to rent space on the tower; and are requests for antenna space frequent.

Councilwoman Jones moved to waive the $9,600 for the first year license fee for MAIN to install two antennas on White Fawn Reservoir. This motion was seconded by Councilman Newman.

Council members expressed their reasoning for supporting or not supporting the waiver of the license fee.

The motion made by Councilwoman Jones and seconded by Councilman Newman failed on a 3-4 vote, with Mayor Worley, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis, and Councilman Dunn voting "no."

At 7:47 p.m., Mayor Worley announced a short recess.

B. ORDINANCE NO. 3263 - BUDGET AMENDMENT TO REFLECT NECESSARY REVISIONS TO FISCAL YEAR 2005-06 BUDGETED REVENUES AND EXPENDITURE RESULTING FROM THE TERMINATION OF THE WATER AGREEMENT

Budget Director Ben Durant said that this is the consideration of a budget amendment to reflect necessary revisions to Fiscal Year 2005-06 budgeted revenues and expenditure resulting from the termination the Water Agreement between the City of Asheville and Buncombe County.

On July 1, 2005, the Water Agreement between the City and County terminated. As a result of this termination, the City's General Fund lost $1,761,896 in tax equity reimbursement revenue (i.e. law enforcement reimbursement; recreation reimbursement; civic center subsidy) formerly received from the County.

Additionally, the operations of McCormick Field, Recreation Park, Nature Center and the Municipal Golf Course were transferred back to the City of Asheville. The Golf Course will operate as an Enterprise Fund. Total expenditures for the operation of these facilities are $2,129,379. Total revenue estimated to be generated from these facilities is $1,425,218, for a total net cost to the City's General Fund of $704,161. The specific net cost for each facility is as follows:

Golf Course	$ 73,714
McCormick	$ 44,469
Nature Center	$ 481,323
Recreation Park	$ 79,655
Administrative	$ 25,000
Total	$704,161

Based on lost general fund revenue of $1,761,896 and additional net general fund expenditures of $704,161, the total general fund impact to the City is $2,466,057. The City proposes to cover this impact by appropriating additional revenue and reallocating expenditures in the following manner:

Land Sale Revenue	$1,200,000
Fund Balance	$ 507,132
Reduce Parking Subsidy	$ 500,000
Reduce Contingency	$ 258,925

Staff would like to stress that this amendment is an immediate fix to the budget gap that was created as a result of terminating the Water Agreement. Approximately $1.7 million worth of new revenue appropriated with this amendment (i.e. land sale proceeds and fund balance) reflects the use of one-time revenue that will not necessarily be available in subsequent years. As such, longer-term solutions will need to be developed over the course of the current fiscal year that can be adopted as part of the Fiscal Year 2006-07 budget development process.

Additionally, the General Assembly, through adoption of Sullivan Acts I & II, prohibited the City from transferring funds from the Water Fund to the General Fund to support general city operations. This will cost the City's general fund an additional $1.15 million, which is currently not covered as part of this amendment. In the next 60-90 days, however, staff will work together as a team to develop structural changes to the budget to cover this $1.15 million gap and will present them to Council for review and deliberation. In the meantime, we have implemented various administrative cost savings measures that should keep the budget in balance.

City staff requests City Council approve the budget amendment to cover the $1.76 million revenue loss and net costs of 704,161 for the operation McCormick Field, Recreation Park, Nature Center and Municipal Golf Course.

Council members spoke about the annual operating budget passed and touched upon the negotiations regarding the water agreement.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3263. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 206

C. ORDINANCE NO. 3264 - ORDINANCE CONTINUING AND READOPTING POLICIES AND ORDINANCES APPLICABLE TO OPERATION OF THE WATER SYSTEM

City Attorney Oast said that this is the consideration of adoption of an ordinance continuing and readopting policies and ordinances applicable to operation of the water system

Since the Water Agreement terminated with no re-negotiated agreement in place, it is necessary to adopt by ordinance regulations and policies for the operation of the system by the City.

The ordinance simply continues in effect the policies and ordinances already in place, while conforming them to reflect the fact that the Water Agreement has terminated, and that certain facilities have reverted to the County and the Districts (as provided for in the Agreement). As the City proceeds with operation and administration of the water system, further amendments to the policies may be brought forward. The ordinance also ratifies any action taken by City employees in operating the system in the interim between June 30 and adoption of the ordinance.

The water rates adopted in connection with the annual budget are also continued in effect. They may likewise be modified during the course of the year.

Considerations: The water system is operated as a public enterprise; rules and regulations must be adopted by ordinance.

- The water policies are those that were previously in place, so the transition should be seamless.
- This also conforms with the requirements of the local acts that were adopted on June 29.
- Amendments or changes to the policies may be made by ordinance any time during the course of the year.

City staff recommends City Council adopt the ordinance continuing and readopting policies and ordinances applicable to operation of the water system

Councilwoman Bellamy said this is a good opportunity to show the citizens how well we can manage our water system.

Councilwoman Jones felt it was important that the citizens of Asheville realize they are subsidizing the excellent work that will be happening outside the City limits.

City Manager Jackson said that he will be bringing back to Council where the additional resources will be going into the capital plan. In addition, Council will see shortly a very detailed analysis of the cost of providing the water services. He said that in the near future Council will be seeing very sound business practices and a real upgrade in the management of the operation.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3264. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 210

D. RESOLUTION NO. 05-144 - RESOLUTION APPOINTING MEMBERS TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Citizens/Police Advisory Committee.

The terms of Tim Flora (North area), John Burchfield (Central area), Jimmy Hungerford (West area) and Betty Budd (South area), as members of the Citizens/Police Advisory Committee, will expire on June 30, 2005.

In addition, John Robinson has resigned, thus leaving a vacancy in the East area until June 30, 2005.

At City Council's worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tim Flora (North area) and John Burchfield (Central area), as members of the Citizens/Police Advisory Committee, to each serve an additional three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Davidson Jones, Donald Swaby and Mary Ann LaMantia.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to re-advertise for the West Asheville area position.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint Davidson Jones (East area) and Mary Ann LaMantia (South area) as members to the Citizens/Police Advisory Committee to each serve a three year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 178

E. RESOLUTION NO. 05-145 - RESOLUTION APPOINTING MEMBERS TO THE CRIMESTOPPERS BOARD OF DIRECTORS

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Asheville-Buncombe Crime Stoppers Board of Directors.

The terms of Councilman Dunn, Bill McGuire and Leslie Hennessee, as members to the Asheville-Buncombe Crime Stoppers Board of Directors, will expire on June 30, 2005.

At the City Council worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to (1) appoint Councilwoman Bellamy to serve a three year term, term to expire June 30, 2008, or until her term on City Council ends; and (2) reappoint Bill McGuire to serve an additional three-year term, term to expire June 30, 2008, or until his successor has been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Bill Kelley and Nancy Ray Durham.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint Nancy Ray Durham, as a member of the Crimestoppers Board of Directors to serve a three-year term, term to expire June 30, 2008, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 179

F. RESOLUTION NO. 05-146 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Recreation Board.

The terms of Eleanor Campbell, Chuck Cloninger, Charles Bullman and Jim Drummond, as members on the Recreation Board, expire on June 30, 2005.

At City Council's worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Eleanor Campbell and Jim Drummond to each serve an additional three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Matthew Davis, Susan Birkholz, Geoffrey Ferland and Andrew Gall. Mr. Davis was unable to attend the interview and Mr. Gall was not interested at this time.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint Geoffrey Ferland and Matthew Davis, as members to the Recreation Board to each serve a three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 180

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 24-July 7, 2005: Mildred Burns (Sanitation), Jennifer Williams (Streets), Johnathan Ramsey (Streets) and John Randolph (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English announced he was happy to be well enough to continue attending City Council meetings.

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, reiterated the important matters City Council has had to deal with over the past three months and felt they dealt with them successfully. He urged City Council to consider the adopting a comprehensive quality plan to assure quality government and improve the quality of life for all.

Mr. Ron Harris, representing the Mountainbrook Homeowners Association, spoke about the new Wildes development and solutions to the new traffic hazards. He feels that it is essential that there be a roadway from this new development directly onto Chunns Cove Road. When the development is finished, there will be approximately 80 more cars as well as service vehicles using Mountainbrook Road, with only one way in and one way out. He asked Council to require the developer, Bruce Alexander, to build a second road access to facilitate the flow of traffic and enhance safety in the neighborhood. He presented City Council with a petition containing approximately 45 signatures and a map showing alternative roads from the new development. He said that according to the Planning Department and the City Traffic Engineer, it is normally a requirement for new developments to have two road accesses. City Engineer Cathy Ball met with him and said that in order to meet the Fire Department requirements the developer reduced the number of homes from 40 to 30, and now the second road access is not required. They feel that

one way in and one way out is a serious safety issue. He read a letter from Denise Hickman, Facility Director of a 65-bed assisted living facility located at 67 Mountainbrook Road, which spoke about the need for safety of their residents who walk on that road. The City's Traffic Engineer admitted that the City may choose to make the second road access, currently planned to be a walking path, a permanent road if needed in the future. He stressed that when construction is finished, it will be too late. He urged Council to make this road a reality now to prevent problems in the future. He presented two possible solutions. One, they suggested an access avenue through the business park immediately south of the Wildes development. This would require the City to use the power of eminent domain. They suggest the City contact the owner of the business park (Mr. Coleman) and asking him to allow the Wildes development access through this business park. Secondly, they suggested that the proposed walking path be converted into the main entry road to the Wildes directly onto Chunns Cove Road. The Association requests that the City make this road a condition of approval of the final plat. They would also request that Council place this matter on a future agenda as soon as possible. In addition, he requested a copy of the meeting minutes where the single-access road was approved.

Mr. Cogburn, attorney representing Mr. Alexander, said that an engineering study was performed in September which indicated that building a permanent road on the rock slope was not a good idea to do. Mr. Alexander also originally thought there was going to be ingress and egress through the Coleman property that had been reserved, but it had not been reserved. Therefore, Mr. Alexander complied with the single-access roadway by reducing his development from 40 to 30 units. He urged City Council to allow Mr. Alexander to continue with his project.

Upon inquiry of Mayor Worley, City Attorney Oast said that pursuant to the ordinance, the appeal for preliminary plat stops at the Planning & Zoning Commission. He said that under the law, the developer meets the technical requirements. It was his opinion that City Council does not have the ability to get involved in subdivision questions.

City Manager Jackson said that he would provide Council and the residents in the area with the Fire Chief's response to these concerns about safety and the assurance of service capability. In addition, he said that the Fire Chief will communicate with Council of how they have evaluated this project, including what their response times are and whether or not this development meets the adequacy test.

Mr. Alexander explained that there is no right-of-way through Mr. Coleman's property and he isn't interested in granting any right-of-way.

City Council explained that there doesn't appear there is anything more City Council can do about this. Council's rules set up specific standards for what development decisions get brought to this Council where we are the deciding body on it. Development decisions below those standards are not within Council's purview to review.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:03 p.m.

Magdalen Bouleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 19, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn

CONSENT AGENDA:

Animal Control Ordinance Technical Changes

Summary: The consideration of an ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

On May 24, 2005, City Council passed a revised animal control ordinance. Upon further review of Sec. 3-20, staff questioned whether the civil penalties in Sec. 3-20 could be applied to violations of Article II (Restraint of Animals) and Article III (Livestock and exotic pets) of the ordinance. Based on the wording in Sec. 3-20, it appeared that civil penalties could only be issued for violations of Article I (i.e. animal care, animal licenses etc). It is staff's opinion that the civil penalties should be applicable to the entire ordinance and recommends changing the wording in Sec. 3-20 from "Article" to "Chapter."

Pros:

- Insures that City staff can issue civil penalties for violation of every article of the Animal Control Ordinance.
- Resolves any ambiguity regarding the applicability of civil penalties to violations of Article II and Article III of the ordinance.

Cons: None noted.

City staff recommends approval of the ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

Agreement with the Asheville Humane Society

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City for Fiscal Year 2005-06.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 28, 2005, the City approved the budget for Fiscal Year 2004-05 and in that budget approved $121,000 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2005, through June 30, 2006.

Advantages to the contract: The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Disadvantages to the contract: The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2005, through June 30, 2006.

License Agreement with Arch Wireless Operating Company Inc.

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. (Arch) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge overlooking downtown to the north, Mission Hospital to the west and Kenilworth to the south. The circular concrete rim of an in-ground water tank that has been completely filled is the only trace of its former use. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

Arch Wireless Operating Company, Inc. has operated an antenna and related equipment at the site since December 1993. The antenna is located on the tower known as the "BellSouthTower" which is the tower to the west. The proposed License Agreement will enable Arch to continue operating an antenna at that site; however, there is a provision which allows the Licensor to terminate the agreement upon 180 days notice or the Licensee to terminate the agreement with 60 days notice. The term of the License Agreement will be 3 years with no renewal periods. Arch will pay a License Fee of $350 per month ($4,200 annual) the first year with a 4% annual increase thereafter. In addition to the License Fee, Arch will pay a Utility Fee of $150.00 per annum.

The positive aspects of the transaction are:

1. The license will generate revenue
2. The license fee represents fair market value.
3. The transaction will retain a fee tenant rather than having a vacant space.
4. It will facilitate Arch being able to continue providing a valuable service to its customer

There are no negative aspects to the transaction

Planning Department staff recommends adoption of the resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. for an antenna at 36 Reservoir Road.

Field Services Coordinator Ed Vess responded to questions from Councilwoman Jones about the difference between this license agreement and the license agreement that MAIN requested earlier this month.

Advertise offer to purchase property on Bartlett Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Bartlett Street in the East Riverside community.

A bid has been received from Ray Quate in the amount of $2,500 for the purchase of a small parcel of land on of Bartlett Street in the East Riverside community.

The land on Bartlett Street is a rectangular shaped parcel comprising 0.062 acre± (approximately 21' x 127'). It is gently sloping from east to west with the grade of Bartlett Street. It is unimproved and covered with grass The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. The lot is not large enough to build on as a separate parcel. Based on an opinion letter dated May 11, 2005, by L. Ted Prosser, the value of the cut-out parcel is $2,500. The bid from Ray Quate, owner of the adjacent parcel is in the amount of $2,500. Mr. Ouate is renovating the building on the adjoining parcel with historic consideration to provide three (3) main floor artist's studios and five (5) second floor apartments with inside parking. He purchased a 0.13 acre parcel from the City to provide access to the second floor parking in November, 2004. He plans to assemble the subject parcel with his property to provide improved access to the parking and a better buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the re-development by providing improved access.

Planning & Development staff along with Parks & Recreation staff recommend adoption of the resolution which will initiate the sale of the property through the upset bid process.

Contract for Traffic Calming in Redwood Forest

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of $65,000 to install traffic calming in the Redwood Forest neighborhood.

As part of the approval of the Riverbend Development on Swannanoa River Road, the developer was required to pay for traffic mitigation in adjacent neighborhoods. Staff determined that the neighborhood impacted most by the development was Redwood Forest. Staff has been working with the neighborhood to develop a plan.

Staff and the neighborhood (in accordance with the Traffic Calming Policy) completed the plan. Staff requested bids for the project. We only received one bid from Dee Williams and Company, Inc. The original bid exceed the funds for the project. We have negotiated with Dee Williams to reduce the cost of the project to $65,000.

This contract will not include improvements to the intersection of Swannanoa River Road and Beechwood Road. We have not received an approved encroachment from the N.C. Dept. of Transportation. We are still working with them to obtain this approval. The cost for

improvements at this location is estimated at $5,000 to $7,000. This work will be performed by the City Public Works Department.

Considerations

- This does not allow us to do traffic calming in any other neighborhood's unless additional money is appropriated.
- The contractor is a Certified Minority Business.
- The money for this project is currently budgeted.
- We are able to complete the project as design with this contract.

Staff requests that City Council authorize the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of $65,000 to install traffic calming in the Redwood Forest neighborhood.

City Engineer Cathy Ball responded to various questions from Council regarding the traffic calming in Redwood Forest.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

SIDEWALK USE ORDINANCE AMENDMENT

City Development Director Sasha Vrtunski said that this is the consideration of an ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City besides the Central Business District and Biltmore Village.

Currently, the sidewalk ordinance, Article V of Chapter 16, applies only to the Central Business District and the Biltmore Village area. Staff has received a request for an outdoor dining permit in the arts district off of Clingman Avenue. Because this area is neither in the Central Business District nor Biltmore Village, staff is prevented from issuing a permit. This is an example of an area that would benefit from businesses spilling out onto the sidewalk making the area more pedestrian oriented. Expanding the scope of the ordinance will allow staff to issue permits to businesses that are located adjacent to a sidewalk and would like to spill out onto the sidewalk.

In addition, staff is anticipating requests from other areas of the City, such as the Haywood Road Corridor, the Head of Montford or Charlotte Street. Widening the scope of the ordinance will allow these businesses to place outdoor dining or retail on the sidewalk. It will also allow for pushcarts to be located in commercial areas as well. All of the same requirements will remain in effect which will ensure that there is sufficient room on the sidewalk for pedestrians.

The proposed changes to the ordinance will allow permits to be issued for outdoor dining and retail in places where there is an appropriate place on the sidewalk for these uses. The outdoor dining or retail area must be either in front of or adjacent to the business.

Advantages:

- Wording amendment will allow staff to issue permits in new areas that are appropriate for outdoor dining, retail and pushcarts. Some businesses will be able to expand their service area where the sidewalk width allows.
- Outdoor seating and retail is seen as a way to make streets more pedestrian friendly and inviting to customers. This expansion of the ordinance may increase the number of areas in the city with this character.

Disadvantages: None noted.

City staff recommends the adoption of the ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City besides the Central Business District and Biltmore Village.

Upon inquiry of Councilwoman Jones about the possibility of having access to the Unified Development Ordinance during Council meetings, Planning & Zoning Director Scott Shuford explained how they are in the process of providing that resource to Council and that they will be coordinating that when the City's new webpage comes online.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on the appropriate City Council agendas. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Umbrella Signs

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of adding provisions for umbrella signs.

The current sign regulations of the City of Asheville do not address umbrella signs. Umbrella signs are those signs printed on umbrellas that are commonly used at outdoor eating and drinking establishments and often advertise products sold on the premises. This amendment provides for such signage.

This ordinance amendment defines umbrella signs as those signs printed or painted on an umbrella. This amendment goes on to classify umbrella signs as a type of sign exempt from permit requirements. This means that an umbrella sign is permitted without having to actually obtain a permit for the signage so long as the applicable regulations are met.

The regulations stipulated in this amendment for umbrella signs include that such signs not be illuminated, that they be located at a lawfully permitted outdoor dining/drinking establishment, that they not be suspended from the umbrellas, and that the signage be limited to 25% of the surface area of the umbrella cloth.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment sets forth regulations for a type of signage not currently addressed in the UDO and which has been raised as an issue for enforcement staff.
- The amendment permits umbrella signs without permit (subject to specific requirements) which will not add to the permitting burden for staff.

Cons-

- The amendment allows this type of signage (with restrictions) that may be considered to add to sign clutter.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Definition of Adult Establishments

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of changing the definition of "adult establishments.

The UDO regulates "adult establishments" as conditional uses. In defining "adult establishments" the current ordinance simply refers to the definition contained in the North Carolina General Statutes.

The definition of "adult establishment" found in the North Carolina General Statutes does not specifically address retail operations that deal specifically with "sexually oriented devices" although that term is defined in the statutes. N.C. Gen Stat. sec. 14-202-11 gives local governments power to regulate "adult establishments or other sexually oriented business to the extent consistent with the constitutional protection afforded free speech." "Sexually oriented devices" are defined in the statutes as "without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device."

Due to recent inquiries concerning operations that retail "sexually oriented devices," the Planning and Development Department and the City Attorney's Office recommend the addition of operations where the principal retail business is in such items to the definition of "adult establishment."

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment clarifies an issue that has recently been brought to staff's attention as to whether or not retail operations dealing primarily in "sexually oriented devices" are "adult establishments."

Cons-

- The amendment could be viewed by some as unnecessary over regulation of adult establishments.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0. Staff recommends approval as well.

Establishment of New Live-Work Unit Requirements

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to establish new live-work unit requirements and to allow such uses in various zoning districts.

This code amendment is intended to accommodate a mixed residential/ commercial use of property known as live-work. A live-work unit can be defined as a building or space within a building that is used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work. Since a live-work unit as defined above is predominately commercial in nature, it should be regarded as the equivalent of 0.5 residential unit for the purpose of applying density requirements.

The parking requirements for a live-work unit should be based on the square footage of the nonresidential use plus one space for the residential use. The minimum parking for the nonresidential space of a live-work unit should be the same as for other retail and office uses (a minimum of one space per each 350 square feet and a maximum of one space per each 250 square feet).

Live-work units should be allowed in any zoning district that allows a mix of commercial and residential uses (i.e., virtually all zoning districts that are not exclusively residential).

Pros

- Provides an added option for entrepreneurship development.
- Accommodates an increasingly popular form of land use that can reduce trip generation by mixing uses.

Con

- None noted.

On July 6, 2005, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Clarification of Council Direction on Open Space Standards

Planning & Development Director Scott Shuford said that City staff is seeking Council direction concerning the proposed open space ordinance.

At City Council's regular meeting on July 12, 2005, the proposed open space ordinance was postponed to allow for worksession discussion of various issues. In order to best structure that future worksession discussion, City Council clarified issues regarding the open space 'cap" concept; the fee-in-lieu concept, including information on how the decisions will be made on where to use of fee-in-lieu of money; the threshold concept, including the relative extent of the impact based on past development trends; the creation of some incentives for development that exceed the required open space other than the incentives proposed for excess greenway space; and the request that the proposed open space ordinance and the ridge top, steep slope and environmentally-sensitive regulations be brought back at the same worksession.

RIVER REDEVELOPMENT PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorizing staff to forward the Plan to the Rural Center for consideration.

In response to the Fall 2004 floods, the NC Legislature authorized redevelopment planning and implementation monies. In late April, the City of Asheville was awarded a $20,000 grant from the NC Rural Economic Development Center to prepare a redevelopment plan for Biltmore Village. We were also invited to submit other planning grant applications and were successful in obtaining an additional $20,000 grant to study two other areas. Council recently approved these grants.

Pursuant to these grants, City staff has prepared the redevelopment plan. Due to the timeframe associated with the Rural Center grants, the plan was developed with only limited public input. It consequently has many areas that will require additional public involvement prior to any implementation actions taking place. However, the plan does follow the adopted Wilma Dykeman Riverway Master Plan in scope and design, examining a mixed-use development pattern and suggesting economic revitalization of the City's urban riverfront, greenway

implementation, construction of the Wilma Dykeman Riverway, and use of environmentally-sensitive construction methods. It also offers implementation funding from the Rural Center for items not able to be funded using traditional means and opens the possibility of receipt of much more significant funding from the Rural Center for the designated projects.

The following three areas were identified for redevelopment planning:

- Biltmore Village Redevelopment Area – This includes the Biltmore Village local historic district and a large area to the east, including the Koon Development located at Glendale Avenue and Thompson Street.
- East Swannanoa River Redevelopment Area – This area includes property located on Swannanoa River Road across from the Sayles Wal-Mart.
- French Broad River Redevelopment Area – This area is located south of the Smoky Park Bridges southward to the Norfolk Southern RR property.

In the plan, staff proposes to proceed with a variety of tasks; key items are summarized below:

- Conduct public input sessions about the appropriate development pattern(s) and associated financial incentives for the three redevelopment areas and bring these ideas forward for Council consideration.
- Develop, with public comment, best management practices for environmentally-sensitive design for inclusion in the Standards and Specifications Manual.
- Continue to pursue grant and other funding options for implementation of the Wilma Dykeman Riverway Plan and begin implementing the Riverway project by allocating the federal earmark funding to studying the corridor in the three redevelopment areas.
- Pursue improvements to Biltmore Village called for in the plan, including traffic safety and aesthetic improvements and funding for an architectural "flood proofing" program for vulnerable historic buildings to ensure their continued economic vitality.
- Bring forward ideas for constructing public parking in Biltmore Village after reviewing these ideas with the public and with Biltmore Village property owners.
- Purchase floodway properties in the East Swannanoa River redevelopment area from willing sellers.
- Demolish an unsafe structure in the Biltmore Village area.
- Design and construct the riverside greenway in the French Broad River redevelopment area.
- Seek consultant services about the use of project development financing in the French Broad River redevelopment area.

He said that the key components of the Plan include (1) identifies projects for Rural Center implementation funding for each area; (2) proposes the use of federal earmark funding to study Riverway improvements in each area; (3) lays out public involvement program for identifying (a) desired land use and zoning pattern for area redevelopment; and (b) financial incentives needed to implement desired pattern of redevelopment; (4) proposes creation of best management practices for environmentally sensitive development; (5) proposes hiring consultant to identify opportunities and mechanism to use project development financing to jump-start river redevelopment; and (6) proposes active implementation efforts for the parking, traffic circulation, and aesthetic improvements called for in the Biltmore Village Development Plan.

If the Rural Center Board approves the Plan, the City will become eligible for grant funding of up to $700,000 per area.

City staff recommends City Council adopt the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorize staff to forward the Plan to the Rural Center for

consideration. The next steps will be to (1) implement Rural Center projects; (2) identify desired development pattern and financial incentives; (3) create development and design standards; (4) proceed with riverway construction design; and (5) pursue implementation of other plans.

Throughout Mr. Shuford's presentation, he responded to various questions/comments from Council.

Vice-Mayor Mumpower said that he didn't have a clear vision of our ability to create a sustainable reality that doesn't become elitist in Asheville. Mr. Shuford said that he would be happy to come back at a future worksession and update them on some model projects that have been developed for at least five years.

City Manager Jackson said that since there is some City Council interest in looking at the strategies that other communities have used to try to mitigate the potential impacts of displacing people who have grown up and own property in these neighborhoods and would like to stay while they are redeveloped, staff will look at best practices elsewhere on how other communities have either failed or succeeded in addressing that issue.

Councilman Newman felt that the vision is attractive, but he would like more information on the trade-offs, in terms of redevelopment potential vs. the environmental impact that that will cause.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

At 4:33 p.m., Mayor Worley announced a short recess.

NEW DAY CENTER PRESENTATION

Ms. Helen Beck, Director of the Workforce Development Board, explained that Nurturing Encourages Winners – Dedicated to All Youth Center (NEW DAY) is a community-based program currently operating under the auspices of Partners Unlimited Inc., a 501 (c) (3) non-profit organization established in October 1997. They share in common the desire to help young people build a strong foundation for success in life by providing them with the information and support they need to bridge the gap between themselves, their families and society. Together, NEW DAY Center and Partners Unlimited form a unique organization in that they work with youth, their families and the community to build strong communication links and the basic bonds of trust.

Particular concerns of NEW DAY Center include: (1) efficacy of our public schools in addressing social justice issues; (2) obstacles to teacher-driven, student focused education due to the current emphasis on school accountability; (3) the inefficient and often lack of direct involvement of communities, parents, and other supporters in the mainstream of the education process; and (4) the unbalanced focus of attention on primary education often to the neglect and even detriment of secondary schools and students; particularly the cursory attention given to high school dropout, retention, and graduation rates, including such primary indicators as chronic absenteeism, school suspensions, and the lack of many students' ability to maintain academic credit levels commensurate to their cohort graduation year commonly referred to "the ninth grade parking lot."

With our program site in the Reid Center, we are based in a community that is disproportionately victim to the concerns listed above. The community is dominated by low-income public housing developments. With access to Partners Unlimited Inc.'s 15-passenger van, NEW DAY Center can also serve students throughout Buncombe County. Additionally, we expect to have access to vehicles/transportation through the Asheville City Schools and the A-B Technical Community College.

The NEW DAY Center program will serve as a model of success and innovation. She encouraged City Council support.

Ms. Pat Griffin further explained that they wish to expand the Partners Unlimited program that is currently operating out of the Reid Center. She said that even though at this time they are only seeking Council support, they are in need of financial support as well. They need to purchase the site licenses for 12 computers at $1,500 a site license.

Vice-Mayor Mumpower felt this program was worthwhile and suggested they see how much money they can raise themselves and perhaps City Council may be able to match that amount. He felt it was important that they demonstrate some fund-raising initiative.

Mr. Jim Drummond responded to various questions from Councilwoman Bellamy regarding the space at the Reid Center, when the program is slated to begin, whether their services are for City and County students, and transportation.

Upon inquiry of Councilwoman Jones, Ms. Griffin explained that NEW DAY Center is a similar model to the Caring for Children effort, however, they serve a different population.

It was the consensus of Council to support the NEW DAY Center program. Regarding financial assistance, it was recommended that they go through the City's normal outside agency review process.

Councilwoman Jones agreed that the normal outside agency funding process is a good idea to follow, however, she hoped that Council will be flexible when there is a pressing community need that comes in that is not in line with the normal process.

DETAILED TRAFFIC ANALYSIS OF I-26 CONNECTOR (I-240)

City Traffic Engineer Anthony Butzek said that this is a summary of results of a CORSIM traffic simulation analysis that was performed for the future I-26 Connector project. The analysis was commissioned by the N.C. Dept. of Transportation ("NCDOT") at the request of City Council, and compares traffic operations under scenarios of a six-lane cross-section or an eight-lane cross-section, with each supplemented by two auxiliary lanes for entering and exiting traffic.

The NCDOT is planning improvements to I-240 between I-40 and Broadway in conjunction with its future designation as I-26. This project, Transportation Improvement Program (TIP) project I-2513, is currently scheduled to begin construction in 2012. An eight-lane cross-section plus two auxiliary lanes is proposed for the project. Numerous community and technical groups have suggested that fewer lanes may be adequate for this project and would significantly reduce the social and construction costs for this project.

The NCDOT commissioned this study at the formal request of the Asheville City Council. A detailed analysis was performed by NCDOT's consultant, StanTec, with the CORSIM model, and City staff was provided with numerous opportunities to review and provide input to the development of the model. As a result of this close cooperation between NCDOT's consultant and City staff, staff is confident in the results of the model. Additionally, NCDOT elected to do the full study, including a calibration, in order to complete the most accurate study possible. You will recall that the City requested them to do a basic CORSIM analysis; they took this a step further for better results.

The model was originally developed for the two time periods of most concern: the morning and afternoon rush hours, known as the AM and PM peak hours. Due to budget constraints, and the fact that the differential in travel times between the six and eight-lane

alternatives were minimal for the AM peak hour, the model was on completed for the PM peak hour.

As shown in the excerpt from the NCDOT study, the average total travel time for the corridor during the PM peak hour was:

- Northbound traffic: 366.4 seconds (6 min. 6 sec.) with 6 lanes; 356.8-s (5 min. 57 sec.) with 8 lanes.
- Southbound traffic: 398.9 seconds (6 min. 39 sec.) with 6 lanes; 381.5-s (6 min. 22 sec.) with 8 lanes.

In looking at the specific locations where the travel times differ, in the northbound direction, it is fairly consistent throughout the corridor. In the southbound direction, 10 of the 17 seconds of relative delay for the six-lane section come from the section between I-240 and Broadway. This section was modeled as 4-lanes and 6-lanes in the respective alternatives. It is apparent that continuing the 6-lane configuration may be appropriate here for both alternatives, thereby reducing the difference in travel time from about 17 seconds to about 7 seconds. City staff recommends that this be done whichever alternative is constructed.

In summary, the difference in average afternoon rush hour travel time between the two alternatives is a 9.6-second increase (2.7%) per car for northbound, and a 17.4-second increase (4.6%) per car for southbound, although maintaining the 6-lane alternative throughout I-26 (in lieu of reducing to 4-lanes for a small portion) reduces this to 7.0-seconds (1.8%) per car. There appears to be very little difference in real traffic operation between the two alternatives, and no congestion in either. The slightly improved travel time for the eight-lane section comes from the greater likelihood of fast drivers to find an open lane.

Levels of Service (LOS) were not determined form the study but can be projected.

He than showed Council a traffic model showing traffic operations under both scenarios for the year 2035.

Mr. Butzek said that this study analyzed the traffic to a much higher level of detail than previous analyses. The first analysis done was simply based on reference tables. That was very generalized and tends to under-estimate capacity. The next analysis still didn't provide a full level of detail, in that for example it did not consider the effect of the auxiliary lanes. This model, however, goes beyond that and comes up with a very accurate analysis of the condition.

There was considerable discussion surrounding the 8-lane vs. 6-lane cross-sections and whether the NC DOT would consider changing their 8-lane recommendation to 6-lanes, given that this NC DOT state-of-the-art analysis shows that in the year 2030 a 6-lane facility shows no congestion. In addition, Council questioned why NC DOT won't even study the relative merits of a 6-lane facility, based on this current analysis.

Councilwoman Jones favored 6-lanes, however, she felt that whether or not the project is 6 or 8 lanes, the community wants the project to move forward faster.

Vice-Mayor Mumpower wondered if we are being realistic in thinking that we may be able to impact NC DOT's decision.

Upon inquiry of Councilwoman Jones, Mr. Adam Cooper with the Asheville Area Chamber of Commerce said that in brief, the Chamber supports a Connector designed and constructed with a sufficient number of lanes - sufficient to meet level of service requirements for an interstate highway, and that we support inclusion of aesthetic components appropriate to the

existing beauty of our area. In addition, he said that he would communicate Councilwoman Jones' comments to the Chamber's leadership, being that that she hoped that the Chamber would advocate for the speed of the project and be interested in the facts and what those facts would mean on our community in so many different ways.

As a result of the discussion, it was the consensus of City Council to have the Mayor invite NC DOT Board members to meet with City Council in order to respond to Council's questions/concerns. Council strongly recommended the meeting occur as soon as possible. Councilwoman Bellamy also felt that we should invite our legislators and the County Commissioners to this meeting as well.

NORTH FORK RESERVOIR SPILLWAY OPERATIONS

City Engineer Cathy Ball said that this is an update to review the current guidelines concerning emergency spillway operations at the North Fork Reservoir and to seek direction for further evaluation.

An emergency operation plan and monitoring guide for the Burnette Dam (North Fork) was prepared for the Regional Water Authority in July 1995 by Law Engineering in an effort to insure the integrity of the earthen dam in the case of severe rain events.

This plan provides guidelines for when the spillway flood gates should be opened and is based upon the anticipated precipitation during a 24-hour period. For example, this study states that the gates should be opened 18 feet if rainfall in the reservoir area exceeds six inches during a 24-hour period.

Staff believes that an updated comprehensive study of emergency operations at North Fork, to include hydrological data from the two September, 2004 storm events, is necessary in order to appropriately analyze downstream impacts of emergency spillway operations. The estimated cost of this study may exceed $150,000; however, Water Resources has identified funding from within this fiscal year budget to cover this anticipated cost.

City staff recommends moving forward to pursue a Request for Proposals process, to involve key stakeholders from the community, in an effort to complete an updated comprehensive study as discussed above.

Ms. Ball said that since the hurricanes of September, 2004, the City has been working with the community to evaluate and address flooding. These efforts include: (1) receiving a grant from the National Weather Service; (2) receiving a grant from the Rural Center; (3) adopted a Stormwater Enterprise Fund; (4) serving on the Swannanoa Watershed Planning Task Force, headed by RiverLink to develop strategies to address flooding in the Swannanoa River Basin; (5) applied for a Clean Water Trust Fund Grant to develop flooding mitigation in the Dingle Creek Watershed; and (6) recommended a new study be completed of the North Fork Reservoir.

Regarding the National Weather Service Grant, we (1) applied for a $170,630 grant to purchase, install and maintain additional rainfall gages, high water monitoring stations, and develop an action plan for various flooding events in February 2005; (2) received $57,000 for equipment in May 2005; and (3) working with Warren Wilson College to develop a plan to install and maintain equipment.

Regarding the Rural Center Grant, we (1) received $40,000 to develop a River Redevelopment Plan; (2) anticipate receiving $700,000 to implement the plan in the Biltmore Village area, of which $375,000 will be allocated to an architectural analysis and implementation program to assist Biltmore Village property owners with the flood-proofing of their historic

structures; and (3) additional funds may be available for other redevelopment areas described in the Plan.

With the Stormwater Enterprise Fund, (1) stakeholders recommended Council adopt a Stormwater Enterprise fund as a dedicated funding source to address a federal mandate as well as flooding issues; (2) Council adopted an ordinance establishing a Stormwater Enterprise Fund in December of 2004; (3) Council adopted budget and fees as part of the Fiscal Year 2006 Operating budget; and (4) budget includes $200,000 for developing Maser Plans in the Biltmore Village area and Dingle Creek.

She said that several staff members serve on the Swannanoa Watershed Planning Task Force to identify flooding issues in the Swannanoa River Basin.

Regarding the Clean Water Trust Fund, (1) in June 2005, submitted a grant to the Clean Water Trust Fund for over $500,000 to address flooding issues in the Dingle Creek area. City's match would be $100,000 from Stormwater Enterprise Fund for the Stormwater Master Plan for Dingle Creek; and (2) grant will be awarded in November or December of 2005.

With regard to the North Fork Reservoir, (1) 1995 Law Engineering Plan addressed how to maintain the structural integrity of the dam; (2) staff has determined that an additional engineering study is necessary to evaluate the following: Emergency Action Plan, Operation and Monitoring Plan, and Flood Operation Plan, including guidelines for operating the dam before and during flooding events, to include impacts on downstream flooding; and (3) the cost of the study is estimated at $200,000.

She said that staff's recommendations are (1) to develop a Request for Proposals to evaluate the Reservoir as described previously; and (2) work with an advisory committee (consisting of a sub-group of the Swannanoa Watershed Planning Task Force to include representatives from the following agencies: RiverLink, Buncombe County, Town of Black Mountain, City of Asheville, Biltmore Village, and professional representatives, i.e., engineers, architects, etc.) to review the Request for Proposals in order to make sure that the study will address the technical and operational issues of the dam and downstream impacts.

Upon inquiry of Councilwoman Jones, Ms. Ball said that staff would like to come back to Council in late September to award a contract and hopefully have plan in place by next hurricane season.

Upon inquiry of Vice-Mayor Mumpower, Ms. Ball said that the existing protocols we are operating under are from the 1995 Law Engineering study. The 1995 study addresses both Bee Tree and North Fork. The study is very good from the standpoint that it made the recommendation it was asked to do in that the study developed the protocol with the only goal of protecting the dam. She explained further that the dam was not designed to be a flood control dam. It was designed to be a water source. No one studied how to make the dam work with the downstream flow in the event of flooding. That is the study they are asking for now. Again, she feels confident that the City did what was right during that time, based on the information we had from the 1995 study.

Mayor Worley said that the study will determine how we fill the goal of protecting the dam and to what extent we can also use the dam to have an impact on downstream flooding, and to the extent possible, mitigating that.

Upon inquiry of Vice-Mayor Mumpower, Interim Water Resources Director David Hanks said that we started this process last October. He explained that we brought in experts from the most renowned engineering firm in the county that deals with this kind of damage in dams and we

have been having dialogue and meetings with them on site to get their guidance as to where we need to go. We have also been collecting the data from last September to have some kind of model to proceed with to help when we go out with the formal Request for Proposals. We were at a point about 1.5 months ago to go forward to Council, but at the time we didn't have the funds to move forward, so we now have it in this year's budget.

City Manager Jackson said that it is staff's recommendation that while this study is on-going that you continue to see this facility operated according to the same standards that were in place last year. The professional staff would not recommend continuing to operate under the 1995 Law Engineering study if it did not have merits and application. To the credit of the staff, they were working on this and they are open and receptive to this kind of credible re-evaluation and broadening of the scope of the study. We will learn things in 2006 that were not available to the City in 1995. The scope has been widened and it will answer the important questions that have been raised, but the 1995 study still provides a basic framework to safely operate and maintain the facility. We will also step up communications with residents and property owners in this area because we want them to be aware of what we are doing and how this Council is being responsive and the staff is planning for the future as well.

It was the consensus of Council to instruct City staff to move forward to pursue a Request for Proposals process.

BOARDS AND COMMISSIONS:

It was the consensus of Council to instruct the City Clerk to arrange interviews for Craig Young and Robert Burns for a vacancy on the Citizens/Police Advisory Committee.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Susan Chambers Overstrom, Meg Winnecour and Bill Fishburne for a vacancy on the Public Art Board.

MISCELLANEOUS

Councilwoman Jones suggested that the Corporate Academy name be changed to perhaps the Citizens Academy or the Asheville Academy.

CLOSED SESSION

At 6:31 p.m., Councilwoman Bellamy moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Davis and carried unanimously.

At 8:55 p.m., Vice-Mayor Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:55 p.m.

Magdalen Bourleson
CITY CLERK

Charles L. Worley
MAYOR

Tuesday – July 26, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION PROCLAIMING JULY 26, 2005, AS "RASHAD MCCANTS DAY"

Mayor Worley read the proclamation proclaiming July 26, 2005, as "Rashad McCants Day" in the City of Asheville. He was pleased to present the proclamation to Mr. McCants.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON JUNE 28, 2005; JULY 12, 2005; AND THE WORKSESSION HELD ON JULY 19, 2005

B. ORDINANCE NO. 3265 - ORDINANCE AMENDING CHAPTER 3 (ANIMALS AND FOWLS) OF THE CODE OF ORDINANCE TO INSURE THAT THE CIVIL PENALTIES WILL BE APPLICABLE TO VIOLATIONS OF ARTICLE II AND III OF THE ORDINANCE

Summary: The consideration of an ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

On May 24, 2005, City Council passed a revised animal control ordinance. Upon further review of Sec. 3-20, staff questioned whether the civil penalties in Sec. 3-20 could be applied to violations of Article II (Restraint of Animals) and Article III (Livestock and exotic pets) of the ordinance. Based on the wording in Sec. 3-20, it appeared that civil penalties could only be issued for violations of Article I (i.e. animal care, animal licenses etc). It is staff's opinion that the civil penalties should be applicable to the entire ordinance and recommends changing the wording in Sec. 3-20 from "Article" to "Chapter."

Pros:

- Insures that City staff can issue civil penalties for violation of every article of the Animal Control Ordinance.

- Resolves any ambiguity regarding the applicability of civil penalties to violations of Article II and Article III of the ordinance.

Cons: None noted.

City staff recommends approval of the ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

ORDINANCE BOOK NO. 22 - PAGE 212

C. RESOLUTION NO. 05-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY FOR FISCAL YEAR 2005-06

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City for Fiscal Year 2005-06.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 28, 2005, the City approved the budget for Fiscal Year 2004-05 and in that budget approved $121,000 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2005, through June 30, 2006.

Advantages to the contract: The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Disadvantages to the contract: The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2005, through June 30, 2006.

RESOLUTION BOOK NO. 29 – PAGE 181

D. RESOLUTION NO. 05-148 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC. FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. (Arch) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge overlooking downtown to the north, Mission Hospital to the west and Kenilworth to the south. The circular concrete rim of an in-ground water tank that has been completely filled is the only trace of its former use. Two telecommunication

towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

Arch Wireless Operating Company, Inc. has operated an antenna and related equipment at the site since December 1993. The antenna is located on the tower known as the "BellSouthTower" which is the tower to the west. The proposed License Agreement will enable Arch to continue operating an antenna at that site; however, there is a provision which allows the Licensor to terminate the agreement upon 180 days notice or the Licensee to terminate the agreement with 60 days notice. The term of the License Agreement will be 3 years with no renewal periods. Arch will pay a License Fee of $350 per month ($4,200 annual) the first year with a 4% annual increase thereafter. In addition to the License Fee, Arch will pay a Utility Fee of $150.00 per annum.

The positive aspects of the transaction are:

1. The license will generate revenue
2. The license fee represents fair market value.
3. The transaction will retain a fee tenant rather than having a vacant space.
4. It will facilitate Arch being able to continue providing a valuable service to its customer

There are no negative aspects to the transaction

Planning Department staff recommends adoption of the resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. for an antenna at 36 Reservoir Road.

RESOLUTION BOOK NO. 29 – PAGE 182

E. RESOLUTION NO. 05-149 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON BARTLETT STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Bartlett Street in the East Riverside community.

A bid has been received from Ray Quate in the amount of $2,500 for the purchase of a small parcel of land on of Bartlett Street in the East Riverside community.

The land on Bartlett Street is a rectangular shaped parcel comprising 0.062 acre± (approximately 21' x 127'). It is gently sloping from east to west with the grade of Bartlett Street. It is unimproved and covered with grass. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. The lot is not large enough to build on as a separate parcel. Based on an opinion letter dated May 11, 2005, by L. Ted Prosser, the value of the cut-out parcel is $2,500. The bid from Ray Quate, owner of the adjacent parcel is in the amount of $2,500. Mr. Ouate is renovating the building on the adjoining parcel with historic consideration to provide three (3) main floor artist's studios and five (5) second floor apartments with inside parking. He purchased a 0.13 acre parcel from the City to provide access to the second floor parking in November, 2004. He plans to assemble the subject parcel with his property to provide improved access to the parking and a better buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the re-development by providing improved access.

Planning & Development staff along with Parks & Recreation staff recommend adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 29 – PAGE 183

F. RESOLUTION NO. 05-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DEE WILLIAMS & CO. INC. TO INSTALL TRAFFIC CALMING IN THE REDWOOD FOREST NEIGHBORHOOD

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of $65,000 to install traffic calming in the Redwood Forest neighborhood.

As part of the approval of the Riverbend Development on Swannanoa River Road, the developer was required to pay for traffic mitigation in adjacent neighborhoods. Staff determined that the neighborhood impacted most by the development was Redwood Forest. Staff has been working with the neighborhood to develop a plan.

Staff and the neighborhood (in accordance with the Traffic Calming Policy) completed the plan. Staff requested bids for the project. We only received one bid from Dee Williams and Company, Inc. The original bid exceed the funds for the project. We have negotiated with Dee Williams to reduce the cost of the project to $65,000.

This contract will not include improvements to the intersection of Swannanoa River Road and Beechwood Road. We have not received an approved encroachment from the N.C. Dept. of Transportation. We are still working with them to obtain this approval. The cost for improvements at this location is estimated at $5,000 to $7,000. This work will be performed by the City Public Works Department.

Considerations

- This does not allow us to do traffic calming in any other neighborhood's unless additional money is appropriated.
- The contractor is a Certified Minority Business.
- The money for this project is currently budgeted.
- We are able to complete the project as design with this contract.

Staff requests that City Council authorize the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of $65,000 to install traffic calming in the Redwood Forest neighborhood.

G. ORDINANCE NO. 3266 - ORDINANCE REVISING THE SIDEWALK ORDINANCE TO BE APPLICABLE TO OTHER COMMERCIAL AREAS OF THE CITY IN ADDITION TO THE CENTRAL BUSINESS DISTRICT AND BILTMORE VILLAGE

Summary: The consideration of an ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City in addition to the Central Business District and Biltmore Village.

Currently, the sidewalk ordinance, Article V of Chapter 16, applies only to the Central Business District and the Biltmore Village area. Staff has received a request for an outdoor dining permit in the arts district off of Clingman Avenue. Because this area is neither in the Central Business District nor Biltmore Village, staff is prevented from issuing a permit. This is an example of an area that would benefit from businesses spilling out onto the sidewalk making the area more pedestrian oriented. Expanding the scope of the ordinance will allow staff to issue permits to businesses that are located adjacent to a sidewalk and would like to spill out onto the sidewalk.

In addition, staff is anticipating requests from other areas of the City, such as the Haywood Road Corridor, the Head of Montford or Charlotte Street. Widening the scope of the ordinance will allow these businesses to place outdoor dining or retail on the sidewalk. It will also allow for pushcarts to be located in commercial areas as well. All of the same requirements will remain in effect which will ensure that there is sufficient room on the sidewalk for pedestrians.

The proposed changes to the ordinance will allow permits to be issued for outdoor dining and retail in places where there is an appropriate place on the sidewalk for these uses. The outdoor dining or retail area must be either in front of or adjacent to the business.

Advantages:

- Wording amendment will allow staff to issue permits in new areas that are appropriate for outdoor dining, retail and pushcarts. Some businesses will be able to expand their service area where the sidewalk width allows.
- Outdoor seating and retail is seen as a way to make streets more pedestrian friendly and inviting to customers. This expansion of the ordinance may increase the number of areas in the city with this character.

Disadvantages:

- None noted.

City staff recommends the adoption of the ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City in addition to the Central Business District and Biltmore Village.

ORDINANCE BOOK NO. 22 – PAGE 213

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE CORNER OF COLLEGE STREET AND WOODFIN, KNOWN AS THE COLLEGE STREET OFFICE BUILDING**

ORDINANCE NO. 3267- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE CORNER OF COLLEGE STREET AND WOODFIN, KNOWN AS THE COLLEGE STREET OFFICE BUILDING

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:15 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for property located at the corner of College Street and Woodfin, known as the College Street Office Building.

This project located in the downtown Central Business District is proposed to be 10 stories tall and contain 130,000 square feet (Attachments to City Exhibit 3 – Location Map and Aerial Map). The building will provide new office space for Buncombe County totaling 50,000 square feet (Attachments to City Exhibit 3 – Building Elevations). The remainder of the building will be leased to the private sector. A bank will occupy the first two floors and will provide a covered teller window along the west façade of the building. Two or three retail uses will occupy the ground floor of the building and one is expected to be a restaurant (Attachment to City Exhibit 3 – Site Plan).

On the site plan the building is placed close to College Street and provides a setback from Oak Street. To better accommodate Technical Review Committee comments regarding site access, the plan has been modified in the current layout. The building has shifted to the west resulting in a 50-foot wide public space at the Oak Street corner. This space will allow an outdoor dining area for a possible restaurant and will provide ample sidewalk space along all street frontages. On College Street the new office building will share a driveway with a parking area for the Health Department. Site access concerns have been addressed with these modifications. Street trees along Oak Street may be retained with the current layout which will be beneficial. The location and scale of this building on the main east side corridor of downtown makes this a gateway building for downtown. This proposal along with the City of Asheville recently completed

College Street Gateway Boulevard project match closely with the goal noted in the City of Asheville Strategic Operating Plan to encourage new downtown development with improved gateways and corridors.

A question about parking space came up during the Planning and Zoning Commission meeting. Off-street parking is not a requirement for projects in the Central Business District and therefore should not be a factor in the approval of the project. However the developer's agent reported that Buncombe County officials and the developer have agreed to build a parking garage on County property along Woodfin Street on the north side of the Health Department.

The CBD zoning is developed to reinforce the downtown as the urban center of Asheville and Western NC, encouraging private and public investment which will preserve the CBD as the primary retail, office, hotel, institutional, cultural and entertainment center of our community. A high priority is placed on design, integrating new uses into and with existing architecture in a respectful and cohesive manner. There are no building size limits and no height limits. There are also no requirements for off-street parking requirements in the CBD.

The building was reviewed by the Downtown Commission as part of the Design Review for new construction. With minor modifications, the Commission unanimously approved the design.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project will meet City and State safety requirements and be subject to the state building code.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project is located on an infill lot that is currently a parking lot. No conflict was noted regarding any site features there.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The project represents a substantial investment by the private sector. Nearby property values are expected to increase because of this public private project.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The downtown area is an appropriate location for a building of the scale proposed for this parcel. In the vicinity of the site are several structures of similar scale including the Buncombe County Courthouse, City Hall and the Buncombe County Detention Facility.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The plans adopted by the City Council support redevelopment and reinvestment at infill locations in a high-density mixed-use pattern. The project will become a gateway building along the east side of the downtown area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   Adequate infrastructure appears to be in place to support the development. Transportation facilities appear to be adequate and a Traffic Study will determine if any improvements are required for area roadways.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The site plan has been modified to facilitate the safe and orderly flow of traffic through the site. City staff has reviewed these changes and this should be sufficient to minimize any traffic hazards.

Additional Conditional Use Findings related to Government Uses in the Central Business District. In accordance with UDO Section 7-19-2-13, these additional standards must also be met:

1. The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.

   Although the land is owned by Buncombe County the property is being offered back for private development through a long-term lease. Over half the building will be made available to the private sector.

2. No alternative location for the building or use exists within areas previously developed for government buildings and/or uses.

   The governmental uses will total about 50,000 square feet of a 130,000 square foot building. The government facilities are in close proximity to other Buncombe offices and uses and offer practical efficiencies in proximity to these sites.

3. If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request.

   New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council. The project was reviewed by the Downtown Commission for compliance with the Design Review Guidelines. With minor modifications, the plan was thought by the Commission to be in compliance with the design guidelines.

Pros

- A significant gateway corner into the downtown area is being redeveloped.
- The proposed building represents a major private redevelopment in the downtown area.
- The mixed-use proposal is supported by many of the plans adopted by the community

Cons

- Beyond the concern over parking which has already been addressed, no items of concern have been noted regarding the proposed project.

At their June 1, 2005, meeting the Planning and Zoning Commission voted (7-0) to recommend approval of the conditional use permit based on the CUP findings and with the conditions outlined in the TRC report and the following conditions added at the TRC meeting: (1) A letter from Buncombe County stating who is responsible for inspections and permitting must be provided (Fire & Building Safety Departments); (2) One of the two existing driveways must be closed with cross access provided between the two lots (Fire & Engineering Departments); and (3) The dimensions of the leased area need to be identified and subdivided from the larger parcel (Planning Department).

Ms. Patsy Brison, attorney representing the developer and applicant, asked that the application and any supporting documents be made a part of the record (Applicant Exhibit 1), including the traffic impact analysis (Applicant Exhibit 2), and the Downtown Commission minutes of May 13, 2005 (Applicant Exhibit 3). Ms. Brison then reviewed the seven conditional use permit standards as well as the additional findings related to governmental uses.

Mr. Gerald Green, representing the developer, spoke in support of the permit. He explained there is no conflict with the roundabout on the corner. He explained how the project meets the City's goals, including it is a mixed-use building and will be subject to property taxes. The project has been reviewed by the TRC, the Downtown Commission and the Planning and Zoning Commission with only some minor modifications that have been or will be met as the development moves forward. Although the UDO does not require off-street parking for projects within the Central Business District, the tenants of the building do require off-street parking. As part of the lease for this property, Buncombe County is committed to providing a parking deck with approximately 750 parking spaces dedicated to this building. The construction period for the building is about three times longer than the construction period for a parking deck, so even though the deck has not been brought before Council yet, they don't see any problem with meeting the end date when the deck comes on line. Again, off-street parking is not a requirement for projects in the Central Business District and therefore should not be a factor in the approval of this project.

Mr. Brad Burns spoke in opposition to the project. After the Grove Park Inn development public hearing, he felt that city government should have reviewed the process of citizen appointees, revised their standards and set guidelines. If they had, then this project would not be before Council. Urban parks should be designed within or just outside the buildings. The exceptional heights of the buildings in the Central Business District are exceptions and no more should be allowed. We need to establish office hubs outside the Central Business District and traffic hubs from which others can bus shuttle back and forth. The bottlenecking of traffic and pedestrian safety on College Street should prohibit future development.

After rebuttal, Mayor Worley closed the public hearing at 5:39 p.m.

Upon inquiry of Councilman Dunn, Mr. Green said that the building will be built by a private developer and will be privately owned. He explained that the County will lease space in the building.

In response to Vice-Mayor Mumpower, Mr. Green said that he hoped that construction would be approximately 18 months with construction to begin in spring of 2006.

Mr. Green responded to various questions/comments from Council, some being, but are not limited to: what is the impact on the surrounding area; and where will the sidewalks be located (Applicant Exhibit 4 – Earlier Site Plan).

In response to Councilwoman Bellamy, Mr. Green said that the building design doesn't conform to a lot of buildings in the community because they wanted to construct something that honors the buildings downtown and builds on the architectural buildings in Asheville.

Mr. Glines responded to Councilman Davis' concern about drive-throughs in the Central Business District.

There was considerable discussion about why the parking deck plan is not being presented concurrently with this project plan. Mr. Green explained that the parking deck is not part of this development project. It will be reviewed by the City as a separate project. City Attorney Oast said that the fact that there is a contractual arrangement between Buncombe County and the developer to provide parking is useful information but is not relevant to Council's consideration of this project. Councilwoman Jones and Councilman Newman felt that if there is a process that doesn't allow us to look to the future and take the project and the parking deck into account, then we need to look to see if there are procedural inadequacies in our current process. They didn't want to be backed into a corner to approve a project based on a previous decision. Planning & Development said that this project does meet all requirements we have for a building in the Central Business District. They are not required to have parking for a building of this type, but they do it for their own marketing purposes, but again, not to comply with any of the City's codes.

In response to Councilwoman Jones, Mr. Green explained the public notice procedures they have used for this project, in addition, he showed a June 13, 2005, article in the Asheville Citizen-Times in which the project was discussed (Applicant Exhibit 5).

Councilman Dunn moved for the adoption of Ordinance No. 3267, granting a conditional use permit for property located at the corner of College Street and Woodfin, known as the College Street Office Building, subject to the following conditions: (1) A letter from Buncombe County stating who is responsible for inspections and permitting must be provided; (2) One of the two existing driveways must be closed with cross access provided between the two lots; and (3) The dimensions of the leased area need to be identified and subdivided from the larger parcel. This motion was seconded by Councilman Davis and carried unanimously.

In response to Councilwoman Jones' concern, Mr. Shuford said that staff will come back to Council at a future worksession to share a range of issues that were identified from a design standpoint by the Urban Design Associates as they looked at Pack Square and the surrounding properties and what are some of the key issues are that need to be addressed in terms of the infill development along College Street. That way, Council will have a framework, not a master plan because we don't control the property, so we can give you a clear idea of what to look for as additional projects come along in that area of town, and what are the critical design elements that need to be taken into account.

ORDINANCE BOOK NO. 22 - PAGE 215

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FROM CENTRAL BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THREE PROPOSED OFFICE BUILDINGS

ORDINANCE NO. 3268 - ORDINANCE REZONING PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FROM CENTRAL BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3269 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FOR THREE PROPOSED OFFICE BUILDINGS

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:19 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of a request to rezone property located at 200 Technology Drive from: Central Business District to Commercial Industrial District/Conditional Use, and a request to issue a conditional use permit for three proposed office buildings.

The applicant, Biltmore Farms, Inc., seeks a Conditional Use Rezoning (CUZ) based on a concept plan showing an office development with associated parking on 19.3 acres on Technology Drive in the Biltmore Park community (Attachments to City Exhibit 3 – Location Map and Aerial Map). The site for the proposed project is a portion of a 145-acre lot in the City of Asheville's extraterritorial jurisdiction area (ETJ). This portion of the parcel is currently zoned Central Business District (CBD). The applicant seeks to rezone the portion to Commercial Industrial (CI). (Offices are a permitted use in the CI district) (City Exhibit 4).

The project has a total building area of 225,000 square feet. The number of parking spaces shown is sufficient for project (Attachments to City Exhibit 3 – Master Plan and Master Plan with phasing).

The applicant has agreed that the subdivision of the property will a condition for approval of the rezoning.

At their May 16, 2005, meeting, the Technical Review Committee (TRC) reviewed the Conditional Use Rezoning and concept plan proposal and made a positive recommendation that

the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. The applicant agreed at the meeting to comply with these conditions. Please note that the plans accompanying this report have been revised since the TRC meeting to address most of the conditions mentioned in the TRC staff report:

1. The CI zoning district requires a 35-foot front setback, in which parking is not permitted. Design will have to be altered to remove parking from within 35 feet of the northeast edge of the lot (Attachment to City Exhibit 3 – Landscape Plan).
2. As this high impact use will be adjacent to a low impact use to the northeast, a type "A" vegetated buffer will be required along the shared boundary.
3. If any of the entrance drive to the project will become part of Technology Drive for City maintenance, street trees must be indicated.
4. Project will require provision of an urban level of public safety service.
5. Parking spaces to be City Standard (18'X9') and drive aisles to be standard 24' width.
6. Bike rack will be required for the project. The bike spaces shall be 5% of total vehicle spaces.
7. Striped pedestrian crosswalks will be required at all proposed pedestrian crossings.

At their June 1, 2005, meeting, the Planning and Zoning Commission reviewed the Conditional Use Rezoning and concept plan proposal and approved the application by a 7-0 vote, with the stipulation that all TRC conditions be met.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Though some grading and site disturbance will be required, the proposed project's design will mostly preserve the existing topographic relationships. Provided the applicant employs proper erosion control measures and the proposed landscaping and mitigation, the nearby streams should not be adversely affected.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Staff does not expect that the proposed use would have anything more than a minimal impact on property values.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed project would be in harmony with these characteristics of the area—the office park design is similar to the neighboring properties which are developed.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. While this project is more suburban in character than the new urbanist designs promoted in the Comprehensive Plan, it is located near an interstate highway "node," as the plan recommends for large office developments. In addition, the proposal includes significant area reserved for open space, and the developers have stated an intention (though not a final design) to include walking trails to the nearby services of the Biltmore Park Town Square, both goals of the Comprehensive Plan and the Strategic Operating Plan.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project's location off a parkway feeding into Long Shoals Road close to I-26 ensures access to major transportation facilities and other services. In addition, technical review from other departments has not revealed any problems for serving the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed entrances and exits are similar to those currently in place.

Pros

- Project would include substantial open space, and developer has stated intention to provide walking trails, both amenities that are unusual for an office park.
- Project corresponds well to the closest neighboring developments.

Cons

- Design of project resembles suburban style of office park development.

Staff recommends approval of the rezoning request from CBD to CI with approval of the associated Conditional Use Permit and detailed site plan.

Mr. Thomas Jones, applicant, spoke in support of the project. He felt Biltmore Park needs this type of office space and the project works with the existing topography.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:28 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located at 200 Technology Drive from Central Business District to Commercial Industrial District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3269 to issue a conditional use permit for property located at 200 Technology Drive for three proposed office buildings, subject to all the TRC conditions being met. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 4, 6 AND 7 ROBERTS ROAD, KNOWN AS FUN DEPOT, FOR A PROPOSED EXPANSION OF THE EXISTING OFFICE BUILDING AND RECREATIONAL FACILITY AND CONSTRUCTION OF A NEW OFFICE BUILDING

ORDINANCE NO. 3270 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE 4, 6 AND 7 ROBERTS ROAD, KNOWN AS FUN DEPOT, FOR A PROPOSED EXPANSION OF THE EXISTING OFFICE BUILDING AND RECREATIONAL FACILITY AND CONSTRUCTION OF A NEW OFFICE BUILDING

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:32 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Julia Cogburn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Cogburn said that this is the consideration of the issuance of a conditional use permit for property located at 4, 6 and 7 Roberts Road, known as Fun Depot, for a proposed expansion of the existing office building and recreation facility and construction of a new office building.

The project site is located at the corner of Sweeten Creek and Roberts Road just south of the intersection of Sweeten Creek with I-40 (Attachment to City Exhibit 3 – Location Map). Access to all parcels involved in this development is off of Roberts Road. The total project site (presently three lots) is currently listed for tax purposes as 6.32 acres and is zoned CI (Commercial Industrial) (City Exhibit 4 – Aerial Map). Commercial Industrial zoning allows for office buildings and for both indoor and outdoor recreational facilities. The three separate site proposals are being considered as a singular development under a provision in the City's Unified Development Ordinance (UDO) that requires development proposals located within 1500 feet, developed by one entity, to be treated as one development for review purposes. The concept

plan shows these lots being combined for development purposes and the project has been reviewed as if it were all one lot.

The applicant, Day and Elizabeth LLC and Asheville Fun Depot LLC, is proposing an expansion of the existing Asheville Fun Depot recreational facility on the property located at 7 Roberts Road (PIN 96571036577) (City Exhibit 5 – Site Plan). This expansion will add 22,020 square feet to the existing structure, creating a total of 58,700 square feet of enclosed recreational use. The applicant is also proposing the development of a new multi-level outdoor go-cart track and a pedestrian bridge and stairwell to take patrons of Fun Depot from the facility down to the lower parking at the Day Associates Office Building.

At 6 Roberts Street, the site of the existing Day Associates Office Building, the applicant is proposing an interior expansion (creation of a second floor) of 3,284 square feet of office space. The applicant currently has a Level I application for this expansion and for the go-cart track under review.

A new office building, Depot Crossing at Sweeten Creek, is proposed for the western most lot. The proposal is for a 39,000 square foot building, three stories in height. Approximately one-third (1/3) of this property is in the floodway for Sweeten Creek. It is proposed that the creek be culverted and filled over to allow this development to take place.

The City's Technical Review Committee (TRC) met on April 18, 2005, to review this development proposal. At that meeting, as there were still some legal issues to be addressed, the committee tabled this proposal to their May 2nd meeting. At their meeting on May 2nd the TRC voted to approve the project with the conditions outlined in the TRC report. Additionally, it was stipulated that the lease agreement with Norfolk Southern would need to be received prior to hearing before the Planning and Zoning Commission and that any proposal on additional buffering would have to be presented to and informally accepted by the Tree Commission.

City Council must take formal action on this matter and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed use has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code, and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The applicant is working with the topographic features of the site in locating the structures. The applicant will have to obtain a no-rise certificate for work done in the floodway and a LOMR if construction changes the location of the floodway or floodplain.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The project consists primarily of expansions to existing operations and the construction of a new office building that is in keeping with the uses in the area. These improvements should increase the property values and encourage additional investment in the surrounding area. Required landscaping and buffers will shield the project from less intensive uses.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed development is surrounded by major highways (I-40, Hwy 25-A), railroad tracks, an office complex, and a major equipment sales and service operation. The scale and character of the development is in keeping with all that surrounds it.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

This development supports the *Asheville City Development Plan 2025* objectives concerning infill development and the adaptive reuse of properties through flexible development standards. It also implements the strategy of permitting more intense commercial and office developments in locations where there exist adequate public facilities.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The subject site is located adjacent to an interstate interchange and on a major artery in the community. Traffic associated with the development will have ample resources for access to the site. All other services are readily available to the development.

Pros

- The proposed development consists mostly of expansions to two existing facilities, appropriate to the location. The additional development is in keeping with the area.
- The project supports the City's comprehensive plan as indicated in this report and is adequately served by needed infrastructure.
- The developer has utilized shared parking and flexible development standards to reduce the number of parking spaces provided.

Cons

- The project site has difficult topographic and flood challenges for the developer. Proposed retaining walls and creek culverts will have to meet all applicable regulations.

The Asheville Planning and Zoning Commission reviewed this application at their meeting on July 6, 2005, and voted unanimously (7-0) to recommend approval to you subject to the conditions outlined by the Technical Review Committee including the need to resolve all the legal

issues concerning the use of the Norfolk Southern property. Based on the seven findings, staff also recommends approval of the conditional use permit with the aforementioned conditions.

Mr. Mike Connor, representing the applicant, spoke in support of the project.

After rebuttal, Mayor Worley closed the public hearing at 6:38 p.m.

Vice-Mayor Mumpower moved to approve the conditional use permit adopting the proposed master plan for the proposed expansion of an existing office building and recreational facility and construction of a new office building located at 4,6, and 7 Roberts Road subject to the conditions outlined by the TRC including the need to resolve all the legal issues concerning the use of the Norfolk Southern property. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED EMPLOYEE PARKING LOT

Mayor Worley said that on July 26, 2005, a letter was sent to Ms. Kim Hamel in the Planning Department from Pat Grimes, from Harry's Cadillac, and Pastor Randy Bray, from Temple Baptist Church, stating that "As you may know, we held a neighborhood meeting this past week. Several of our neighbors are opposed to our rezoning request. We asked for options at that meeting and received none. After discussion the matter at length with our attorney, we believe that it is prudent to withdraw our application at this time to allow us additional time to re-consider our planning options. Hopefully, if we re-submit in the near future, our new proposal will receive more favorable neighborhood support and perhaps support from your department."

E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED ON OAK PARK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ESTABLISH TWO DUPLEXES AND SIX SINGLE-FAMILY UNITS

On July 26, 2005, City Clerk Burleson received a letter Mr. Gerald Green, Principal of GreenPlan Inc., as follows: I am requesting that the public hearing for the Skyview Park Conditional Use Rezoning scheduled for July 26, 2005, be continued until August 9, 2005. This continuance will provide time for us to address some of the concerns identified by neighboring property owners. We will be revising the site plans to address some of the concerns that have been identified and we will continue to meet with neighboring property owners to identify their concerns regarding the project."

Mr. Bill Chase, resident on Oak Park Road, was not so much opposed to the continuance request, but that residents have made accommodations to be present for this public hearing.

Mr. Green said that the continuance will allow the developer to spend more time trying to address the concerns of the property owners.

City Attorney Oast said that a valid protest petition has been filed and it would not need to be re-filed.

Vice-Mayor Mumpower moved to continue this public hearing until August 9, 2005. This motion was seconded by Councilman Newman and carried unanimously.

F. PUBLIC HEARING TO CONSIDER REZONING VARIOUS LOTS IN SECTIONS B, C AND F OF THE BREVARD ROAD REZONING STUDY

ORDINANCE NO. 3271 - ORDINANCE TO REZONE VARIOUS LOTS IN SECTIONS B, C AND F OF THE BREVARD ROAD REZONING STUDY

Mayor Worley opened the public hearing at 6:41 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone various lots in Sections B, C and F of the Brevard Road Rezoning Study. This public hearing was advertised on July 15 and 22, 2005.

In the summer of 2003 the N.C. Dept. of Transportation (DOT) publicly revealed final plans to widen two sections of Brevard Road from the existing 2 lanes to a more accommodating 4-5 lanes. The first section was from just south of Oakview (near Interstate 26) to Pine Road (near the Toyota/Saturn Car Dealership). The second stretch begins just south of Stradley Mountain Road all the way to the NC Arboretum and Blue Ridge Parkway entrances. The intervening stretch already contained anywhere from 4 to 6 lanes to accommodate the Biltmore Square Mall and other large businesses and retail centers.

There were a number of reasons stated by DOT for the widening including anticipated increases in traffic volumes, which are expected to almost double by 2025, and a need for increased safety. However, the strongest reason for the widening was simply that 191 (Brevard Rd.) was part of an "intrastate" road system and it was part of the DOT's larger plan to widen all intrastate roads.

As a result of the road widening plans, the Planning and Development office was flooded with requests from property owners along the corridor, wanting to rezone their properties to allow for a higher use. As a result, a number of requests were initiated and approved at various points along the corridor. The amount of interest in rezoning along the corridor prompted staff to re-examine the existing land-use patterns in conjunction with the goals and strategies of the Asheville City Development Plan 2025 (ACDP). The study revealed six pocket areas that were felt to be better served by a different zoning classification. Those six sections are described as:

- Section A – 10 lots, RS-8. Staff proposed to rezone these properties to RM-16
- Section B – 1 lot, CI. Staff proposed to rezone this single property to OFFICE
- Section C – 14 lots, HB. Staff proposed to rezone these properties to CB-II
- Section D – 54 lots, RS-8. Staff proposed to rezone these properties to RM-16.
- Section E – 2 lots, OB. Staff proposed to rezone these properties to HB.
- Section F – 3 lots, CI. Staff proposed to rezone these properties to RB.

Although staff felt, based on the study, that a different zoning classification was warranted for these areas, it was of paramount importance that property owner interest and input was garnered for these proposed changes. In an effort to effectively communicate with these property owners, a separate informational meeting was held on March 16, 2005, where each individual property owner was invited to attend and participate in a discussion about the rezoning petition. The meeting was well attended and property owners from Sections A and D uniformly spoke against the zoning change and expressed a preference to retain the RS-8 designation.

The ACDP 2025 describes the need to encourage transit supportive density along major corridors, however, it also describes as a purpose of the plan to propose a land use pattern, transportation network and a system of city services and infrastructure that reflects the community's desires and wishes concerning future growth of the city. Having heard the community's desires and the recommendation from the Planning & Zoning Commission, staff made the decision to drop sections A and D from the study. In addition, as a result of these two sections dropping out, it was felt that Section E should also be removed from the study since its proposed change was contingent on rezoning the residential areas to a higher density. The other three sections (Section B, Section C, and Section F) were retained and are part of the current petition.

On June 1, 2005, the Planning & Zoning Commission reviewed the rezoning study and requests and unanimously approved the recommendation to rezone Sections B and F. A moderate amount of discussion revolved around the proposed rezoning of Section C where public comment was received both in favor and in opposition of the zoning change. The primary concern was over a single wholesale business that would be rendered non-conforming in use if rezoned to CB-II. The individual property owner, although notified of the informational meeting and public hearing, was not in attendance and had not expressed interest in the potential zoning change. The Planning & Zoning Commission postponed voting on a recommendation for Section C and asked staff to try to contact the property owner directly to better discern a position or preference for the zoning change. After some time and effort, staff did make contact with the property manager and owner who both expressed concern over a change to CB-II. Although the business did not have any immediate plans for expansion, they did not want to limit their ability if they felt it necessary to expand in the future. As an alternative, staff proposed rezoning the majority of Section C to CB-II while rezoning the wholesale florist property and an adjacent vacant lot to the west (owned by Anderson Dental Laboratories) to CI. The CI zoning would allow the use to remain conforming, would retain the same setback requirements, and better matched existing land use and zoning patterns. Both the property owner and manager did support this alternative. On July 6, 2005 the Asheville Planning & Zoning Commission reviewed the revised recommendation and unanimously approved rezoning 12 lots to CB-II and 2 lots to CI.

In summary, staff now recommends the following rezoning actions:

Section B (one lot) from CI to OFFICE to better address the existing pattern of growth and redevelopment and to more accurately reflect the existing office use. The property currently supports a chiropractor's office and two additional structures that appear to be residential structures but may be used as additional office space. The purpose of the CI zoning designation is to provide for a wide range of commercial and industrial uses; common CI uses include, light manufacturing, wholesale, warehousing, service uses, and retail. The purpose of the OFFICE zoning is to reserve areas for the development of small scale office uses adjacent to residential uses and/or to serve as a transition between residential and commercial areas. This property will fill in the transition office zone between the existing residential area to the north and the existing commercial area to the south.

Section C (12 lots) from HB to CB-II to encourage a Smart Growth Development pattern adjacent to residential areas and to preserve and enhance the character of the Gateway Boulevard. The purpose of the HB zoning designation is to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare; common HB uses include shopping centers, big box retail, and grocery stores. The purpose of the CB-II zoning designation is to provide business and service uses to medium/high density residential areas located along minor and major thoroughfares. CB-II development should provide for adequate and safe vehicular access while being sensitive to a significant pedestrian population; common CB-II uses include medical

offices/clinics, restaurants, banks, and mixed-use developments. The properties are relatively small for the underlying HB zoning making typical large scale re-development more difficult. In addition, all existing uses are smaller businesses that currently conform in use and structure size.

Section C (2 lots) from HB to CI to better address an existing wholesale business. Originally, staff looked at rezoning all 14 lots in Section C to CB-II but discovered that the existing wholesale florist was the only existing business that would be rendered non-conforming in use. This was a concern due to an existing restriction that does not allow the expansion of non-conforming uses. It was recognized that the existing business would be better served by either the current HB zoning or, as an alternative, a rezoning to CI. To prevent the isolation of a single vacant lot, the property immediately west of the wholesale business is also proposed to be rezoned to CI.

Section F (3 lots) from CI to RB to better reflect the existing development patterns and preserve the character of this portion of Brevard Road described as a "Regional Commercial Corridor". The purpose of the CI zoning designation is to provide for a wide range of commercial and industrial uses; common CI uses include, light manufacturing, wholesale, warehousing, service uses, retail, and large office centers. The purpose of the RB zoning designation is to provide areas of large scale commercial and retail operations. These centers should be concentrated around the intersections of high traffic volume thoroughfares and arterial roads and should be easily accessible by the automobile while providing for shared parking opportunities and pedestrian connections; common RB uses include big-box retail, restaurants, lodging facilities, and shopping malls. The subject properties are adjacent to the Biltmore Square Mall (zoned RB) which already acts as a destination shopping center. In addition, the three lots currently support uses consistent with the RB zoning designation (K-Mart, misc. strip retail, and Ryan's Steakhouse).

Pros

- Proposed zoning changes will more accurately reflect existing land use patterns.
- Redevelopment will better preserve the character of Brevard Road as a Gateway Boulevard.
- Proposed zoning will better preserve the character of the existing residential areas.
- Existing uses remain conforming.

Cons

- Renders some existing parking lots to be non-conforming.

City staff recommends City Council approve the zoning map amendment identified as (1) Section B (1 lot) from CI to OFFICE; (2) Section C (12 lots) from HB to CB-II; (3) Section C (2 lots) from HB to CI; and (4) Section F (3 lots) from CI to RB.

Mayor Worley closed the public hearing at 6:54 p.m.

There was discussion about Councilman Davis' concern that the Highway Business District may be more favorable in the future as the road widens and the city continues to grow.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3271. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote with Vice-Mayor Mumpower voting "no".

At 7:18 p.m., Mayor Worley called a short recess.

G. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH NEW LIVE-WORK UNIT REQUIREMENTS AND TO ALLOW SUCH USES IN VARIOUS ZONING DISTRICTS

ORDINANCE NO. 3272 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH NEW LIVE-WORK UNIT REQUIREMENTS AND TO ALLOW SUCH USES IN VARIOUS ZONING DISTRICTS

Mayor Worley opened the public hearing at 7:36 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to establish new live-work unit requirements and to allow such uses in various zoning districts. This public hearing was advertised on July 15 and 22, 2005.

This code amendment is intended to accommodate a mixed residential/ commercial use of property known as live-work. A live-work unit can be defined as a building or space within a building that is used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work. Since a live-work unit as defined above is predominately commercial in nature, it should be regarded as the equivalent of 0.5 residential unit for the purpose of applying density requirements.

The parking requirements for a live-work unit should be based on the square footage of the nonresidential use plus one space for the residential use. The minimum parking for the nonresidential space of a live-work unit should be the same as for other retail and office uses (a minimum of one space per each 350 square feet and a maximum of one space per each 250 square feet).

Live-work units should be allowed in any zoning district that allows a mix of commercial and residential uses (i.e., virtually all zoning districts that are not exclusively residential).

Pros

- Provides an added option for entrepreneurship development.
- Accommodates an increasingly popular form of land use that can reduce trip generation by mixing uses.

Con

- None noted.

On July 6, 2005, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Mr. Matthew Hebb, Mr. Shuford said that any concerns regarding sanitation will be addressed through other mechanisms, not the Unified Development Ordinance.

Mayor Worley closed the public hearing at 7:39 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3272. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 239

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION SUPPORTING THE CONVERSION OF THE DOWNTOWN ONE-WAY PAIR OF COLLEGE STREET AND PATTON AVENUE

Councilwoman Bellamy asked that if this matter could be postponed in order to give the community an opportunity to become familiar with the recent changes that have occurred on College Street. Planning & Development Director Scott Shuford said that with the construction of the Pack Square Renaissance Project, that will cause a portion east of Biltmore Avenue to be converted this year. The part west of Biltmore Avenue will be on a timeline that will be at least 1-3 years because of the phasing of traffic signals. He felt there will be an ample period of time for people to get used to the College Street and Pack Square Renaissance changes. Alternately, it may be possible for Council to provide staff with a timeframe for implementation.

Traffic Engineer Anthony Butzek said that one of the reasons they are bringing this to Council is there is a significant amount of work that would have to be done by staff including pursuing some funding, particularly from the State, in moving us forward. As far as implementation, it depends somewhat on the available funding. Once we have an adopted plan from Council for the conversion, staff will be pursuing funding from the N.C. Dept. of Transportation (NC DOT) for modifications to the traffic signals and we can't pursue that funding until we have an approved plan from Council.

Mr. Shuford said that this is the consideration of a resolution supporting the conversion of the downtown one-way pair of College Street and Patton Avenue back to two-way operation so that staff may pursue State funding for implementation.

Staff has been studying the benefits of converting College Street and Patton Avenue back to two-way operation for several years. Discussion of this conversion was initiated with the Pritchard Park project and has continued with the Pack Square Renaissance project, although neither of these projects requires conversion for their operation.

There are several benefits with conversion to two-way operation:

- It supports the conversion of the main east-west traffic access through downtown (east of Pritchard Park) from Patton Avenue to College Street.
- It improves accessibility and exposure of businesses along these roads, thereby supporting the overall business climate in downtown.
- It improves the level-of-service (LOS) for eastbound traffic while maintaining the LOS for westbound traffic.
- It improves pedestrian safety on two critical east-west streets in downtown.
- The proposed design offers opportunities for enhanced sidewalk café operations on downtown sidewalks, allowing greater business use of public space.
- It improves the linkage between two important downtown parks – Pritchard Park and Pack Square.

- It provides additional parking on the eastern end of the corridor while maintaining current parking levels on the western end.
- It allows adjustments to loading zones to improve business access, although some businesses may be slightly farther away from loading zones than is currently the case.
- It promotes multiple use of loading zones (loading during the day, parking at night).

The Downtown Commission considered the conversion issue at its July 8, 2005, meeting and unanimously recommended that Council proceed with the conversion. Communities that have made similar conversions are pleased with the results. The following table lists several communities studied in the late 1990s by a traffic engineering periodical, including the results experienced.

Characteristics of Projects Converting Downtown Streets from One-Way to Two-Way Operation

City	Pop.	Year	Type of Conversion	Average ADT	Results
Anniston, AL	26,400	1997	Convert major downtown streets back to two-way.	10-15,000	Vacancy dropped, very positive for business development
Dubuque, IA	60,000	1998	Convert one-way loop around pedestrian mall to improve access, reduce confusion.	6,000	Very positive, better business access, customer friendly.
Gardner, MA	22,000	1993	Convert one-way loop around to two-way on three downtown streets.	40,000	Conversion immediately enhanced business development, reduced vacancy.
Green Bay, WI	97,000	1997	Convert main downtown gateways to two-way.	5,000	Improved business access.
Hickory, NC	36,000	1999	Converting paired one-way traffic system to two-way flow.	5,000	Good results, calmed traffic, improved business access and development, new investment.
North Little Rock, AR	61,000	1999	Converting to two-way after 16 years.	13,000	Announced two-way flow attracted property investment and new businesses.

Source: *The Urban Transportation Monitor*, May 12, 2000.

Mr. Butzek said that a traffic study commissioned by the City in 2001 concluded that the conversion to two-way traffic is feasible and would not significantly degrade traffic operations. Levels of service remained generally similar to conditions under one-way operation with the full implementation of the conversion, including several minor geometric improvements. This study, conducted by Kimley-Horn and Associates, analyzed traffic conditions in the downtown area, recommended improvements for two-way operation, and estimated costs for conversion.

The conversion from one-way to two-way would be done to support the economic vitality of downtown and increase pedestrian safety. It is generally felt that one-way streets have the ability to move more traffic, while two-way streets are more conducive to economic vitality. Two-way streets also avoid the confusion to motorists that one-way streets create, allowing for more direct routes of travel. This is especially important in Asheville as downtown is a tourist destination. Two-way streets would result in slower traffic movement, and slightly increased

congestion. The idea that congested downtown streets keep people away is generally obsolete, with current wisdom dictating that slower traffic is representative of economic vitality. As noted above, many cities are converting their one-way streets back to two-way, as traffic conditions permit.

Generally, downtown merchants have expressed support for two-way streets. A survey of ground-level businesses indicates support for the conversion. Out of the thirty-three businesses and/or property owners surveyed, sixteen support the change, eight felt that they might support the plan and ten were against the plan. The businesses that indicated a lack support were concerned primarily about loading zones and parking spaces that serve their business. As the result of this feedback, staff has ensured that the same amount of loading and parking is available as is currently.

College Street and Patton Avenue are currently proposed to be converted to two-way east of Biltmore Avenue/Broadway to facilitate traffic movement consistent with the Pack Square Plan. In order to pursue conversion of the remainder to the west (to Coxe Avenue), and to request State funding to perform necessary replacement of the signals on Biltmore Avenue/Broadway at Patton Avenue and College Street, staff requests approval of the conversion by City Council.

The following table provides a summary of City staff modeling of the PM peak-hour operational differences at various intersections showing expected levels of service (LOS). By direction of travel, the converted roadways show an improvement in the level-of-service (LOS) for eastbound traffic while maintaining the LOS for westbound traffic.

Intersection	One-way LOS	Two-way LOS
College & Spruce	B	B
College & Market	A	A
College & Broadway	B	B
College & Lexington	B	B
College & Haywood	B	B
Patton & Coxe	C	C
Patton & Haywood	A	A
Patton & Lexington	B	B
Patton & Biltmore	C	C
Patton & Market	B	*

Concerns regarding the effect of the conversion to 2-way traffic on traffic flow, parking availability, and loading zones, were raised consistently as input was taken for this project. Staff has analyzed each in detail and studied ways to improve operations for each as part of the development of this plan.

Traffic Flow:
Traffic operations are not expected to be degraded by the conversion to 2-way, and will be improved for some traffic. The conversion to 2-way relieves the existing bottleneck at Pack Square, the intersection of Biltmore, Broadway, and Patton. Drivers traveling eastbound through downtown, or north or southbound along Biltmore/Broadway, will see improved travel times compared to existing conditions. Drivers traveling westbound through downtown will see comparable travel times compared to existing conditions. Some rush-hour congestion will occur, as it does under the current configuration.

Loading Zones:
This was raised as a significant concern by businesses and the Downtown Commission. A number of marked loading zones exist on College and Patton, in addition to a number of informal loading zones. Informal loading zones typically occur in "dead space", non-critical and unmarked pavement between travel lanes, along curbs, or in excess vehicle travel lanes. Loss of loading zones on College Street will occur, given that College Street would be a 3-lane street, thus removing most parking and loading. Staff reviewed and documented these marked and informal loading locations in an effort to replace the space with a reasonable provision of marked loading zones.

The number of marked loading zones on College and Patton, and within a short distance along side streets, will increase from 11 loading zones totaling 265 linear feet (plus informal zones) to 17 zones totaling 706 linear feet (removing most informal zones). The increased length reasonably offsets the loss of informal loading space. These 17 proposed zones could revert to 36 parking spaces after-hours and on weekends.

Parking:
Loss of parking along College Street was raised as a significant concern, given that College Street would be a 3-lane street, thus removing most parking and loading. Staff worked to provide added parking on side streets as possible to offset these losses. Gains in the Pritchard Park, Biltmore Avenue, and Pack Square areas more than offset this loss of parking, although in different locations than the lost parking. Overall, the number of parking spaces would increase by 11 spaces downtown, with a net gain on the central and east parts of the corridor, and a net loss (5 spaces) on the west side of downtown. Additionally, 36 additional spaces are gained after-hours and on weekends in the marked loading zones.

The conversion requires modification to or replacement of eight traffic signals (six City and two State) along the corridor, and allows for removal of three others (Haywood & Battery Park, Patton & Haywood, Patton & Market). These replacements comprise most of the costs associated with the conversion. Replacement of all eight signals with decorative poles is estimated to cost $1.05 million. Modification to the City's six signals could serve two-way traffic on a temporary basis at an estimated cost of $100,000. Geometric modifications to the streets for two-way traffic are estimated at $125,000, about half of which will be done as part of Pack Square.

Staff proposes that Council allocate approximately $250,000 per year over the next four budget years in order to facilitate the necessary geometric modifications and replacement of traffic signals.

Pros

- Expected economic benefits for downtown, including improved accessibility and enhanced opportunities for use of public space for sidewalk cafes
- Reduced traffic speeds downtown with improved pedestrian safety
- Greater consistency with Pack Square plans
- Supported by many downtown merchants
- Supported by the Downtown Commission

Cons

- Cost
- Reduced traffic speeds downtown (con for impatient drivers)
- Concerns from some downtown office buildings

This project meets several of Council's strategic goals and objectives: Planning Goal #2, Objective A, Task 2: Leverage outside funding to achieve multiple transportation goals where

possible. Planning Goal #2, Objective B, Task 1: Determine opportunities for managing traffic demand through changes to commuting patterns and transportation modes, land use patterns, signalization improvements, etc.

Staff recommends approval of the two-way plan and authorizing staff to pursue State funding and phased implementation of the two-way conversion as budgets permit.

Mr. Butzek said that they have not been able to reach a solution with the property owner of the BB&T building. An alternative to those two loading zone spaces, staff is proposing to add two new loading zones in the front of the BB&T building. Unfortunately that does cause an inconvenience for that operation.

Mr. Fred English and Mr. Peter Dawes spoke against the conversion. They were both concerned from the public safety standpoint.

Mr. William Wilcox, representing Tower Associates Inc., owners and managers of the BB&T Building, opposed the 2-waying of the street section between the intersections of Broadway Avenue/College Street and Lexington Avenue/College Street. He presented City Council with a copy of an e-mail outlining his concerns dated July 25, 2005, to Mr. Anthony Butzek and Ms. Sasha Vrtunski. One of his main concerns is the elimination of the existing loading docks on the north side of their building. He explained the problems with re-locating those loading zones to the front of their building,

Throughout the discussion about the conversation, Mr. Butzek responded to various questions/comments from Council.

City Manager Jackson said that he will report back to Council with a public safety response and with a financial analysis laying out in detail what the costs will be and what the funding alternatives are. In terms of the community preference and the policy considerations, he will leave that to the Council.

In summary, Councilman Dunn moved to postpone this matter until the City Manager has had the opportunity to do further analyses. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. RESOLUTION NO. 05-151 - RESOLUTION ADOPTING THE RIVER REDEVELOPMENT PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorizing staff to forward the Plan to the Rural Center for consideration.

In response to the Fall 2004 floods, the NC Legislature authorized redevelopment planning and implementation monies. In late April, the City of Asheville was awarded a $20,000 grant from the NC Rural Economic Development Center to prepare a redevelopment plan for Biltmore Village. We were also invited to submit other planning grant applications and were successful in obtaining an additional $20,000 grant to study two other areas. Council recently approved these grants.

Pursuant to these grants, City staff has prepared a redevelopment plan. Due to the timeframe associated with the Rural Center grants, the plan was developed with only limited public input. It consequently has many areas that will require additional public involvement prior to any implementation actions taking place. However, the plan does follow the adopted Wilma

Dykeman Riverway Master Plan in scope and design, examining a mixed-use development pattern and suggesting economic revitalization of the City's urban riverfront, greenway implementation, construction of the Wilma Dykeman Riverway, and use of environmentally-sensitive construction methods. It also offers implementation funding from the Rural Center for items not able to be funded using traditional means and opens the possibility of receipt of much more significant funding from the Rural Center for the designated projects.

The following three areas were identified for redevelopment planning:

- **Biltmore Village Redevelopment Area** – This includes the Biltmore Village local historic district and a large area to the east, including the Koon Development located at Glendale Avenue and Thompson Street.
- **East Swannanoa River Redevelopment Area** – This area includes property located on Swannanoa River Road across from the Sayles Wal-Mart.
- **French Broad River Redevelopment Area** – This area is located south of the Smoky Park Bridges southward to the Norfolk Southern RR property.

In the plan, staff proposes to proceed with a variety of tasks; key items are summarized below:

- Conduct public input sessions about the appropriate development pattern(s) and associated financial incentives for the three redevelopment areas and bring these ideas forward for Council consideration.
- Develop, with public comment, best management practices for environmentally-sensitive design for inclusion in the Standards and Specifications Manual.
- Continue to pursue grant and other funding options for implementation of the Wilma Dykeman Riverway Plan and begin implementing the Riverway project by allocating the federal earmark funding to studying the corridor in the three redevelopment areas.
- Pursue improvements to Biltmore Village called for in the plan, including traffic safety and aesthetic improvements and funding for an architectural "flood proofing" program for vulnerable historic buildings to ensure their continued economic vitality.
- Bring forward ideas for constructing public parking in Biltmore Village after reviewing these ideas with the public and with Biltmore Village property owners.
- Purchase floodway properties in the East Swannanoa River redevelopment area from willing sellers.
- Demolish an unsafe structure in the Biltmore Village area.
- Design and construct the riverside greenway in the French Broad River redevelopment area.
- Seek consultant services about the use of project development financing in the French Broad River redevelopment area.

He said that the key components of the Plan include (1) identifies projects for Rural Center implementation funding for each area; (2) proposes the use of federal earmark funding to study Riverway improvements in each area; (3) lays out public involvement program for identifying (a) desired land use and zoning pattern for area redevelopment; and (b) financial incentives needed to implement desired pattern of redevelopment; (4) proposes creation of best management practices for environmentally sensitive development; (5) proposes hiring consultant to identify opportunities and mechanism to use project development financing to jump-start river redevelopment; and (6) proposes active implementation efforts for the parking, traffic circulation, and aesthetic improvements called for in the Biltmore Village Development Plan.

If the Rural Center Board approves the Plan, the City will become eligible for grant funding of up to $700,000 per area.

City staff recommends City Council adopt the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorize staff to forward the Plan to the Rural Center for consideration.

Throughout his presentation, Mr. Shuford responded to various questions/comments from Council.

Mr. Jim Auggins, a business owner in the Biltmore Village area, was disappointed with the Plan in that there is no linkage between this Plan and the Army Corp of Engineers reconnaissance studies that have been funded, which are to present options for flood control and reducing flooding. Another major concern is that development in the Swannanoa River Watershed is going to increase future flooding in Biltmore Village and along the Watershed. He doesn't believe that the City has put in place tools to use to evaluate the impact of land use on the degree of flooding.

In response to Vice-Mayor Mumpower, Mr. Shuford said he would add language in the Plan to indicate that the City will be pursuing information, of the nature of the Army Corp of Engineers reconnaissance studies, as we go forward.

Upon inquiry of Vice-Mayor Mumpower about the county land use impact on flooding, Mr. Shuford said it is difficult for us to calculate what might happen in an area where there are no zoning standards. At Vice-Mayor Mumpower's suggestion, Mr. Shuford said that he would include language in the Plan that suggests, within the limits of our abilities, to look upstream and seek efforts to collaborate with people that do have that control.

In response to Councilman Newman, Mr. Shuford explained what specific projects we are committing to and at what cost.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-151, with the language suggested by Vice-Mayor Mumpower. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

Vice-Mayor Mumpower said that there is some real potential for abuse. You don't hear about riverfront development for the poor. He understands that we will have opportunities to guide things to make sure this doesn't become a sanctuary for the rich and privileged.

RESOLUTION BOOK NO. 29 – PAGE 185

C. RESOLUTION NO. 05-152 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Mumpower said that the term of Jimmy Hungerford (West area), as a member of the Citizens/Police Advisory Committee, expired on June 30, 2005.

At Council's June 21, 2005, worksession, the City Clerk was instructed to re-advertise for the West Asheville area position.

At the July 19, 2005, City Council worksession, it was the consensus of City Council to arrange interviews for Craig Young and Robert Burns.

After each Council member spoke in support of the candidates interviewed, Craig Young was appointed as the west Asheville representative on the Citizens/Police Advisory Committee, to serve a three-year term, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 186

D. RESOLUTION NO. 05-153 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Vice-Mayor Mumpower said that Betty Clark has resigned from the Public Art Board, thus leaving a vacancy until December 31, 2005.

At the July 19, 2005, City Council worksession, it was the consensus of City Council to arrange interviews for Susan Chambers Overstrom, Meg Winnecour and Bill Fishburne.

After each Council member spoke in support of the candidates interviewed, Bill Fishburne was appointed to the Public Art Board to serve the unexpired term of Ms. Clark, term to expire December 31, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 187

VI. OTHER BUSINESS:

RESOLUTION NO. 05-154 – RESOLUTION REGARDING THE CITY'S POSITION ON EMINENT DOMAIN

At the suggestion of Councilman Dunn, Mayor Worley read the following resolution: "Be it resolved, that the Asheville City Council has no intention of utilizing eminent domain to take private property for any purpose other than a bona fide public purpose and, under no circumstance would private property be taken by eminent domain and utilized for the benefit of private development such as was allowed in the United States Supreme Court in the New London, Connecticut, case. Further, that the Asheville City Council encourages our local delegation to the North Carolina General Assembly to work to ensure that there is no legislation that would permit any government entity in North Carolina to use eminent domain in the manner approved by the United States Supreme Court in the New London, Connecticut, case.

Vice-Mayor Mumpower moved to adopt Resolution No. 05-154. This motion was seconded by Councilman Dunn and carried unanimously.

Ms. Leesa Kulba and Mr. Fred English both spoke in support of adoption of the resolution.

RESOLUTION BOOK NO. 29 – PAGE 188

CLAIMS

The following claims were received by the City of Asheville during the period of July 8-14, 2005: Patsy Medford (Transit Services), Greg Goodman (Streets), Adrian Pachico (Streets) and James Cutshall (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower was pleased to present Council with the first For Our Kids Program T-shirt, which will be designed in the future by children from public housing developments.

An intern at the WNC Alliance presented Council with 100 letters from downtown and west Asheville businesses supporting moving forward with the minimum number of lanes on the I-26 Connector, not to exceed six travel lanes. They strongly oppose the N.C. Dept. of Transportation's proposal to build an unnecessarily large eight-lane Connector, which would have negative impacts on Asheville's business community and quality of life.

Mr. Fred English spoke in opposition of the City spending money for an updated comprehensive study of emergency operations at North Fork. He felt that information is available through the Army Corp of Engineers.

Mr. Gene Hamilton, founder of Asheville Citizens for Quality Government, urged City Council to include their priority objectives in Council's goals. Those objectives are (1) improving the quality of education received by every student in Asheville; (2) increasing the minimum wage through a "just and living wage" ordinance to $8.50 per hour, with annual incremental increases each year to $10.00 per hour in 2008; and (3) improving the quality of public transportation for all the citizens of Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 9, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Mayor Worley announced Consent Agenda Item "G" will be removed from consideration at this time.

Councilwoman Jones asked that Consent Agenda Item "C" be removed from the Consent Agenda for discussion.

Councilwoman Bellamy asked that Consent Agenda Items "E" and "F" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 26, 2005

B. ORDINANCE NO. 3273 - BUDGET AMENDMENT TO ACCEPT GRANT MONEY FROM THE U.S. DEPT. OF HOMELAND SECURITY

Summary: The consideration of a budget amendment, in the amount of $141,244, to receive grant money from the U.S. Dept. of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) FY 04 Assistance to Firefighter's Grant Program, for procurement of portable radios, portable computers, and portable repeaters to be used in emergency response and more efficient use of resources.

The City of Asheville Fire and Rescue Department with endorsement of the Asheville City Council in March, 2004 requested $98,910 from the U.S. Dept. of Homeland Security to fund computers and walkie-talkies that will be used daily by firefighters and are used on virtually every emergency that occurs with the city. The portable repeaters will be used often. Computer's are used through the city's existing Geographical Information Systems (GIS) database t provide street, water line, hydrant, building, pre-incident plans, aerial photography, resource listings and other information to firefighters on a daily basis when responding to and managing emergencies. Additional walkie-talkies would allow each firefighter "seat" to have a portable radio. Currently, only the fire officer and fire engineer on each apparatus have portable radios. This would improve firefighter safety. The two vehicle repeaters would allow firefighters to better communicate in dense or "heavy" buildings, such as hospitals, the malls, etc.

Staff desires to accept the grant in the amount of $141,244, with 70%, or $98,871 Federal dollars coupled with 30%, or $42,373, of local (city) dollars.

Pros:

- The computer equipment would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day.
- The portable radios would increase firefighter safety on emergency scenes
- The portable repeaters would allow firefighters to communicate in locations where the current system is very limited such as the hospital, mall and other "heavy" buildings.
- 70% of the funding would come from the Federal Government.

Cons:

- The City of Asheville's share of the matching grant.
- In order to maintain the same level of service, computer equipment and radio equipment would have to be replaced by the city when the service life is met. Life expectancy would be approximately five (5) years.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council approve the budget amendment to receive grant money from the U.S. Department of Homeland Security.

ORDINANCE BOOK NO. 22 – PAGE 241

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC., FOR AN ANTENNA AT 36 RESERVOIR ROAD

This item was removed from the Consent Agenda for discussion.

D. RESOLUTION NO. 05-155 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON BARTLETT STREET TO RAY QUATE

Summary: The consideration of a resolution authorizing the Mayor to convey property on Bartlett Street to Ray Quate in the amount of $2,500.

On July 26, 2005, City Council directed the City Clerk to advertise for upset bids on property on Bartlett Street. The advertisement ran in the Asheville Citizen-Times on July 29, 2005, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Ray Quate in the amount of $2,500 was not upset and the sale to Ray Quate should be approved.

The land on Bartlett Street is a rectangular shaped parcel comprising 0.062 acre± (approximately 21' x 127'). It is gently sloping from east to west with the grade of Bartlett Street. It is unimproved and covered with grass. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. The lot is

not large enough to build on as a separate parcel. Based on an opinion letter dated May 11, 2005, by L. Ted Prosser, the value of the cut-out parcel is $2,500. The bid from Ray Quate, owner of the adjacent parcel is in the amount of $2,500. Mr. Quate is renovating the building on the adjoining parcel with historic consideration to provide three (3) main floor artist's studios and five (5) second floor apartments with inside parking. He purchased a 0.13 acre parcel from the City to provide access to the second floor parking in November of 2004. He plans to assemble the subject parcel with his property to provide improved access to the parking and a better buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
- The sale of this lot to Mr. Quate will facilitate the re-development by providing improved access.

There are no negative aspects of the transaction.

City staff recommends the Mayor be authorized to convey property on Bartlett Street to Ray Quate.

RESOLUTION BOOK NO. 29 – PAGE 189

E. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE

This item was removed from the Consent Agenda for discussion.

F. BUDGET AMENDMENT TO REFLECT INCREASED FUNDING FROM THE N.C. DEPT. OF TRANSPORTATION AND THE TOWN OF WEAVERVILLE FOR OPERATION OF A NEW ROUTE TO WEAVERVILLE

This item was removed from the Consent Agenda for discussion.

G. RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON CROCKETT AVENUE FOR A RIGHT-OF-WAY EASEMENT AND UTILITY EASEMENT ON CROCKETT AVE

This item was removed from consideration at this time.

H. RESOLUTION NO. 05-156 - RESOLUTION APPROVING FREEDOM LANE AS A NEW STREET NAME

Summary: The consideration of a resolution approving Freedom Lane as the name for a new street located off Liberty Street.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Liberty Street without causing emergency response delays.

Pro:

- The street will be utilized to access four new residential units.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Freedom Lane to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Freedom Lane as new street name.

RESOLUTION BOOK NO. 29 – PAGE 190

I. RESOLUTION NO. 05-157 - RESOLUTION APPROVING ALEX BREEZE WAY AS A NEW STREET NAME

Summary: The consideration of a resolution approving Alex Breeze Way as the name for a new street located off Deaverpark Drive.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Deaverpark Drive without causing emergency response delays.

Pro:

- The street will be utilized to access three new residential units.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Alex Breeze Way to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Alex Breeze Way as new street name.

RESOLUTION BOOK NO. 29 – PAGE 191

J. RESOLUTION NO. 05-158 - RESOLUTION APPROVING EDBAR STREET AS A NEW STREET NAME

Summary: The consideration of a resolution approving Edbar Street as the name for a new street located off Sweeten Creek Road.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Sweeten Creek Road without causing emergency response delays.

Pro:

- The street will be utilized to access existing and new businesses.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Edbar Street to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Edbar Street as new street name.

RESOLUTION BOOK NO. 29 – PAGE 192

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC., FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Arch Wireless Operating Company, Inc. (Arch) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge overlooking downtown to the north, Mission Hospital to the west and Kenilworth to the south. The circular concrete rim of an in-ground water tank that has been completely filled is the only trace of its former use. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

Arch has operated an antenna and related equipment at the site since December 1993. The antenna is located on the tower known as the "BellSouthTower" which is the tower to the west. The proposed License Agreement will enable Arch to continue operating an antenna at that site; however, there is a provision which allows the Licensor to terminate the agreement upon 180 days notice or the Licensee to terminate the agreement with 60 days notice. The term of the License Agreement will be 3 years with no renewal periods. Arch will pay a License Fee of $350 per month ($4,200 annual) the first year with a 4% annual increase thereafter. In addition to the License Fee Arch will pay a Utility Fee of $150.00 per annum.

The Notice of Intent to enter into a License Agreement with Arch was published on July 29, 2005, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

The positive aspects of the transaction are:

1. The license will generate revenue
2. The license fee represents fair market value.
3. The transaction will retain a fee tenant rather than having a vacant space.
4. It will facilitate Arch being able to continue providing a valuable service to its customer

There are no negative aspects to the transaction

City staff recommends City Council authorize the City Manager to execute a License Agreement with Arch Wireless Operating Company, Inc. for an antenna at 36 Reservoir Road.

Upon inquiry of Councilwoman Jones, Field Services Director Ed Vess said that Arch had four antennas, however, they removed all of them except for one. This is the rate for one antenna.

Councilman Jones moved for the adoption of Resolution No. 05-159. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 193

E. RESOLUTION NO. 05-160 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE

Summary: The consideration of a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Weaverville, and an associated budget amendment, in the amount of $108,839.

The Asheville Transit System has received funding for the operation of a route to Weaverville. The route will operate five times per day (out and back) six days per week, with the last run retiring around 7:30 p.m. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The Town of Weaverville has budgeted $10,000 to this route. There are no City funds in this operation, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes. The route will run from the downtown transit center up Merrimon to UNC-Asheville, then to Weaverville, Rose's Shopping Center, Sonopress, and back through Weaverville to the downtown transit center via Merrimon Avenue. Using the Black Mountain operations as a guide, it is reasonable to project ridership after three years to be in the range of 15,000 trips annually with the potential for up to 25,000 trips at full maturity (5 years), with 2,700 vehicle trips removed from roads after three years.

Conformance to City Development Plan 2025:

- Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.
    - Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

Conformance to Strategic Plan:

- Strategic Plan Section on Planning, Goal 2, Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion.

The benefit to the City of Asheville is:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville
- Increased accessibility to jobs in Weaverville (Sonopress being the largest employer in Weaverville), and access to jobs in Asheville by those living along the route

Costs to the City of Asheville:

- None

City staff recommends City Council endorse a resolution authorizing the Mayor to enter into a funding agreement with the NC DOT for the provision of transit services to the Town of Weaverville, and the associated budget amendment.

In response to Councilwoman Bellamy, Transit Services Director Bruce Black explained benefits and promotion of this new bus rote.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-160. This motion was seconded by Councilman Davis and carried unanimously.

F. **ORDINANCE NO. 3274 - BUDGET AMENDMENT TO REFLECT INCREASED FUNDING FROM THE N.C. DEPT. OF TRANSPORTATION AND THE TOWN OF WEAVERVILLE FOR OPERATION OF A NEW ROUTE TO WEAVERVILLE**

Summary: See Resolution No. 05-160 above.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-160. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 243

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED ON OAK PARK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ESTABLISH TWO DUPLEXES AND SIX SINGLE-FAMILY UNITS**

This public hearing was continued from the July 26, 2005, City Council meeting in order to allow the developer time to address some of the concerns identified by neighboring property owners.

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:15 p.m.

All Council members disclosed that they have visited the site and/or have received correspondence relating to this project and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located on Oak Park Road from RS-4 Residential Single-Family Medium Density District and RS-2 Residential Single-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use, and a request to issue a conditional use permit to establish two duplexes and six single-family units.

The project area is located in the Asheville city limits with frontage on both Oak Park Road and on Sky View Place in North Asheville (Attachments to City Exhibit 3 – Location Map and Aerial Map). The subject properties (2 lots) are the result of a lot recombination with additional property gained through a quit claim processed in 2004. The subject properties total approximately 1.46 acres, of which approximately .72 acres is zoned RS-2 and .74 acres is zoned RS-4.

The site currently supports a non-conforming garage that will be removed to make way for new construction consisting of the addition of 2 duplex buildings and 5 single family structures for a total of 9 units (Attachment to City Exhibit 3 – Site Plan). Four of the 5 single family structures will be located on subdivided lots accessed off of Sky View Place, with the remaining 1 single family units and 2 duplex units all being located on a larger single lot where all 5 units will share a 10 space parking lot (+ 2 garage spaces) accessed off of Oak Park Road. The duplex units will be 2 stories and approximately 1980 square feet per unit, 3960 square feet total. The single family structures will be 3 stories and approximately 1850 square feet with a comparatively smaller footprint, a little over 600 square feet. Also associated with the project is additional landscaping required for parking lot, street buffer, street tree, and landscape buffers along with tree preservation shown on the proposed Master Plan (Attachments to City Exhibit 3 – Building Elevations).

The rezoning component of the application is a request to rezone from RS-4/RS-2 to RM-8 to allow for a higher density and to allow for multi-family structures on a single lot. Current zoning would allow up to 3-4 single family units.

At their May 4, 2005, meeting, the Planning & Zoning Commission reviewed the proposed project and unanimously denied the proposal as submitted. Issues of concern centered primarily on the increase in traffic as a result of the increase in density and the inability for the existing road system and infrastructure to support the proposed density. There was a fair amount of public comment in opposition of the proposed project that pointed to examples of lack of off-street parking for existing homes resulting in congestion on the streets from on-street parking, narrow roads, sharp turns, steep grades, and emergency response times. The applicant responded to the some of these concerns with a revised site plan that removed one of the units (originally there had been 6 single family structures proposed) and increased the ratio of parking spaces per unit in order to alleviate any potential contribution to the existing on-street parking situation. In addition, the revised site plan shows that parking spaces from in front of the homes located on Sky View have been moved to parallel on street spaces and that this change, combined with the use of retaining walls, has further reduced the overall impact to the site by further reducing the amount of clearing and grading necessary for construction.

Despite the changes to the site plan, staff remained somewhat concerned over the lack of support from the Commission and the public. In response Planning staff re-visited the site and reviewed the revised plans with both the Fire Marshal's office and the City's Traffic Engineer. Travel routes to both the upper half of the site and the lower half of site appeared to be easily navigated with the lower portion being accessed from the straight line of Baird Street while the upper portion of the site was easily reached from Town Mountain Road. The Fire Marshal's office did not find issue with serving the development and was pleased with the amount of parking provided for development commenting that it would aid in their response to the area. In addition, the Traffic Engineer reviewed the proposal and did not find that the amount of trips generated

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from the proposed development would contribute significantly to the traffic on the roads, particularly the less traveled roads that were more problematic for safe and easy navigation or wayfinding. In addition, the change to the parking for the units on Sky View was generally preferred by the traffic engineer since it reduced the need for backward movements and provided more spaces per unit.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The site area is an unusual combination of very mild and easily developed property with an equivalent amount of very steep terrain that is significantly more challenging to develop. The applicant has responded appropriately with the larger buildings and parking lot being located in the mildly sloped areas where less grading would be required. The steeper portions of the property are being developed with single family structures that have a comparatively small (600 s.f.) footprint that will accommodate the existing terrain more sensitively and require less disturbance than the average single family home. The use of retaining walls is also shown to help minimize the total disturbed area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed development will be in character with the development patterns already existing on the hillside and will also be architecturally attractive and consistent with the older Craftsman style homes of the area. This development is not expected to negatively affect adjacent property values.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   It is a relatively typical scenario to find the size of single family home sites increase with the rise in terrain and an increase in grade; as slopes become steeper, lots become larger (Attachment to City Exhibit 3 – Slope and Density Analysis Map). The larger lots perched higher on the hillside are typically developed at a low density due to physical challenges and development costs. Understandably, lower lying properties are commonly developed at a higher density where development costs are not as restrictive. Oftentimes, between the relatively flat low lying properties and the relatively steep hillside properties are pockets of "transition" properties. The subject area appears to be located

in just such a transition zone with a proposed density classified as Medium Density (City Exhibit 4 – Use/Access Study Map). The existing development on the hillside currently supports several similar pockets of medium density development as well as individual lots that would be classified as high density and low density (City Exhibit 5 – Property Selection Map). The scale of the larger duplexes is not out of scale with many of the larger single family homes in the area as well as the existing multi-family structures. The proposed single family homes are taller (3 stories) than many of the single family homes in the more traditional lower lying neighborhood but are not out of place with many of the homes perched on the hillside designed to capture views out over the valley floor. Lastly, the character of all the proposed structures would be compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville (City Exhibits 6-10 – Photos).

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing zoning (by limiting density and a sufficient return given the market for the property's development). The *ACDP 2025* proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditonal Use Rezoning is one such tool that would allow this property to be developed at a higher density than the current zoning would allow. In addition, the same section of the comprehensive plan that discusses the need for residential infill development also outlines the need for this new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach and building design that will blend in with the existing hillside neighborhood.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240 only ¼ mile away and within walking distance. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed use splits access to the project area on two road frontages and will safely distribute traffic to roads with a higher capacity. The heaviest use to the site, 5 multi-family units, will be able to utilize an existing driveway (that will be improved) that empties onto Oak Park Road, a very short distance from the intersection of Baird Street which is part of the City's more navigable road system. In addition, all units will have the maximum number of off-street parking spaces allowed to prevent the need for any on-street parking. Lastly, the proposed use has been reviewed by the City's traffic engineer who has determined that the number of units and their access does not pose an undue or dangerous traffic hazard.

Pros

- Allows for an attractive mix of infill housing types strategically located to transportation, services, & employment.
- Provides a topographically sensitive design and layout.
- New building construction will be in scale with existing multi-family and single family structures.
- Provides off-street parking in excess of the minimum required (alleviating on-street parking congestion).

Cons

- Results in a higher density than some of the existing residential units.

City staff recommends approval of the zoning change from RS-4/RS-2 to RM-8 (CUZ) and approval of the associated conditional use permit, as proposed by the applicant.

Should the Council choose to deny the request as submitted, staff would like to recommend the following alternatives that reduce the total number of units:

- Remove the single family structure on the multi-family lot (for a total of 4 single family homes+2 duplexes)
- Reduce the number of single family homes on Sky View from 4 to 3
- Replace duplexes with single family structures

Discussion then surrounded why the Planning & Zoning Commission has not reviewed the revised plans, especially since it was a Planning & Zoning Commission unanimous denial. City Attorney Oast advised Council that they have the ability to remand the matter back to the Planning & Zoning Commission. He also noted that the valid protest petition would remain in effect when the issue is brought back again before Council.

Mr. Gerald Green, representing the applicant, said they would be willing to take the project back to the Planning & Zoning Commission. That will give them an opportunity to show the Commission how they have addressed their concerns. In addition, they will meet with a wider range of the neighborhood to see if their concerns can be addressed.

Councilman Dunn moved to remand this matter back to the Planning & Zoning Commission. This motion was seconded by Councilwoman Jones.

The following individuals spoke against remanding this issue back to the Planning & Zoning Commission for various reasons, some being, but are not limited to: the neighborhood has already looked at the revised plans and there is not a huge change; Skyview Place is a narrow road; the inconvenience to the neighborhood; the development does not fit into the site; the developer has not made an effort to meet with the neighborhood:

Mr. Bill Chase, resident on Oak Park Road
Ms. Erin McLaughlin, resident on Oak Park Road
Ms. Elizabeth Wyndelts, resident on Oak Park Road

Mr. Alan Laibson, applicant, said he would like the opportunity to go back to the Planning & Zoning Commission, in particular to address the parking and density concerns. He felt there was some misinformation being relayed to the neighborhood and he would like the opportunity to clear that up as well.

In response to Councilman Newman, Ms. Tuch felt that the Planning & Zoning Commission's prospective was evenly balanced between the technical and fundamental aspect of the project.

After further discussion, the motion made by Councilman Dunn and seconded by Councilwoman Jones to remand the matter back to the Planning & Zoning Commission failed on a unanimous vote.

Mr. Green, on behalf of the developer, withdrew the request at this time. He said they would re-evaluate the site, meet with the neighborhood and possibly come back to Council at a later date.

B. PUBLIC HEARING TO CONSIDER AMENDING THE CONDITIONAL USE PERMIT TO CONSIDER POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

ORDINANCE NO. 3275 - ORDINANCE AMENDMENT THE CONDITIONAL USE PERMIT TO CONSIDER POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:08 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of an amendment to the conditional use permit to consider potential outparcel use based on new information included in an update to the Traffic Impact Analysis for the Riverbend Marketplace development located off Bleachery Boulevard.

In 2002, the Riverbend Marketplace was approved and subsequently permitted for a large scale, level 3, commercial development project (City Exhibit 4 – Site Plan). Concerned about the effect of the development on the carrying capacity of Swannanoa River Road led the Asheville City Council to condition approval for the large project to restrict development so that, at

project build-out, traffic volumes on Swannanoa River Road would not exceed 90% of level of service D; new development above the limits that this established in the plan could not occur without additional mitigation measures and conditional use permit (CUP) modification. This restriction prevented the development of one of the two outparcels (Outparcel 1) and limited development in other areas of the project. Subsequently, in 2004, City Council approved a modification to the CUP to allow an expansion of the allowable development intensity of the associated urban village project based on a traffic impact analysis (TIA) that showed that the constructed road network was capable of handling peak hour traffic without degradation of the level of service on Swannanoa River Road below acceptable limits, although the 90% requirement was exceeded. Staff made its review at that time using site-specific analysis of intersections, a more accurate and accepted method of gauging traffic impact than the somewhat arbitrary 90% of level D capacity measure used in the prior CUP. Now, an updated TIA has been submitted that examines the intersections in the vicinity of this proposal, taking into account the added traffic anticipated from the new Aldi grocery store, the proposed urban village, and the proposed outparcel development, as well as other background traffic increases. This analysis showed that, while the 90% requirement was again exceeded on the corridor, all but two intersections would operate at a level of service meeting the intent of Council's original condition. The two intersections that were not operating optimally are:

1. Swannanoa River Road & S. Tunnel Road
2. Tunnel Road & S. Tunnel Road

The intersection of Swannanoa & S. Tunnel is not of great concern since it is anticipated that the road improvements required as a condition of the Target development will improve the level of service at this intersection. The second intersection, Tunnel and S. Tunnel, was of greater concern, with a level of service of "F". However, it was recognized that the Riverbend Marketplace development contributes a very small amount of peak hour trips to this intersection and is generally considered not to be responsible for its poor level of service. Similarly, it is anticipated that the development of Outparcel 1 would not contribute significantly to the existing problem. Consequently, the mitigation measures planned for the Swannanoa River and Tunnel Roads intersection mitigate the added traffic planned for Outparcel 1.

In summary, in an effort to seek relief from development restrictions established over concern due to increases in traffic, the applicant has updated the former TIA to demonstrate that any increases in traffic as a result of the Riverbend Marketplace development, including Outparcel 1, can be accommodated with recent and anticipated road connections and improvements to meet an acceptable level of service on all affected roadways. As a result, the developer would like to amend the conditional use permit (CUP) to allow Outparcel 1 to be considered for development, based on the updated TIA.

The revised TIA was reviewed at the July 18, 2005, Technical Review Committee meeting where the project was approved with conditions. The majority of the departments commented that since a development plan for the parcel had not yet been determined, a separate review would be required at a later date. As a result, these departments abstained from voting. The only other comments were from the City Traffic Engineer who provided a summary of the revised TIA and how it related to the overall development project. In addition, the Traffic Engineer also responded to questions from the public and provided clarification on issues raised. Ultimately, it was only the Engineering Department that voted, and the project was approved with conditions. The conditions included:

- Identify recommended improvements to the intersection of Tunnel Road and South Tunnel Road
- Provide additional detail to some of the analyses.

A revised TIA has been submitted and will be reviewed to see if the above conditions have been met.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

The larger Riverbend Marketplace Master Plan was reviewed and approved in July of 2002. At that time, the overall development project was found to meet all seven conditional use standards (listed below). It is generally felt that the ability for the project to meet the seven standards has not changed as a result of the requested amendment, however, as it relates to traffic, standards #1 and #7 have been reviewed.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The updated TIA demonstrates that an acceptable level of service is maintained on all affected roadways. As a result, the proposed use is not expected to endanger the public health or safety. Concern was raised during the TRC meeting that increases in traffic accidents have resulted post-development but any information provided to support this concern could be attributed to any number of factors including a simple increase in traffic increasing the statistical likelihood of an accident or a small and/or aberrant sample. In addition, traffic calming that will be implemented as a result of Urban Village development would reduce the likelihood of traffic accidents.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Not applicable.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Not applicable.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   Not applicable.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   Not applicable.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   Not applicable.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

An update to the TIA generated for the project reveals that an adequate level of service will be maintained on all affected roadways as a result of this development project. Areas of poor service will either be improved as a result of anticipated road improvements or are not attributable to this development project.

Pros

- Allows for the infill development in an already established retail area.

Cons

- Contributes to a small increase in traffic (but within acceptable limits).

For the reasons stated above, Planning staff concurs with the City Traffic Engineer and recommends approval of this CUP amendment subject to the TRC conditions being met.

Mr. Rick Pressley, with Horne Properties representing the development company, said that this Outparcel was always a part of an intended use of the development. The updated TIA in May of the roads and the new two miles of roadway emptying onto Fairview Road and through the River Ridge Shopping Center shows that traffic is being adequately handled. He noted that the conditional use permit that they were granted included approximately 5,500 square feet of allowable area, which they are not building. Noteably, the Outparcel square feet will probably be less than 5,500 square feet. Finally, the study that was brought before Council for the second phase, which they do not own, which is the Urban Village, included this lot and there is further proof that the level of services are adequate within that study. He asked for a favorable approval to get this Outparcel freed up for development which will conclude the Riverbend Market Place development as far as build-out.

In response to Councilman Newman, Traffic Engineer Anthony Butzek said that when the project was originally approved, Council expressed some concerns about one development absorbing all of the capacity on the roadway and the development density of the project was therefore limited. Now that the project has been built and we are seeing how traffic operations are occurring, the developer is asking relief from a condition that was agreed to at that time. This Outparcel was removed from the project to get them below that maxium density that Council wanted them to adhere to.

In response to Mayor Worley, City Attorney Oast explained that the Urban Village project has a different owner and is not part of this conditional use permit for this project.

Ms. Tuch said that there is a difference between the level of service and the 90% anticipated traffic load. The 90% is a theoritical number. The anticipated amount of traffic that the project will contribute to the road was 90%, which included the Urban Village. An amendment to the conditional use permit for the Urban Village added another 5% to a total of 95% for the Riverbend project. The Aldi development contributed 10% and now this Outparcel is anticipated to contribute 1%. The total percentage is 106%. That theoritical number can exceed 100% because it is theoritical. The way to measure the service is to go out and measure the traffic through the intersections. That is what the TIA did and it showed that we are at an adequate level of service, with the exception of the two. One intersection did not meet that level of service, but it is anticipated that it will be improved as a result of traffic improvements to be completed for the Target development. The other intersection remains at a poor level of service, however, it has been determined that a number of the trips at that intersection are not coming from this Riverbend development. It seems unfair to penalize them for something they are not significantly contributing to.

Mr. William Lentz, resident on Governor's View Road, presented Council with Neighborhood Exhibits 1 and 2 which are photos of the congestion of the South Tunnel Road area with the intersection of Swannanoa River Road. He urged Council to not approve any more development which will contribute to the traffic congestion.

After rebuttal, Mayor Worley closed the public hearing at 6:22 p.m.

Mr. Butzek said that an update to the TIA was required for this project. That TIA does meet the typical traffic engineering standards and shows an acceptable level of service with improvements to the roadways. Improvements to two intersections would be necessary. With regard to the intersection of South Tunnel and Swannanoa River Road, Target is required to do some improvements there. In fact, the N.C. Dept. of Transportation has made some signal timing improvements to that intersection. Regarding the other intersection of South Tunnel Road and Tunnel Road, signal timing improvements would improve conditions there as well. That is quite a distance from this project and the number of trips that this particular outparcel would contribute to the intersection is minimal.

In response to Councilwoman Bellamy, Mr. Butzek said that a TIA looks at intersection analysis and determines the specific level of service. The 90% rule is a fairly general type rule that doesn't relate very closely to the specific analysis. It's not a standard way of determining the capacity of a roadway. It's a way of getting a general idea of the capacity of a roadway. That condition was imposed to keep this one development from absorbing all the capacity. The TIA looks much more specifically at intersections and is a better determination of actual operations. The Aldi development, which is unrelated to this development, contributed approximately 10%. They also had a separate traffic study which determined acceptable operation. This study then factored in all of those approved developments, the Urban Village expansion as well as the Aldi develoment.

Councilman Newman was concerned about how close are we getting until we see a poor level of service to the intersections in the area, based on the rate growth in the area. He wondered if we had a planning tool for future development in that area.

In response to Councilwoman Bellamy, Planning & Development Director Scott Shuford said that this is the last piece of development for the Riverbend project. There are two outparcel pieces that are undeveloped. The first outparcel piece was included in the original TIA and has been accommodated in this TIA. The second outparcel piece here is the last piece of the Wal-Mart development itself. The Urban Village is at the top of the hill and its traffic generation has been accommodated in this study as well.

Responding to Councilwoman Bellamy's question about future plans for the corridor development, Mr. Shuford said we have a plan for constructing the Wilma Dykeman Riverway. It won't be a huge capacity increase because Swannanoa River Road will still remain a two-lane roadway, but many of the intersections that do cause congestion will be widened. He said that if we continue to look at high traffic generating retail uses in that area, we will run out of capacity a lot faster than if we look at mixed-use development. He said that Swannanoa River Road is a state road and there are no plans to widen it. He did say that they are trying to get the Wilma Dykeman Riverway Plan on the Transportation Improvement Program, which they hope they will get it on this year.

When the Urban Village project was brought before Council, Councilwoman Jones felt she was clear in asking what plans there were for future development on that site. She did not recall this being mentioned. She did recall a possible movie theatre and asked what the status of that is. Mr. Shuford said that was associated with the Urban Village project and as far as he

knows there are no plans to construct that. He did state that if a movie theatre is proposed, it would have to come back to City Council for approval.

Upon inquiry of Councilman Davis, Mr. Shuford said that Target will add another left turn lane from Swannanoa River Road onto Tunnel Road. With regard to the intersection improvements, Mr. Butzek said that several deadlines have passed and the City is working with Target to move the improvements forward. He has another meeting scheduled with Target within the week. He said that staff will let Council know if they reach a stopping point, however, he doesn't feel Council involvement at this time is necessary. He feels comfortable that they intend to move forward with that improvement. If the improvement is not completed, City Council can revoke Target's conditional use permit.

In response to Vice-Mayor Mumpower, Mr. Butzek said that the Target improvement will have a very large impact to that intersection. It will increase the capacity on the east bound approach significantly as it will provide for an additional left-turn movement. It will also reduce the amount of greentime that is allocated to that eastbound movement. The traffic signal will reallocate that greentime around the intersection to serve the other movements more appropriately.

Councilwoman Jones pointed out that in staff's report, it say that "this analysis showed that, while the 90% requirement was again exceeded on the corridor, all but two intersections would operate at a level of service meeting the intent of Council's original condition." She clarified that it was not her sole intent. The level of service is one aspect of it in terms of traffic, but it was also the future planning capacity. She felt the 90% was too high even then. She felt that Council made a promise to the community. To say that this is an amendment to the intent of Council is a problem for her.

Mr. Shuford said that the 90% issue was not a requirement. It is referred to in one of the findings of the conditional use permit. It was never included as a specific condition of the conditional use permit. The point was, and an effort was made at that time, to try to reserve some capacity for future development along the roadway. There is no question that was what Council intended. He felt he may have made a mistake back on July 23, 2002, when the conditional use permit was before Council, by suggesting that particular measure, because that is not a stardard measure for level of service. It was his planner's effort to try to take a number that a two-lane roadway would typically have and have some capacity associated with it to get Council to where they wanted to go be. He feels Council s intent was that Council wanted to make sure that the roadway operated at an acceptable level of service. That is why the sentence was written the way it was.

In response to Councilman Newman, Mr. Butzek said that it appears that neighborhood encroachment has not been as significant as the original traffic study forcasted, based on the data we have available. In addition, traffic calming is scheduled for Governor's View Road and also for Redwood Forest.

Councilman Dunn moved to adopt Ordinance No. 3275 to approve the modification to Ordinance No. 2939 and to Ordinance No. 3178, and Condition No. 2 as set forth in said ordinances is amended to read (changes indicated in red) provided all TRC conditions are met and that there be no further changes without traffic mitigation, a Traffic Impact Analysis, etc.: The attached Exhibit A, the level of development intensity approved for this Project, is amended to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units as approved by Council by adoption of Ordinance No. 3179, and for the development of Outparcel 1 as a 5,000 square foot high-turnover restaurant or similar use of an equal or lesser impact. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa

River Road unless further traffic impact mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than $50,000 to be used for improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.This motion was seconded by Councilman Davis.

Vice-Mayor Mumpower wondered at what point, if any, should the City should say no to development in order to keep the capacity open for future development. Mr. Shuford felt this is a policy question for Council. He suggested Council look at the roadway corridor and think about the type of land use you want to see occurring and think about the traffic generation characteristics of that type of land use and then see if there are ways to accommodate it or not. We are trying to do that with the River Redevelopment Plan.

In response to Councilwoman Bellamy, Mr. Shuford believed that Ingles has purchased the former Wal-Mart site, but would confirm that and report back to Council.

Vice-Mayor Mumpower commented that he felt it was unfair to limit or otherwise impair development allowed under our ordinance in anticipation of future development that Council might feel is better.

Councilwoman Jones will not support the motion. She actually likes the Urban Village site, however, the 90% meant something to her and she feels that we are going beyond the capacity of the road. In addition to that being an important part of her reasoning, she also feels like Council made some statements to the community and she doesn't feel we are living up to those statements.

Councilman Newman said that this was a very controversial project when it came before Council and traffic congestion was a principle part of the equasion that people were concerned about. Since the traffic projections at that time showed that on the day the project opened, it would already be above a level of service "D", a decision was made to require the developers to scale the project back to 90%. He felt that while there was not community consensus, it was like a deal was struck with the community.

Councilwoman Bellamy said she could not support the motion. She read the following portion of the July 23, 2002, minutes: "However, the applicant indicated that the option they would prefer to pursue at the current time is to reduce the scale of the project in order to meet the 10% capacity retention standard proposed at the City Council meeting. Included in this option is the provision of an expanded connection, via a public street to be constructed by the applicant, to the River Ridge Shopping Center. In other words, they propose to delete some land uses from this request and to change others to such an extent that the total projected traffic on Swannanoa River Road falls below 12,600 vehicles per day."

Upon inquiry of Councilman Dunn, Mr. Pressley said that with all the testimony heard it is very easy for anyone to get tangled up on intent. He assued Council that at no time did they ever mean to state, or in his opinion state, that they would not develop that second outparcel. We said that we had the intent, along with everyone in the room, to address the traffic situation. We have

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done that through the exterior and rear entrances. Again, it was never their intent to take this off the table on a continuing, forever basis.

When Councilman Dunn called the question, a vote was taken to cut off the debate, which motion carried unanimously.

The motion made by Councilman Dunn and seconded by Councilman Davis carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

ORDINANCE BOOK NO. 22 - PAGE 345

At 7:26 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR UMBRELLA SIGNS

ORDINANCE NO. 3276 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR UMBRELLA SIGNS

Mayor Worley opened the public hearing at 7:34 p.m.

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of adding provisions for umbrella signs. This public hearing was advertised on July 29 and August 5, 2005.

The current sign regulations of the City of Asheville do not address umbrella signs. Umbrella signs are those signs printed on umbrellas that are commonly used at outdoor eating and drinking establishments and often advertise products sold on the premises. This amendment provides for such signage.

This ordinance amendment defines umbrella signs as those signs printed or painted on an umbrella. This amendment goes on to classify umbrella signs as a type of sign exempt from permit requirements. This means that an umbrella sign is permitted without having to actually obtain a permit for the signage so long as the applicable regulations are met.

The regulations stipulated in this amendment for umbrella signs include that such signs not be illuminated, that they be located at a lawfully permitted outdoor dining/drinking establishment, that they not be suspended from the umbrellas, and that the signage be limited to 25% of the surface area of the umbrella cloth.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment sets forth regulations for a type of signage not currently addressed in the UDO and which has been raised as an issue for enforcement staff.
- The amendment permits umbrella signs without permit (subject to specific requirements) which will not add to the permitting burden for staff.

Cons-

- The amendment allows this type of signage (with restrictions) that may be considered to add to sign clutter.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 7:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3276. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 249

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE DEFINITION OF ADULT ESTABLISHMENTS

ORDINANCE NO. 3277 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE DEFINITION OF ADULT ESTABLISHMENTS

Mayor Worley opened the public hearing at 7:36 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of changing the definition of "adult establishments. This public hearing was advertised on July 29 and August 5, 2005.

The UDO regulates "adult establishments" as conditional uses. In defining "adult establishments" the current ordinance simply refers to the definition contained in the North Carolina General Statutes.

The definition of "adult establishment" found in the North Carolina General Statutes does not specifically address retail operations that deal specifically with "sexually oriented devices" although that term is defined in the statutes. N.C. Gen Stat. sec. 14-202-11 gives local governments power to regulate "adult establishments or other sexually oriented business to the extent consistent with the constitutional protection afforded free speech." "Sexually oriented devices" are defined in the statutes as "without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device."

Due to recent inquiries concerning operations that retail "sexually oriented devices," the Planning and Development Department and the City Attorney's Office recommend the addition of operations where the principal retail business is in such items to the definition of "adult establishment."

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment clarifies an issue that has recently been brought to staff's attention as to whether or not retail operations dealing primarily in "sexually oriented devices" are "adult establishments."

Cons-

- Some as unnecessary could view the amendment over regulation of adult establishments.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 7:37 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3277. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 451

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH BUNCOMBE COUNTY FOR MAINTENANCE OF NON-CITY WATER LINES, TANKS AND PUMPS LOCATED IN BUNCOMBE COUNTY

This matter was removed from consideration at this meeting.

B. RESOLUTION NO. 05-161- RESOLUTION SUPPORTING SENATE BILL 1006 INTRODUCED IN THE 2005 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

Councilman Newman explained the need for the following resolution and asked for City Council's consideration and support: "WHEREAS, air pollution is a significant contributing cause of respiratory and other ailments in the population of Western North Carolina, especially in the very young and very old; and WHEREAS, air pollution has harmful effects on the ecology and environment, including the weakening and destruction of vegetation at high elevations; and WHEREAS, air pollution has a harmful effect on the economy of Western North Carolina, in that it interferes with mountain views which have long been an attraction for the tourism industry; and WHEREAS, a major source of controllable air pollution is exhaust emissions from motor vehicles; and WHEREAS, a bill has been introduced in the N. C. General Assembly, Senate Bill 1006, entitled "An Act to Establish the North Carolina Low-Emission Vehicles Program," which bill provides for the State of North Carolina to adopt and administer a program for reducing vehicular emissions, and for the State and its political subdivisions to purchase low-emissions vehicles. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The Asheville City Council of the City of Asheville does hereby express its support for Senate Bill 1006, and urges the members of its local delegation, and all members of the General Assembly, to adopt said legislation, and further urges the Governor to sign said legislation into law, as soon as possible (2) The Mayor, through the City Clerk, is authorized to transmit a copy of this resolution to the sponsors of Senate Bill 1006."

It was the consensus of Council that Asheville is a leader in the south and this continues our leadership role.

Councilman Newman moved for the adoption of Resolution No. 05-161. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 195

C. RESOLUTION SUPPORTING FULL IMPLEMENTATION OF THE FEDERAL CLEAN AIR ACT AND THE ADOPTION OF OTHER MEASURERS TO CONTROL INTERSTATE POLLUTION

This matter was removed from consideration at this meeting.

VI. OTHER BUSINESS:

Councilman Davis commended the Asheville Police Department for responding in such a rapid manner to a break-in at his store, resulting in the culprit being captured.

Vice-Mayor Mumpower announced the Midnight Basketball event at Hillcrest Apartments for the children of Hillcrest and Deaverview on Friday, August 12, 2005.

The following claims were received by the City of Asheville during the period of July 15-28, 2005: Kyle Ann Ross (Police), Rob Weed (Water), Ann E. Sams (Streets) and Teresa Foster (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton felt the City of Asheville "needs to demonstrate its ability to consistently provide service that meets customer ... requirements." He felt City Council should review the ISO 9001 requirements to operate successfully.

At 7:55 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously. At 9:05 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:05 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 16, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Contract with Carolina Cornerstone to Construct Tennis Facility at Aston Park

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carolina Cornerstone Construction to construct a tennis facility in Aston Park.

The City of Asheville Parks and Recreation Department is in the process of implementing the first phase of development on the Aston Park Master Plan. This phase of significant public park improvements includes a new tennis facility, driveway and handicap parking to replace the current building that is in poor condition and doesn't meet the needs of the tennis program and the community. The project was bid out according to City standards that include the Minority Business Plan. The Director of the Asheville-Buncombe Office of Minority Affairs has reviewed the bid submittal and found that the company provided the appropriate good faith effort documentation along a listing of certified firms that will be participate on this project. Funds for this project are coming from the Irene and Dick Covington Foundation and the Parks and Recreation Trust Fund grant. This building will also house the memorabilia from Dick Covington who was affectionately known as "Mr. Tennis" for his work in Asheville on enhancing this sport for over five decades.

Pros

- The construction of this portion of the project is an integral-supporting aspect of the unique clay tennis courts.
- The park will provide greatly needed recreation facilities for recreation users, especially the tennis players in the area.
- The tennis facility will be a local and regional attraction that will foster economic development.
- No City tax funds will be used in the development of this facility.

Cons

None

City staff recommends that City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, in the amount of $361,237, to construct the tennis facility at Aston Park.

There was considerable discussion, initiated by Councilwoman Jones, about the number of people who just hang out at Aston Park. Parks & Recreation Director Irby Brinson explained that they have hired off-duty officers for the last 3-4 months taking shifts at that location, in addition to other measures, including the design of the park and zero tolerance policy in the parks. He felt that to discourage that type of activity a full-time person is needed to police the area. He felt that when positive activities take place in the park, the unwanted element will go somewhere else. He agrees that it is a big problem, which will take some time to resolve.

At the request of City Manager Jackson, it was the consensus of Council to ask the City Manager to report back to Council with other ideas on improving the security of our downtown parks, along with any resource commitments that may be necessary to accomplish the task.

Setting a Public Hearing to Close an Alley off Clingman Avenue

Summary: The consideration of a resolution of intent to close an unnamed alley off Clingman Avenue and set a public hearing for September 27, 2005.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mountain Housing Opportunities has requested the City of Asheville permanently close to public use as an unnamed alley off Clingman Avenue. This alley is more particularly described as the alley mentioned in Deed Book 1700 at page 471 and prior deeds in the same chain of title, said alley being further described as Lot 1 of a plat of property of Wilson and Teasley as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 2 at page 24 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress as Mountain Housing Opportunities has submitted to the Planning Department a recombination request for the parcels affected. There are three parcels that abut this section of alleyway. They are identified by PIN Nos. 9648.05-08-4179, 9648.05-08-5118, and 9648.05-08-4248. The petitioner has authority over all the abutting parcels.

Pros:

- The closure allows the property to be used to its maximum (density) potential.
- Affordable housing can be constructed on the consolidated site.
- There will be no future compromise of ingress/egress to other property.

Cons:

- In consideration of the proximity of the alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for September 27, 2005, to close an alley off Clingman Avenue.

FAA Grant Offer

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $836,729.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $836,729, is for the Airport Improvement Program Project No. 3-37-0005-30. This project consists of expanding the terminal apron (including rehabilitation), Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-30.

Provisions for Possession and Consumption of Malt Beverages and/or Unfortified Wine at the Lexington Avenue Arts & Fun Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

The Arts 2 People group has requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at their Lexington Avenue Arts & Fun Festival, scheduled for Sunday, September 4, 2005, from 11:00 a.m. – 10:30 p.m.

City staff requests City Council adopt a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

Budget Amendment for Aston Park Renovations

Summary: The consideration of a budget amendment, in the amount of $260,000, from a $260,000 grant award from the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund.

The City of Asheville applied in January 2005 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of $260,000.

The money will be used for the Irene and Dick Covington Center construction, new backboard, trailhead for greenway to Clingman Forest.

Pros:

- Allows for the City to develop improvements to Aston Park without taxpayer investment.
- Completes the construction of the Irene and Dick Covington Tennis Center.
- Completion of the Center will allow for community use in the meeting space provided.
- Allows for the construction of the trail head for the Clingman Forest Greenway.

Cons:

- None

This action complies with City Council's Strategic Plan in that it deals with the 11 areas of greenway development mentioned in the Strategic Plan.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $260,000 to increase the budget for the renovation of Aston Park.

Next Community Meeting – August 30, 2005 – Public Works Facility

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

LEAGUE OF WOMEN VOTERS BOARDS & COMMISSIONS STUDY

Ms. Kathleen Balogh, President of the League of Women Voters of Asheville/Buncombe County ("League"), said that the League is proud to present this compilation of two years of

intensive dialogue and study, documenting the appointment process for Asheville and Buncombe County boards and commissions.

This report represents Phase I of a two-part study. It is not meant to be a definitive work, as the process is in a constant state of refinement. Part I is a baseline, a detailed accounting of the current process, from the point when a board vacancy is identified to the point when an appointment is made to fill that vacancy at both the city and county levels. Phase II will begin at the point of appointment and move forward into how boards and commissions 'work'.

She said the purpose of the study was to create a comprehensive overview of the appointment process in order to establish better understanding of the process and enhance citizen participation in public decision-making and action.

She summarized the issues of concern:

(1) Availability of information/lack of computerized database - (a) information published in the major publications for the City and County is fragmented and incomplete; (b) access to some information requires knowledge of whom to contact and how and when to contact them; and (c) procedures for the City and County are different, and are described differently. This difference could be confusing, especially in the case of a joint city/county board or commission.

(2) Clarify of descriptions and understanding of the appointed bodies and their duties and responsibilities – (a) major publications lack "standard nomenclature." There is no guiding principle as to why there are so many different terms used to name and describe the duties of the appointed bodies; (i) descriptions of the appointed bodies and their duties and responsibilities are vague and unclear; (ii) major publications use different wording to describe the duties, etc., of boards/commissions; and (iii) major publications use words that have subjective interpretations and/or no real definition, such as "assist with," "combat poverty," "ensure/assure," "advance community awareness," "solve human problems," and "fix and revise.; (c) major publications contain contradictory information (e.g., joint boards/commissions with different names); and (d) websites have limited information and are often out of date.

(3) Limitations with the appointment process – (a) it is difficult to discern where information about board/commission openings is being distributed; (i) the current list of contacts are for internal use by staff; and (ii) we were not able to identify a formal list for the general public; (b) major publications do not provide references for citizens to define key terms used in the descriptions and assigned duties of boards and commissions; and (c) county booklet does not list meeting dates or locations.

Specific recommendations include: (1) language used in describing duties and roles of boards and commissions should be standardized; (2) descriptions of jointly appointed boards should be standardized; (3) City and County might wish to consider computerized management systems for tracking vacancies and appointments; (4) more administrative support for appointment process – especially for recruitment and community education on the important role boards and commissions play in governance; (5) better use of websites for both the appointment process and the work of the boards and commissions – like vacancies, minutes, and meeting schedule (time/location); (6) develop and upkeep of "Boards and Commissions" sections in branches of the public library; and (7) standardize applications – available on the website with an on-line application process.

The League recommends that City Council and the County Commissioners, in collaboration with the League, follow-up on the findings in this study.

She thanked Dr. Alison Climo, League member, who contributed time and expertise in data gathering, formulation, and comparison for this study.

Councilwoman Jones suggested a review be made about specific boards or commissions that have served well in the past, but have out-served their existence.

Vice-Mayor Mumpower, Chair of the City's Boards and Commissions Committee, said that he would review the study in depth with City Clerk Burleson and possibly bring back some items for implementation for Council's approval.

On behalf of City Council, Mayor Worley thanked Ms. Balogh and the other participants for their participation, support and assistance in this study. He said that City Council will look forward to the report on Phase II.

ASHEVILLE DRUG COMMISSION

Vice-Mayor Mumpower asked for Council's endorsement and support of the Asheville Drug Commission. He said the mission of the Drug Commission is to "Focus, learn and act on the causes, sources, and impacts of hard drugs on Asheville and our neighbors..."

He explained our problems consist of (1) A factor in an estimated 80% of the crimes committed in our community; (2) The foundation for much of the child abuse and neglect that occurs; (3) A tremendous drain on the service and financial resources of Asheville costing millions each year; (4) A persisting foundation for violence, fear, and impaired quality of life for the poor and disadvantaged in our community.

Our methods include (1) Monthly meetings – one hour +/-; (2) Monthly target issues which we learn, focus, act on, measure, and assess; (3) Sub-committees to enhance and solidify policy commitments using outside resources, time, and energy.

Initial target areas include (1) treatment; (2) education; (3) enforcement and adjudication; (4) social interventions; and (5) local, state and national policy.

Our methodologies include (1) solid pre-meeting preparation; (2) stay on task and realistic; (3) emphasize action over reaction; (4) assure tangible outcomes; and (5) emphasis on practical and realistic follow-up.

Sample issues for the Commission include (1) Bottleneck in SBI lab processing; (2) Economic and social impact of hard drug users who misuse resources at Mission Hospital – lack of availability of more cost-effective and appropriate inpatient "social detox" resources in the community; (3) Coordination of intelligence and communication between enforcement agencies; (4) Inconsistencies in our treatment network; and (5) Harmful exposures to children and elderly in public housing developments.

He suggested the following Commission members: Mr. Gene Bell – Housing Authority of the City of Asheville; Judge Gary Cash – Senior District Court Judge; Dr. Buddy Corbin – Senior Minister, Calvary Baptist Church; Mr. Joe Damore – CEO, Mission Hospital Systems; Dr. Cliff Dodson – Superintendent of Buncombe County Schools; Ms. Beverly Jeter – President, Bartlett Arms Resident's Council; Dr. Robert Logan Superintendent of Asheville City Schools; Chief Bill Hogan – Asheville Police Department; Mr. Jerry VeHaun – Director of Buncombe County Emergency Services; Mr. Rick Lutovsky – Executive Director, Asheville Chamber of Commerce; Mr. Bobby Medford – Buncombe County Sheriff; Mr. Ron Moore – Buncombe County District Attorney; Ms. Valerie Collins – Director, Helpmate; Nathan Ramsey – Chairman, Buncombe County Commission; Mr. Bob Smith – Director A-B Buncombe Community Relations Council; Mr.

Virgil Smith – President, Asheville Citizen-Times; Mr. Paul Vest – Director, YMCA; Ms. Mandy Stone – Director, Buncombe County DSS; and Dr. Carl Mumpower – Vice-Mayor, City of Asheville.

He said that they are scheduled to meet with The Asheville City Council, Buncombe County Commission, C-T Editorial Board, and Asheville Housing Authority Board to secure their official endorsement of this effort. We will move forward with the Chamber Board, Mission Hospital System Board, and others. Community buy-in is one of several foundations for future success.

He said our people are being harmed by a force that affects every child, adult, family, school, church, and business in our community. It's a growing problem – too many of our friends, neighbors, family members, and loved ones are gazing into the abyss. We are beginning a bold adventure in community responsibility. We must match the energy, enthusiasm and resources of those who traffic in hard drugs. We can make a major difference and we will, we must – together.

Council members spoke in support of endorsing the mission of this Commission and felt it was a good approach in a comprehensive way.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Dunn and carried unanimously.

Councilman Newman felt that if this is going to be a Commission of the City, he felt Council might want to take some time to think about the charge of this group, the lifetime of this group, the terms of the group, the structure of the group, the relationship of group to City Council, etc.

Vice-Mayor Mumpower said that if Council endorses this effort, he would like to come back to Council in approximately 3 months to update City Council with a sense on what they have done, where they are, and how it's going. Then, Council can have some more detailed discussion about ways to improve or enhance their effort. He would also make sure that City Council receives copies of their meeting minutes.

Councilwoman Jones moved to endorse the initial effort of the Commission. This motion was seconded by Councilwoman Bellamy and carried unanimously.

DEVELOPMENT TASK FORCE RECOMMENDATION UPDATE

Building Safety Director Terry Summey said that this is a Status Report on the 2004 Development Review Task Force Recommendations.

As part of the Fiscal Year 2004-05 budget approval process, members of City Council requested the creation of a task force to evaluate the current development processes. Approximately 50 citizens were invited to participate. As many as 34 citizens attended the various meetings. Citizens representing the following groups submitted recommendations: Architects, Engineers, Designers, Surveyors, Business Owners, Managers, Commercial Contractors/ Developers, and Residential Contractors/Developers. City Council was last updated on the recommendations at the February 15, 2005, worksession.

Based upon the guidance given by Council, staff has worked to implement some of the 32 recommendations, which have been categorized into four areas:

- Items that will require additional input and decisions by City Council (5 items)
- Items implemented by staff (7 items)

- Items staff is working on (9 items)
- Ongoing issues being worked on (11 items)

Considerations in the ongoing implementation of the recommendations:

- Greater reliance on staff expertise, and facilitation on development projects
- More business friendly approach to development
- More timely review and approval of projects
- Better communication and coordination with citizens and industry

City staff recommends City Council receive this report as information.

Mr. Russ Martin, Chair of the Development Review Task Force explained how significant progress has been made with the implementation of some of the recommendations, e.g. the consolidation of six forms into one. He explained why some of the recommendations had not been implemented after further review. He passed out to Council a "Asheville Development Guide to Building in Asheville, N.C." which serves as a tool to identify the review and permitting process that corresponds to a particular project. In addition, it contains an outline of key contacts for specific areas that provide technical support to th Development Services Center staff. The Building Safety Department has a DVD that is very informative (and is shown on the Government Channel), however, people do not know that is an available resource, thus identifying the need for communication. He suggested Council appoint a small advisory committee made up of people in the contracting business and representatives from homeowners associations who could meet on a quarterly basis with staff to come up with ideas to improve the process. He also suggested the Task Force members meet one last time to be updated and let them know of the suggestion to form a small advisory committee.

Mr. Summey and City Engineer Cathy Ball responded to various questions from Councilman Dunn about some of the recommendations, in particular the consistency of inspectors and the one-stop shop.

City Manager Jackson said that he understands this is a priority of City Council. He requested comments from the Development Forum and asked the citizens for their on-going involvement. He asked them what was going well and ways where we can improve. He said some of the improvements were that they are seeing better customer from the staff, electronic permitting, the additional code seminars, communication with the building profession, and the form consolidation. Areas to improve include the standardization of the process, streamlining the process, the one-stop shop, the need for tracking, and trouble-shooting.

City Manager Jackson said he has met with individuals in the construction field, development field, neighborhood representatives, individuals for more regulation and individuals for less regulation. As a result of these meeting, he determined that the interpretations in the gray areas meant that we were not doing sufficient enforcement. He cited a couple of examples - accepting streets that had been built; and requiring a developer to extend a waterline. He felt this hands-on involvement has been very beneficial. In some cases he reached the conclusion that staff had a very sound basis for their decisions. He has met with every staff member associated with the permitting process. His first conclusion is that the recommendation that was made by Chair Russ Martin is a sound one. He felt Council needs to commend and compliment the Task Force for the work that they did. He also thinks we need an on-going forum for issues. He would support the recommendation that there be an advisory committee made up of representatives of the development community (including developers, staff, realtors, neighborhood representatives, people from the construction and trades) and that they meet monthly. Regarding the one-stop shop, it is his personal view that we need to explore that further. It does require resources, additional staffing, and technology for tracking. He would like to explore that with the new future

Building Safety Director. He felt we need to have better reporting of performance measures, in that the development community should be able to track their project on the Internet. There will always be a dynamic tension, gray areas and a regulatory role. Our goal in a regulatory role should be to do that in the most efficient and effective way. He said that he would like to position the Economic Development Director to be on top of the technical issues as they relate to the development activity, real estate changes, etc.

On behalf of City Council, Mayor Worley thanked Mr. Martin and the Task Force for their hard work on these issues.

At 5:07 p.m., Mayor Worley announced a short recess.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on September 13, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Addition of General Retail Sales as a Use of Right in the Neighborhood Business District.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of amending the Unified Development Ordinance (UDO) for the purpose of adding general retail sales as a use of right in the Neighborhood Business District.

This proposed ordinance was drafted in response to requests from local businesses and property owners to allow a broader range of retail activities in the Neighborhood Business District (NBD). In reviewing this proposal, staff noted that many types of specific retail uses are already allowed within the NBD, including bakeries, bicycle shops, bookstores, candy/snack shops, delicatessens, florists, fruit/vegetable markets, gift shops, grocery stores, hardware/garden supply stores, pharmacies, and video stores. Both Planning staff and the Planning & Zoning Commission gave careful consideration to types of retail uses that would not be desirable in this district. More objectionable uses, such as the sale of adult-oriented items, are subject to more restrictive standards and are not classified as "retail sales". As the NBD does not allow drive-thrus or outdoor storage and limits the size of any building to 3,000 square feet for commercial use, uses are not of a scale or character that could significantly impact a neighborhood.

The intent of the NBD is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. The district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but small neighborhood oriented businesses are useful and desirable. Examples of existing NBD districts include small, traditional commercial areas within Emma, Montford, Oakley, Shiloh, and West Asheville.

Pro –

- This amendment would allow a greater variety of opportunities for the establishment of businesses in the NBD.
- The additional uses allowed would not have a greater impact than the uses presently allowed in the NBD.

Con –

- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 3, 2005 by a unanimous vote of 7-0. Staff recommends approval of the proposed ordinance amendment as well.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next appropriate formal City Council agenda.

STRATEGIC PLAN UPDATE

Assistant City Manager Jeff Richardson said that this is a quarterly status report of the progress made in key areas of the city's Strategic Operating Plan.

Staff continue to make significant progress in a number of the core focus areas outlined in the plan. Specific progress includes:

Focus Area: Economic Development

- Implementation of the 2004 Development Task Force recommendations, in an effort to facilitate a more efficient and economical permitting process.

Focus Area: Sense of Place, Heritage & Arts

- Completion of the College Street improvement project as part of the gateway/corridor improvement focus.

Focus Area: Housing Opportunities

- Continuing to facilitate community involvement through forums to increase support of affordable housing funds and expand the Housing Trust Fund to include private investment.

Focus Area: Planning

- Successful public transportation partnerships with UNC-Asheville and the Town of Weaverville to increase the effectiveness of the transportation system.

Focus Area: Partnerships to Improve Critical Services & Infrastructure

- Severance of the Water Agreement, which has led to an improved water system governance that better serves our community and its citizens.
- Increased resources and efforts aimed at reducing drug-related crime.

Focus Area: Natural & Built Environment

- Adoption of the Stormwater Utility program, allowing the city to comprehensively address and improve the city's stormwater infrastructure.

Focus Area: Community Building

- Expansion of the city government cable access channel capability by producing over three times the amount of programming over the past year.
- Creation of the Citizen's Academy (62 city residents have graduated thus far)

Staff is prepared to answer any additional questions that City Council may have regarding this document. We would appreciate Council direction on the future steps as follows:

- November, 2005: Next Quarterly Strategic Plan Update

- January, 2006: City Council Annual Retreat: City Council may choose to comprehensively review and update the plan at this time. Staff will align the Fiscal Year 2006-07 annual budget based on council direction at this time.

Council felt the even though the completion of the College Street improvement project as part of the gateway/corridor improvement focus, fits well in the focus area of sense of place, heritage and arts, they felt that was not something Council took the lead on or envisioned when the Strategic Operating Plan was developed.

Councilwoman Jones felt it was time to update the document but felt it was very important to get citizens involved in next stage.

City Manager Jackson felt that the Strategic Plan is an important document and agreed it was important to involve the citizens in the front end. Council should then hold their retreat and be clear about what are the business plan initiatives. Staff will not implement those initiatives without having a follow-up by this Council because it is a commitment of time and resources, and that is a policy decision.

FEDERAL CLEAN AIR ACT

Councilman Newman read the following resolution and asked for City Council's support: "WHEREAS, air pollution is a significant contributing cause of respiratory and other ailments in the population of Western North Carolina, especially in the very young and very old; and WHEREAS, air pollution has harmful effects on the ecology and environment, including depletion of the ozone layer, and weakening and destruction of vegetation at high elevations; and WHEREAS, air pollution has a harmful effect on the economy of Western North Carolina, in that it interferes with mountain views which have long been an attraction for the tourism industry; and WHEREAS, a substantial amount of the air pollution that affects Western North Carolina originates in other states and drifts into this area on prevailing winds; and WHEREAS, in 2001, the State of North Carolina adopted the Clean Smokestacks Act in order to reduce air pollution originating from within the State; and WHEREAS, federal law, like the federal Clean Air Act, is the most effective way to control interstate air pollution. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The City Council of the City of Asheville does hereby support full implementation of the federal Clean Air Act, and the adoption of laws that would make the standards established by the N. C. Clean Smokestacks Act applicable in other states; and (2) The City Council of the City of Asheville urges the N.C. Congressional Delegation to oppose any legislation that would weaken the federal Clean Air Act or that would undercut or delay North Carolina's legal authority to seek reductions in pollution that originate from upwind states."

Although all of Council supported the resolution, discussion surrounded introducing resolutions about issues that are not within Council's power to solve or that City Council does not have direct responsibility for.

Vice-Mayor Mumpower wanted to be supportive but would not because he felt that Council should limit their resolutions to issues that they have a direct impact on or control over.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next appropriate formal City Council agenda.

ASHEVILLE-BUNCOMBE FLOOD REDUCTION TASK FORCE

Councilwoman Jones said that our community witnessed the devastating power of the back-to-back floods that tore through western North Carolina last summer. Millions of dollars in

property were destroyed, businesses were washed away, our rivers suffered serious environmental contamination and lives were lost. The whole region was hit hard. Locally, the flooding was most severe in the Swannanoa Valley, and especially where the Swannanoa River flows through Biltmore Village.

Since the floods, many people have worked hard to help our community recover. Legislators helped secure flood relief and local agencies helped families and businesses who were dislocated. Although it inflicted great pain, the floods also brought out the best in our community.

She believes that we need to do more to understand what we can do to minimize the threat of future flooding in our community. Climate scientists tell us we may be entering an era where severe weather events will become more common. In order to protect the safety of our properties and our families, and the health of our economy and environment, it is vital for us to be prepared and plan for the future. It is not a of if Asheville and Buncombe County will experience another severe rain episode, it is only a matter of when.

One of the major lessons that should be learned is that floods have no respect for political boundaries. The Swannanoa Watershed includes large areas within the Asheville city limits, the unincorporated areas of eastern Buncombe County and the towns of Black Mountain and Montreat. The floods of 2005 sent a clear message – we are all in this together.

The Asheville City Council has indicated its willingness to take steps to minimize future flooding by commissioning a study of possible new reservoir management strategies for the North Fork Reservoir. We don't know if the study will indicate if alternative reservoir management studies could meaningfully reduce flooding during heavy rain episodes, but Council is doing the right thing by asking such questions and determining best management practices.

In the big scheme, the management of the reservoir levels represents only a minor part of what can be done to minimize future flooding. Our community is growing and developing at a rapid rate. We know that how we grow and develop can have a huge impact on future flood events. Poor planning can lead directly to more severe flooding. It would be the height of irresponsibility to grow in a manner that increases the threat to property, businesses, the environment, and the safety of families in our community by exacerbating future flooding.

Addressing the threat of future flooding requires a cooperative, regional approach. No single entity can effectively address the challenge alone. With this in mind, she would like to suggest that the Asheville City Council begin conversations with the Buncombe County Commissioners and other local governments (Black Mountain and Montreat) regarding the creation of an Asheville-Buncombe Flood Reduction Task Force.

She suggested that the task force include representatives appointed by all local governments that are located in the Swannanoa Valley. The purpose of the task force would be to: (1) study strategies to reduce future flood levels in the Swannanoa Valley Watershed during heavy rain episodes; (2) study strategies to minimize the economic, environmental and social impacts and the risk to human life when floods occur in the future; and (3) make recommendations to the local governments on those matters.

She has spoke with several members of the Buncombe County Commissioners about the concept and some members of the community who have strong interests in these issues, such as RiverLink. Everyone she has spoken to has either been supportive or at least open to the concept.

If members of City Council believe this would be a worthwhile effort, she would be willing t continue talking with other members of the County Commissioners and other local municipalities, and members of the community who may have an interest in this issue.

Vice-Mayor Mumpower was supportive of this effort and wondered if we would want to limit this to the Swannanoa Valley or look to other flood-prone areas as well.

In response to Councilman Dunn about development along the River, Councilman Davis said that in reality the bottom line is good planning and development tools. He felt you can build in the floodway responsibly.

Mayor Worley felt this is a good concept and that the task force should be technical in nature.

Councilwoman Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Dunn and carried unanimously.

Councilwoman Bellamy moved to endorse the concept of the Asheville-Buncombe Flood Reduction Task Force, as envisioned by Councilwoman Jones. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to arrange interviews with Janet Whitworth, Darryl Hart and Leslie Fay for vacancies on the Planning & Zoning Commission. Mr. Harry Weiss will be a candidate, however, it is not necessary to bring him in for an interview.

It was the consensus of City Council to instruct the City Clerk to arrange interviews with James Rentz, Eric Scheffer, Elizabeth Sims and Joseph Malki for a vacancy on the Buncombe County Tourism Development Authority.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 23, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

PLEDGE OF ALLEGIANCE

Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 5-9, 2005, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Councilwoman Bellamy read the proclamation proclaiming September 5-9, 2005, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. Marvin Vierra, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING SEPTEMBER 2005 AS "CHILDHOOD CANCER AWARENESS MONTH"

Mayor Worley read the proclamation proclaiming September 2005 as "Childhood Cancer Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Mike Traynor, President of the Pediatric Brain Tumor Foundation, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING SEPTEMBER 2005 AS "CELEBRATION OF THE ARTS MONTH"

Mayor Worley read the proclamation proclaiming September 2005 as "Celebration of the Arts Month" in the City of Asheville. He presented the proclamation to Mr. Dean Schatley, Vice-Chair of the Arts Council, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Vice-Mayor Mumpower, Consent Agenda Items "B" and "D" were removed from the Consent Agenda for individual votes.

At the request of Councilwoman Bellamy, Consent Agenda Items "F" and "G" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 9, 2005, AND THE WORKSESSION HELD ON AUGUST 16, 2005

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE TO CONSTRUCT A TENNIS FACILITY AT ASTON PARK

This item was removed from the Consent Agenda for further discussion.

C. RESOLUTION NO. 05-163 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $836,729.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $836,729, is for the Airport Improvement Program Project No. 3-37-0005-30. This project consists of expanding the terminal apron (including rehabilitation), Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-30.

RESOLUTION BOOK NO. 29 – PAGE 197

D. BUDGET AMENDMENT FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR ASTON PARK RENOVATION

This item was removed from the Consent Agenda for further discussion.

E. RESOLUTION NO. 05-164 - RESOLUTION AMENDING THE CITY COUNCIL 2005 MEETING SCHEDULE TO INCLUDE A COMMUNITY MEETING ON TUESDAY, AUGUST 30, 2005, AT 7:00 P.M. IN THE WILLIAM F. WOLCOTT JR. BUILDING LOCATED AT 161 S. CHARLOTTE STREET

RESOLUTION BOOK NO. 29 – PAGE 198

F. RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2005, TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

This item was removed from the Consent Agenda for an individual vote.

G. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

This item was removed from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 05-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE TO CONSTRUCT A TENNIS FACILITY AT ASTON PARK

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carolina Cornerstone Construction to construct a tennis facility in Aston Park.

The City of Asheville Parks and Recreation Department is in the process of implementing the first phase of development on the Aston Park Master Plan. This phase of significant public park improvements includes a new tennis facility, driveway and handicap parking to replace the current building that is in poor condition and doesn't meet the needs of the tennis program and the community. The project was bid out according to City standards that include the Minority Business Plan. The Director of the Asheville-Buncombe Office of Minority Affairs has reviewed the bid submittal and found that the company provided the appropriate good faith effort documentation along a listing of certified firms that will be participate on this project. Funds for this project are coming from the Irene & Dick Covington Foundation and the Parks & Recreation Trust Fund grant. This building will also house the memorabilia from Dick Covington who was affectionately known as "Mr. Tennis" for his work in Asheville on enhancing this sport for over five decades.

Pros

- The construction of this portion of the project is an integral-supporting aspect of the unique clay tennis courts.
- The park will provide greatly needed recreation facilities for recreation users, especially the tennis players in the area.
- The tennis facility will be a local and regional attraction that will foster economic development.
- No City tax funds will be used in the development of this facility.

Cons

None

City staff recommends that City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, in the amount of $361,237, to construct the tennis facility at Aston Park.

Mr. Jack Petty felt that there are adequate facilities at Aston Park. He felt there is no need to build an attractive nuisance. In addition, he felt the Asheville tennis players have not been brought into the discussion of the use of public funds for expansion of the facilities, other than those that are directly involved in tennis. He felt this is a waste of public funds.

City Manager Jackson noted that the City is working on addressing the existing unwanted element in Aston Park.

Mr. Irby Brinson, Director of Parks & Recreation, said that this process has been going on for five years. It was the dream of Dick & Irene Covington to build a clubhouse at Aston Park for two reasons: (1) to house the memorabilia of Mr. Covington through his many years of tennis; and (2) to build a facility to be used by the public, not only for tennis. The funds for the project are coming from the Dick & Irene Covington Foundation, being matched by a Parks & Recreation Trust Fund grant. He noted there are no taxpayer dollars going into construction of this facility. This has been discussed many times through the N.C. Tennis Association and the Irene and Dick Covington Foundation. In addition, a community meeting was held to discuss the overall design. He will continue to work to build a dialogue with the public as we proceed with this process.

Mr. Fred English felt that to build the new facility will be a waste of money, due to the number of vagrants that frequently use the park.

Mr. Bobby Robinson, speaking on behalf of the Dick & Irene Covington Foundation, spoke in support of the facility, noting it was Mr. Covington's dream to do something for the City and County that was suitable for visitors and players to enjoy a decent and clean facility.

Mr. Gene Hamilton urged City Council to support the building of this new facility.

Vice-Mayor Mumpower said that we do have people that misuse the area, but we don't stop doing good things because of bad people. He said we are working to make Aston Park a better place.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-162. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 196

D. ORDINANCE NO. 3278 - BUDGET AMENDMENT FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR ASTON PARK RENOVATION

Summary: The consideration of a budget amendment, in the amount of $260,000, from a $260,000 grant award from the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund.

The City of Asheville applied in January 2005 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of $260,000.

The money will be used for the Irene and Dick Covington Center construction, new backboard, trailhead for greenway to Clingman Forest.

Pros:

- Allows for the City to develop improvements to Aston Park without taxpayer investment.
- Completes the construction of the Irene and Dick Covington Tennis Center.
- Completion of the Center will allow for community use in the meeting space provided.
- Allows for the construction of the trail head for the Clingman Forest Greenway.

Cons:

- None

This action complies with City Council's Strategic Plan in that it deals with the 11 areas of greenway development mentioned in the Strategic Plan.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $260,000 to increase the budget for the renovation of Aston Park.

Councilman Dunn moved to adopt Ordinance No. 3278. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 253

RESOLUTION NO. 05-165 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2005, TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

Councilman Davis moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: The consideration of a resolution of intent to close an unnamed alley off Clingman Avenue and set a public hearing for September 27, 2005.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mountain Housing Opportunities has requested the City of Asheville permanently close to public use as an unnamed alley off Clingman Avenue. This alley is more particularly described as the alley mentioned in Deed Book 1700 at page 471 and prior deeds in the same chain of title, said alley being further described as Lot 1 of a plat of property of Wilson and Teasley as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 2 at page 24 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress as Mountain Housing Opportunities has submitted to the Planning Department a recombination request for the parcels affected. There are three parcels that abut this section of alleyway. They are identified by PIN Nos. 9648.05-08-4179, 9648.05-08-5118, and 9648.05-08-4248. The petitioner has authority over all the abutting parcels.

Pros:

- The closure allows the property to be used to its maximum (density) potential.
- Affordable housing can be constructed on the consolidated site.
- There will be no future compromise of ingress/egress to other property.

Cons:

- In consideration of the proximity of the alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for September 27, 2005, to close an alley off Clingman Avenue.

Councilman Newman moved for the adoption of Resolution No. 05-165. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 199

RESOLUTION NO. 05-166 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

The Arts 2 People group has requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at their Lexington Avenue Arts & Fun Festival, scheduled for Sunday, September 4, 2005, from 11:00 a.m. – 10:30 p.m.

City staff requests City Council adopt a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

Councilman Dunn moved for the adoption of Resolution No. 05-166. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 200

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

City Attorney Oast said that the City has received a protest petition and, using the procedures that the staff normally uses, staff has determined that it is a valid protest petition.

Mr. Albert Sneed, attorney representing the developer, provided City Council with various documents regarding ways to calculate whether a protest petition is valid. He felt City staff arbitrarily decided how to pick their four sides for calculation. He requested City Council rule on its validity, not City staff.

City Attorney Oast observed that there is no case law to provide much guidance on the issue of what constitutes a side for purposes of validating a protest petition, especially with an irregular shaped piece of property, such as this. He explained how staff reviews protest petitions and added that staff has always, in his experience, done it this way.

Vice-Mayor Mumpower felt Mr. Sneed raised some valid concerns, however, he didn't feel this was the appropriate time to address those concerns. This protest petition has been reviewed based on our current practices and past actions.

City Attorney Oast said that there is an amendment to the statute that is under consideration by the General Assembly and if, and when, it passes, it will be a good opportunity for us to re-examine our current process.

Vice-Mayor Mumpower moved to adopt staff's interpretation that the protest petition is valid. This motion was seconded by Councilman Davis and carried unanimously.

Mr. Sneed said that only six Council members are present at this meeting, he requested a continuance of the public hearing until all seven Council members are present, in fairness to the applicant.

Councilman Newman moved to continue this public hearing until September 13, 2005. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3275 – SECOND AND FINAL READING OF AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

Mayor Worley said that the public hearing and first reading of this ordinance was held on August 9, 2005. A second reading was required since the ordinance passed on a 4-3 vote.

After a brief discussion about the 90% capacity issue, Councilman Newman said that he could not support this motion because when the conditional use permit was originally approved, Council stated that they would not allow expansion of the traffic impact, as part of this project, unless there was additional traffic mitigation measures to address it and he did not see that additional traffic being mitigated.

By a show of hands, Ordinance No. 3275 carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy and Councilman Newman voting "no."

ORDINANCE BOOK NO. 22 – PAGE 245

V. NEW BUSINESS:

A. RESOLUTION NO. 05-167 - RESOLUTION SUPPORTING FULL IMPLEMENTATION OF THE FEDERAL CLEAN AIR ACT AND THE ADOPTION OF OTHER MEASURERS TO CONTROL INTERSTATE POLLUTION

Councilman Newman read the following resolution and asked for City Council's support: "WHEREAS, air pollution is a significant contributing cause of respiratory and other ailments in the population of Western North Carolina, especially in the very young and very old; and WHEREAS, air pollution has harmful effects on the ecology and environment, including depletion of the ozone layer, and weakening and destruction of vegetation at high elevations; and WHEREAS, air pollution has a harmful effect on the economy of Western North Carolina, in that it interferes with mountain views which have long been an attraction for the tourism industry; and WHEREAS, a substantial amount of the air pollution that affects Western North Carolina originates in other states and drifts into this area on prevailing winds; and WHEREAS, in 2001, the State of North Carolina adopted the Clean Smokestacks Act in order to reduce air pollution originating from within the State; and WHEREAS, federal law, like the federal Clean Air Act, is the most effective way to control interstate air pollution. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The City Council of the City of Asheville does hereby support full implementation of the federal Clean Air Act, and the adoption of laws that would make the standards established by the N. C. Clean Smokestacks Act applicable in other states; and (2) The City Council of the City of Asheville urges the N.C.

Congressional Delegation to oppose any legislation that would weaken the federal Clean Air Act or that would undercut or delay North Carolina's legal authority to seek reductions in pollution that originate from upwind states."

Vice-Mayor Mumpower wanted to be supportive but would not because he felt that Council should limit their resolutions to issues that they have a direct impact on or control over.

Councilman Newman moved for the adoption of Resolution No. 05-167. This motion was seconded by Councilwoman Bellamy and carried on a 5-1 vote, with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 202

C. RESOLUTION NO. 05-168 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Mumpower said that the terms of Cindy Weeks, Jerome Jones and Hedy Fischer, as members on the Planning & Zoning Commission, expired on August 14, 2005.

At the City Council worksession on August 16, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Weeks and Mr. Jones, each to serve a three-year term respectively, terms to expire August 15, 2008, or until their successors have been appointed.

Also at the City Council worksession on August 16, City Council instructed the City Clerk to arrange interviews for Leslie Fay, Darryl Hart, and Janet Whitworth. Mr. Harry Weiss is also a candidate, however, it was not necessary to bring him in for an interview. Ms. Fay was unable to attend the interview.

After each Council member spoke in support of the candidates interviewed, Leslie Fay received no votes; Darryl Hart received five votes; Janet Whitworth received no votes; and Harry Weiss received one vote. Therefore, Darryl Hart was appointed as a Planning & Zoning Commission member to serve a three-year term, term to expire August 15, 2008, until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 203

D. RESOLUTION NO. 05-169 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Mumpower said that Mr. Randy Fluharty has resigned, as the individual who is involved in the tourist business who has demonstrated an interest in tourist development, and who does not own or operate hotels, motels or other taxable tourist accommodations, from the Buncombe County Tourism Development Authority.

At the City Council's worksession on August 16, the City Clerk was instructed to arrange interviews for Joseph Malki, Eric Scheffer, Elizabeth Sims and James Rentz. Mr. Rentz was not interested in the position at this time.

After each Council member spoke in support of the candidates interviewed, Joseph Malki received one vote; Eric Scheffer received five votes; and Elizabeth Sims received no votes. Therefore, Eric Scheffer was appointed to the Buncombe County Tourism Development Authority, to serve a three-year term, term to expire August 30, 2008, until his successor has been appointed.

VI. OTHER BUSINESS:

Vice-Mayor Mumpower said that a group of businesses have contributed a basketball court to Deaverview Apartments and invited the public to attend the dedication ceremony.

The following claims were received by the City of Asheville during the period of July 29 – August 11, 2005: Dan Gerber (Water), John Moutos (Streets), Julia S. Reed (Police), Swen Froemke (Engineering) and Paul Raybon (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the need for the City of Asheville to have a comprehensive quality plan.

Mr. Fred English spoke about the high fuel prices in Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:56 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 30, 2005
Public Works Facility
161 South Charlotte Street

7:00 p.m. – Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Fire Chief Greg Grayson briefed Council on weather emergency response.

City Engineer Cathy Ball briefed Council on the parking garage project downtown and the opportunities for future communication with the residents.

Civic Center Director David Pisha briefed Council on the Civic Center.

Assistant City Manager Jeff Richardson updated Council on the renovations to Pack Square Renaissance Project and the City/County Plaza area.

The following topics were raised by residents and addressed by City Council and City staff: what is the City's contingency plan should there be a shortage of gas, i.e., expanded bus service; break-in's on Biltmore Avenue, especially along Lexington Avenue; concerns about the perceived lack of public involvement by the residents of the Battery Park Apartments regarding the Haywood Street Parking Garage; concerns surrounding the health, safety and security of the residents in the Battery Park Apartments from the Haywood Street Parking Garage; and suggestion that the City work to establish a local drug lab in order to identify drugs faster, thus getting drug dealers off the streets quicker.

Mayor Worley adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 13, 2005 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor R. Carl Mumpower, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley

PLEDGE OF ALLEGIANCE

The Asheville High School ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Reverend Spencer Hardaway, from Rock Hill Missionary Baptist Church, gave the invocation.

SPECIAL REPORT

City Manager Jackson updated City Council on the City's efforts regarding Hurricane Katrina and what our citizens can do to assist in the aftermath.

I. PROCLAMATIONS:

A. PRESENTATION OF CITIZEN BOARD MEMBER AWARD

Vice-Mayor Mumpower recognized Mr. Lindsey Dunevant, President of the North Carolina Recreation and Park Association, who presented Parks & Recreation Directory Irby Brinson with the Citizen Board Member Award.

B. RECOGNITION OF ASHEVILLE WINNING THE MAYOR'S CUP RAFT RACE

Vice-Mayor Mumpower recognized the following crew members in their efforts of Asheville placing 1st in the Mayor's Cup Raft Race: Jonathan Feldman, Jason Mann, Mike Quinones, Charley Cox and stand-by member Herb Roberson. In addition to these crew members, Mayor Worley and Vice-Mayor Mumpower manned the raft as well.

C. PROCLAMATION PROCLAIMING SEPTEMBER 12-16, 2005, AS "UCANSING2 WEEK"

Councilman Newman read the proclamation proclaiming September 12-16, 2005, as "UCANSING2 Week " in the City of Asheville. He presented the proclamation to Bob Burns, Land of the Sky Chapter of the Barbershop Harmony Society, and Mr. Mike Richard, bass player of "Almost Famous." In addition, the quartets "Almost Famous" sang a song.

D. ANNOUNCEMENT OF NEW CHIEF FINANCIAL OFFICER

City Manager Jackson was pleased to announce Benjamin Durant as the City's new Chief Financial Officer.

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 23, 2005, AND THE COMMUNITY MEETING HELD ON AUGUST 30, 2005**

B. **RESOLUTION NO. 05-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO INSTALL ADA COMPLIANT RAMPS ALONG HAYWOOD ROAD**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NC DOT) to install Americans with Disabilities Act (ADA) compliant ramps along Haywood Road in conjunction with the NC DOT's resurfacing project.

Both the City of Asheville and the NC DOT are in need of ADA compliant ramps along their respective street systems. It is a requirement of NC DOT to install ADA compliant ramps in conjunction with their resurfacing projects. In order to install some additional City amenities, and to expedite completion, the City of Asheville has offered to install these ramps using Street Division forces. For completing this work on their behalf, the NC DOT has agreed to reimburse the City the full cost of construction, which is estimated at $16,000 (16 ramps X $1,000 each). In accordance with N.C. Gen. Stat. sec. 136-66, municipalities may participate in improvements to the State highway system through mutual agreement.

Funding for this project has already been allocated in the NC DOT's project budget.

This project meets several goals or task identified in the City Council Strategic Operating Plan, specifically:

- Planning section, Goal 2- Multi-modal transportation enhancement, Task 2- Leverage outside funding to achieve multiple transportation goals.
- Sense of Place, Heritage, and Arts- Goal 3- Support and advocate initiatives to encourage new downtown development including gateway/corridor improvements. Task 1- Construct infrastructure including… sidewalks… to include growth downtown.
- Natural and Built Environment- Goal 3- Increased street and sidewalk connections- Expand street and sidewalk connections- Task 6- Pursue additional local and outside funding.

Pros:

- This project will render the existing sidewalks through the project area ADA accessible, which will meet the City's obligation of providing consistent and compliant accessible features.
- It will aesthetically enhance the impacted intersections by providing a consistent design throughout the project area.
- The NC DOT is willing to reimburse the City the full costs of constructing the ADA ramps.

Cons:

- There is an opportunity cost to the City in that Street Division staff would be pulled off of other duties to complete this project; however, the NC DOT reimbursement could offset those costs by enabling the City to construct other needs with those funds.

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The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into a municipal agreement with the NC DOT to install ADA compliant ramps in conjunction with the Haywood Road resurfacing project.

RESOLUTION BOOK NO. 29 – PAGE 205

C. RESOLUTION NO. 05-171 - RESOLUTION AUTHORIZING THE EXCHANGE OF REAL PROPERTY WITH CHRISTOPHER J. PETERSON TO ALLOW ACCESS INTO RICHMOND HILL PARK VIA RICHMOND HILL DRIVE

Summary: The consideration of a resolution authorizing the exchange of real property with Chris Peterson at Richmond Hill

Back in January, the City Council authorized the City to enter into an agreement with the State of North Carolina (National Guard) for the joint use and development of the City's Richmond Hill property. The Guard proposes to construct a training and readiness center there to replace its facility on Shelburne Road, and to perform some grading work for the City's proposed multi-use athletic fields. The City will also have substantial use of the assembly facilities in the Guard's training center.

This agreement was contingent on the City obtaining access to the property from the current terminus of Richmond Hill Drive across intervening property owned by Chris Peterson. The City negotiated an option with Mr. Peterson that provided either for a payment in cash, or for an exchange of adjacent property belonging to the City. If the City exercised the option, Mr. Peterson could elect to receive the cash or the land.

Back in June, Council authorized giving notice to Mr. Peterson of our intent to exercise the option. After completing some routine inspection and title investigation work, that notice was given on August 18. Mr. Peterson has elected to receive property rather than cash, and has identified the property that he proposes to receive. The resolution is the last step required in the process for authorization of this transaction.

Based on appraisals performed in 2003, the value of the properties to be exchanged is approximately equal, at about $37,000. The difference in size reflects a difference in per acre value, due mostly to the Peterson tract's accessibility to a road.

Considerations: The property that we will be conveying to Mr. Peterson is larger than the property he will convey to the City, but the values are essentially equal, especially in view of the public benefit that the City will receive through better access to its property.

- The property that the City will be acquiring is needed for access to the City's Richmond Hill property, and would be needed whether or not the National Guard facility were being constructed.
- The completion of this transaction is necessary in order to complete the transaction with the National Guard.
- Other considerations (pros and cons) are set out in the June 14 Staff Report.

City staff recommends adoption of the resolution authorizing the exchange of property.

RESOLUTION BOOK NO. 29 – PAGE 206

D. **RESOLUTION NO. 05-172 - RESOLUTION AMENDING THE 2005 CITY COUNCIL MEETING SCHEDULE IN ORDER TO RESCHEDULE (1) THE TUESDAY, OCTOBER 11, 2005, MEETING UNTIL WEDNESDAY, OCTOBER 12, 2005; AND (2) THE TUESDAY, NOVEMBER 8, 2005, MEETING UNTIL WEDNESDAY, NOVEMBER 9, 2005**

RESOLUTION BOOK NO. 29 – PAGE 210

E. **RESOLUTION NO. 05-173 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING WITH THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR ENFORCEMENT OF FAIR HOUSING BY THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Summary: The consideration of a resolution authorizing the Mayor to execute an addendum to the Memorandum of Understanding (MOU) with HUD for enforcement of Fair Housing.

The Asheville-Buncombe Fair Housing Commission was created in 1987 by a joint ordinance of the City and County. Since then, it has operated under a MOU between the City, County, Commission and HUD. The purpose of the MOU is to set standards for local enforcement of fair housing law and eliminate duplicate enforcement activity. While the MOU is in force, the City is eligible to receive an annual Fair Housing Assistance Program (FHAP) grant from HUD. In 2004-05 that grant amounted to $173,600.

HUD has requested that the City execute an addendum to the MOU, which was last renewed in 1995, to reflect continued certification of the Commission's Fair Housing Program and make minor amendments to reflect changes in HUD procedures.

Pros:
- Continued ability to provide a local response to fair housing complaints
- Continued receipt of an annual FHAP grant in order to fund this work.

Cons:
- None

City staff recommends approval of the resolution authorizing the Mayor to sign the addendum to the MOU.

RESOLUTION BOOK NO. 29 – PAGE 211

F. **RESOLUTION NO. 05-174 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR FUNDING FOR THE REPLACEMENT PURCHASE OF 20 ON-VEHICLE SECURITY CAMERAS FOR THE TRANSIT FLEET**

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for funding for the replacement purchase of 20 on-vehicle security camera systems for the transit fleet.

These cameras record events on the bus. They are useful in reviewing customer complaints, and are very valuable in staving off superfluous or opportunistic lawsuits. The NCDOT requires an agreement between the City and the NCDOT for reimbursement of up to $120,978 for the replacement of 20 on-vehicle security camera systems for the transit fleet. The

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state will reimburse the City up to 90% ($120,978) of the total expended amount of $134,420. The local matching funds have been programmed in the City budget.

This action complies with the Strategic Operating Plan in the Planning Focus Area - Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

Pros:

- Replacement of aging equipment
- Additional protection from spurious lawsuits
- Enhance safety and security for passengers

Cons:

- $200 a year on-going costs for recording media

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation for funding for the replacement purchase of 20 on-vehicle security camera systems for the transit fleet.

RESOLUTION BOOK NO. 29 – PAGE 212

G. RESOLUTION NO. 05-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID OF ORION BUS INDUSTRIES INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ORION BUS INDUSTRIES INC. FOR THE PURCHASE OF BUSES

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Orion Bus Industries Inc. for the purchase five new 30-foot buses and two new 20-passenger buses and associated equipment.

The City of Asheville has received a federal grant, the federal share of which is $1,354,796, the state share is $136,204, and the city share is $141,645. The total project cost is $1,632,284. The buses to be purchased are Orion VII, 30 foot, 29 passenger low floor buses similar in appearance to our current buses, and smaller cutaway buses similar to the current models. Both will be purchased through the state bus consortium contract. Delivery will take about 56 weeks after order for the large buses, and 3 to 6 months for the smaller buses. Two of these buses are from congressional earmarks gained by our state delegations.

The Orion buses will have diesel engines with Exhaust Gas Recirculation technology for a cleaner engine than at present and will be able to use Ultra Low Sulfur Diesel fuel, to be required in 2007. The Orion's have been certified to use 5% Bio-Diesel, and it is expected that they will be certified for 20% Bio-Diesel by year's end.

The smaller buses will be able to use bio-diesel, and we will try to purchase diesel engines, which will use ultra-low sulfur fuel. If these are not available we will purchase gasoline engines, as the life expectancy of the vehicle extends beyond 2007.

Associated equipment consists bike racks (triple) and in-bus security cameras for each vehicle.

Funds have been allocated and budgeted for this purchase in the Fiscal Year 2005-2006 budget.

Benefits to the City of Asheville:

- The purchase of these buses is the beginning of the project to stagger the purchase of the fleet to spread out the demand for funds on state and federal agencies. This also allows the purchase of the latest technology on buses.
- Low floor buses provide better access for all riders, especially for the elderly and handicapped
- Replacement of aging buses.

Costs to the City of Asheville:

- There are no costs to the City other than those already in the currently approved budget.

This action complies with the City Council's Strategic Operating Plan through the routine replacement of buses - Goal #2, Task #2: Leverage outside funding to achieve multiple transportation goals where possible.

City staff recommends City Council grant the City Manager authority to enter into an agreement with Orion Bus Industries Inc.

RESOLUTION BOOK NO. 29 – PAGE 213

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

Vice-Mayor Mumpower said that this public hearing was originally scheduled for August 23, 2005; however, the applicant had requested the hearing be continued until September 13, 2005, in order to have a full Council present for the hearing. That request was granted.

Due to Mayor Worley's absence at this meeting, Mr. Albert Sneed requested that this public hearing be continued until September 27, 2005, in order to have a full Council present for the hearing. Councilman Dunn moved to continue this public hearing until September 27, 2005. This motion was seconded by Councilman Newman and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR A DUPLEX AT 96 LOUISIANA AVENUE REGARDING A CHANGE IN SIDING MATERIAL

Late September 12, 2005, City Clerk Burleson received a fax from Mr. Brian Fuchs, developer and owner of 96 Louisiana Avenue, stating "It has just been brought to my attention that Mr. Worley will not be present at the Council meeting scheduled for 9-13-05. I feel it is

important to have the Mayor and a full Council in session to hear my request for amendment concerning the materials of the building. For this reason I am requesting a continuance until the next available time on October 25, 2005, or before."

Mr. Nathan Bryant, resident on Louisiana Avenue, spoke against the continuance in that he feels this is an attempt to delay the matter in order to maneuver votes.

Mr. Tom Rightmyer, secretary of the Coalition of Asheville Neighborhoods (CAN), said that CAN has unanimously requested City Council to deny further change the conditions under which the original conditional use permit was approved.

Ms. Julie Allen, resident on Louisiana Avenue, spoke in support of proceeding with the hearing at this time.

Mr. Brian Fuchs urged Council to continue the hearing until there is a full Council present. As soon as he found out Mayor Worley was not going to be present, he faxed a copy of a continuance request to City Clerk Burleson.

Councilman Newman moved to proceed with the public hearing at this time. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Vice-Mayor Mumpower voting "no."

City Attorney Oast said that in order to have the modification to the conditional use permit granted, there would need to be an affirmative vote of 4 members of Council.

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

All Council members disclosed that they have visited the site and/or have received correspondence relating to this project and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Vice-Mayor Mumpower opened the public hearing at 5:44 p.m.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Shannon Tuch, Urban Planner, said that this is the consideration of an amendment to a conditional use permit for a duplex at 96 Louisiana Avenue regarding a change in siding material. This public hearing was advertised on September 2 and 9, 2005.

She said that the Asheville City Development Plan 2025 (ACDP 2025) proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditonal Use Rezoning is one such tool and was utilized to allow for this property to be developed at a higher density than the current zoning would allow. However, the same sections of the comprehensive plan that discusses the need for residential infill development also states

that the "protection, preservation, and enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction". The applicant is proposing a change to the Conditional Use Permit that is felt to detract from the predominant character of the homes in close proximity and the larger neighborhood, particularly those homes that are currently under consderation for historic district designation.

This property was Conditionally Rezoned from a split-zoned RM-8/RS-8 lot to RM-8 CUZ to allow for the addition of a new duplex at the rear of the lot for a total of 4 units.

This project was originally reviewed under a conditional use rezoning application for 96 Louisiana Avenue on April 12, 2005, where the property owner requested a rezoning of the unusually configured and split-zoned lot in order to allow for the addition of a new duplex at the rear of the lot behind an existing single family home and accessory apartment.

During the public hearing for this project there was a substantial amount of concern expressed by both the neighborhood and the Council regarding the appearance and compatibility of this project. At the Council's request, staff attempted to mitigate these concerns by adding conditions during the hearing that would help ensure a more compatible product that would contribute to the enhancement of the neighborhood. This included a condition that was designed to reflect the proposed illustrative character sketch supplied by the applicant and described a number of architectural features and building materials. The condition in question is as follows:

"Before the issuance of a final zoning permit, the applicant shall provide final plans detailing and qualifying the character of the proposed building elevations including details such as the amount and location of window and door fenestration, the number and direction of the multiple roof pitches with moderate to deep overhangs, the location and layout of the proposed foot paths and ornamental plantings, building materials and architectural details including asphalt roof shingle, hardi-plank siding, cedar shake shingles, window shutters, exposed end rafters and/or painted wood trim."

With this condition (and others) added to the CUP, the project was approved 7-0.

In the weeks following the hearing, staff was contacted by the applicant who stated that he had always intended to use vinyl siding and wanted administrative approval to change the building materials included in the conditional use permit. Although staff was not aware of the applicant's intentions, it was felt that siding materials contributed significantly to the appearance and character of a structure and that a change from hardi-plank and cedar shake siding to vinyl siding constituted a significant change and would require Council approval. Staff polled Council and did not find consensus on this issue and we advised the applicant of his appeal options.

The recommended usage of hardi-plank and cedar shake siding was a deliberate choice due to its ease to obtain, apply, and maintain. It is also considered to be more durable and affordable than real wood siding and more flexible than vinyl siding. Lastly, hardi-plank is the only non-wood alternative that is recommended in situations where the preservation of historic character is preferred. This property borders the boundary of a neighborhood in West Asheville (Brucemont/Dorchester) that is currently under consideration for Historic District designation and it is common for conditional zonings to be held to a standard that helps enhance a neighborhood's character.

Staff has worked with the applicant on a number of other relatively minor changes that deviate slightly from the illustrative drawing presented at the April hearing including: changes to window placement to accommodate an internal staircase, the addition of a building protrusion to the rear of the building face to accommodate unanticipated exterior venting to second story (protrusion will resemble a chimney flu), a small increase in height, alterations to stairs leading to

the second entrance, reductions/alterations to the ornamental plantings, and removal of the exposed end-rafter requirement. These changes were approved administratively.

Because this requested amendment involves a change to the appearance of the structure only, it was not required a review by the Technical Review Committee.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   Not applicable.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   Not applicable.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   Although the vinyl siding itself is not believed to adversely affect adjacent property values, it is felt that the proposed vinyl siding does little to enhance the character and subsequent values of the adjacent properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   It has generally been argued that the character defining features of a structure do have an impact on more than the character of the building itself; they also alter the visual relationship between buildings. The applicant is proposing to add a vinyl-sided structure that would be surrounded by other homes, the majority of which, are currently sided with a material other than vinyl. Furthermore, the predominant siding material on the larger block is not vinyl and the vinyl sided homes that do exist in the area are typically older wood-sided homes that have been covered in vinyl.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The ***Asheville City Development Plan 2025 (ACDP 2025)*** proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditonal Use Rezoning is one such tool and was utilized to allow for this property to be developed at a higher density than the current zoning would allow. However, the same sections of the comprehensive plan that discusses the need for residential infill development also states that the "protection, preservation, and

enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction". The applicant is proposing a change to the Conditional Use Permit that is felt to detract from the predominant character of the homes in close proximity and the larger neighborhood, particularly those homes that are currently under consderation for historic district designation.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   Not applicable.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   Not applicable.

Pros

- Results in less expense to property owner.

Cons

- Compromises the character of the structure.
- Weakens the relationship between subject property and adjacent homes through less compatible materials.
- Further dilutes the historic character of the area attempting to be preserved.

Staff does not recommend a change to the coniditonal use permit to allow for the substitution of the previously specified hardi-plank and cedar shake siding for vinyl siding.

Ms. Tuch summarized by saying that this is a request for an amendment to a conditional use permit associated with the conditional use zoning of the property located at 96 Louisiana Avenue. The purpose of this rezoning was to grant a multi-family zoning designation to allow for the addition of a duplex to a site that already supported two residential units. This project was originally approved in April of 2004. (Attachment to City Exhibit 3 – Location Map).

The project met with a fair amount of opposition from the adjacent property owners and other west Asheville residents and despite the relatively small scale, resulted in a fairly significant amount of discussion. Ultimately, the infill project was approved after being conditioned by staff, at Council's request, to ensure adherence to an illustrative drawing that was submitted by the applicant (Attachment to City Exhibit 3 – Illustrative Drawings). These conditions included the application of a cement fiberboard siding (commonly referred to as hardi-plank siding) and cedar shake siding to the new structure. With this condition in place, the Council unanimously approved the proposal.

After the hearing, the applicant contacted staff to request a change in the siding material. Although siding had never been discussed prior to the City Council's public hearing, apparently the staff's choice of preferred siding material was not what the applicant had intended to use. Given the amount of discussion over the appearance of the structure, staff was uncomfortable with an administrative change and felt that the project should return to the City Council for an amendment. In evaluating the project against the seven conditional use standards, not all standards are applicable in this case, but of particular concern to staff is standard #4 related to compatibility with a neighborhood's character. Although vinyl siding is present in the neighborhood, it is not the predominant siding material and it is staff's preference that the project be more compatible with the older more historic character of the neighborhood rather than the

some of the other less historic structures. Furthermore, conditional use rezonings are often projects that request special consideration. These projects are commonly asked to meet a higher standard than the minimal standard normally required, and for this they are allowed to do something that they are not normally allowed to do. In this case, Mr. Fuchs was granted the ability to add two additional units to this property that otherwise would not have been allowed. For this, staff feels that it is not unreasonable to request a building material that aids in the project's compatibility with the neighborhood.

Lastly, the character of the neighborhood is of a higher concern given it's proximity to a proposed historic district (Brucemont/Dorchester area) currently under consideration (City Exhibit 4). Even though this property is not included in this proposed district, it is in close proximity. That is another reason why staff is concerned with compatibility issues. The choice of hardi-plank siding and the cedar shake siding was a deliberate choice by staff, not to burden the applicant, but because it is the only non-historic material that is generally considered to be acceptable in historic areas. It is also very flexible building material and it is a relatively cost-effective material. Again, staff felt that material better reflected the character that was proposed by the applicant.

Mr. Brian Fuchs said that he is not requesting to change anything he originally had planned to do. He felt there was a major misunderstanding that occurred at the end of the Council meeting in April. There was a major issue Council had concerning the look of the building. Council wanted to hold him accountable to make sure it looks like the picture he presented at the Council meeting and not the picture he used at the Planning & Zoning Commission meeting. His problem is the siding materials (hardi-plank, cedar shakes and open-end rafters) suggested by Ms. Tuch (and voted on by Council) were materials never discussed with him because they were not an issue. He did not have the opportunity at the Council meeting to raise that concern since the public hearing was closed. All along he was going to use a very high end vinyl siding, as well as a vinyl shake. He stressed that the siding materials staff suggested were never discussed or agreed to by him. He raised two issues about using the material suggested by staff – maintenance and the cost of $6-10,000. He said that out of the 17 dwellings on his block, 30% have vinyl siding. He feels vinyl siding will fit well into the character of the neighborhood. Using photographs (Applicant Exhibit 1) he showed the siding materials of various houses in the immediate area. He said that the closest house with hardi-plank siding is 3.2 miles away. He urged Council to allow him to us a top-end and first-class vinyl siding.

Mr. Nathan Bryant, resident on Louisiana Avenue, felt that the purpose of the conditions were for the neighborhood and Mr. Fuchs to come to a middle ground. He felt it was appropriate to draw from the best materials for something that has a high impact to the neighborhood He urged Council to not allow vinyl siding in that he did not think it was aesthetically pleasing material.

Ms. Shao Chung, resident who lives on Louisiana Avenue two doors down from the applicant, noted that her house has hardi-plank siding on it. She presented photographs (Neighborhood Exhibit 1) of a sewer line the developer put in. She was opposed to allowing vinyl siding on the building. She felt that any additional buildings or renovations to existing homes should be to enhance the area.

Ms. Julie Allen, resident on Louisiana Avenue, said that the developer has already had administrative modifications made to his project and felt that vinyl siding materials should not be allowed.

Ms. Jennifer Long, resident on Dorchester Avenue, asked Council protest the integrity of the neighborhood and not allow vinyl siding.

Vice-Mayor Mumpower closed the public hearing at 6:09 p.m.

Upon inquiry of Councilman Dunn, Planning & Development Director Scott Shuford said that at the April Council meeting, Council asked staff to help formulate an exact description of the materials that would be used for the building in order to allay neighborhood concerns and to clarify what the building would look like and what it would be made out of. At Council's request, Ms. Tuch made her best effort to clarify that for Council and came up with a condition of hardi-plank siding and cedar shake siding. Those materials were arrived at considering the age of the neighborhood, the type of materials available, etc. It was Council's decision to accept that condition. Unfortunately there was not a lot of time for discussion with the developer.

Councilman Dunn felt it was the developer was never given the opportunity to comment about the siding materials.

Councilwoman Jones said that it would have been City Council's responsibility to engage the developer at the point when the condition was developed by staff.

At the request of Councilman Davis, Ms. Tuch outlined other minor changes made, which did not detract from the character of what the conditional use permit issued by City Council.

Councilman Davis and Councilman Dunn felt that a lot of people have vinyl siding and thought that that siding would be in character with the surrounding neighborhood.

Councilman Dunn moved to approve the amendment to the conditional use permit to allow for the substitution of the previously specified hardi-plank and cedar shake siding for vinyl siding.

Councilwoman Jones said that if Council is going to be advocates of affordable housing we have got to make sure that the neighborhoods know that the project will be attractive and compatible. She feels Council made a commitment to the neighborhood of what the building siding will be.

Councilman Newman felt that staff has been willing to work with the developer on changes to the project but they did not feel comfortable with the compatibility issue of the siding. He felt there was a compromise crafted because this was such a tough site to fit in. He would not be able to support the modification request.

Councilwoman Bellamy explained that Council deliberated at length about what the project would look like and would not support the modification request.

Vice-Mayor Mumpower felt the kind of vinyl siding Mr. Fuchs is talking about installing on the home would look similar to the materials outlined in the condition.

The motion made by Councilman Dunn and seconded by Councilman Davis failed on a 3-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

At 6:40 p.m., Vice-Mayor Mumpower announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO A PREVIOUSLY APPROVED MASTER PLAN ASSOCIATED WITH THE FORMERLY KNOWN BROTHERTON COMMONS PROJECT, NOW KNOWN AS GREENWOOD POINT, TO ALLOW FOR A MULTI-FAMILY PROJECT LOCATED AT VIRGINIA AND BROTHERTON AVENUES

City Clerk Burleson administered oaths to anyone who anticipated speaking on this matter.

All Council members disclosed that they have visited the site and/or have received correspondence relating to this project and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Vice-Mayor Mumpower opened the public hearing at 6:54 p.m.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

This is the consideration of an ordinance to amend a previously approved Master Plan associated with the formerly known Brotherton Commons Project, now known as Greenwood Point, to allow for a multi-family project located at Virginia and Brotherton Avenues. This public hearing was advertised on September 2 and 9, 2005.

The project is supported by numerous goals and strategies in the ***Asheville City Development Plan*** relating to infill development, smart growth policies and affordable housing. The project will provide for a sustainable medium-density residential development within the City Limits. The site is also located within close proximity to transit service along Haywood Road, several area parks (Riverfront Park, Malvern Hills, and West Asheville Park) potential employment centers, restaurants and shopping centers.

In addition, this project will make a significant contribution to meeting the needs for affordable housing outlined in the ***Consolidated Strategic Housing and Community Development Plan 2000-2005***.

Although, not directly related to the identified tasks of the "Housing Opportunities" goals of the SOP, this project utlizies CDBG funding that will assist in providing an increased supply of affordable housing opportunities within the City Limits.

This project received a conditional use rezoning from RS-8 to RM-8/Conditional Use in May of 2002.

The applicant, the Hunter Group working with Neighborhood Housing Services (NHS), is requesting an amendment to the Master Plan and Conditional Use Permit associated with a Conditional Use Rezoning from RS-8 to RM-8/Conditional Use for the Brotherton Commons project located in West Asheville on the corner of Virginia Avenue and Brotherton Avenue. In May 2002 the Asheville Council approved the rezoning and Master Site Plan for two lots totaling approximately 7.61 acres to allow for a 32-unit co-housing project. The proposed amendment proposes to remove 1.7 acres from the total site area in addition to an increase in the total number of units to 44. The smaller total site area combined with the increase in units raises the density of the project from the previously approved 4.2 units per acre to 7.8 units per acre. Both density totals are classified as "Medium Density".

Since 2000, the City has invested federal Community Development Block Grant (CDBG) funds in acquiring and improving the Brotherton site. The developer, Morse Properties Inc.,

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The project is supported by numerous goals and strategies in the ***Asheville City Development Plan*** relating to infill development, smart growth policies and affordable housing. The project will provide for a sustainable medium-density residential development within the City Limits. The site is also located within close proximity to transit service along Haywood Road, several area parks (Riverfront Park, Malvern Hills, and West Asheville Park) potential employment centers, restaurants and shopping centers.

In addition, this project will make a significant contribution to meeting the needs for affordable housing outlined in the ***Consolidated Strategic Housing and Community Development Plan 2000-2005***.

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This project received a conditional use rezoning from RS-8 to RM-8/Conditional Use in May of 2002.

The applicant, the Hunter Group working with Neighborhood Housing Services (NHS), is requesting an amendment to the Master Plan and Conditional Use Permit associated with a Conditional Use Rezoning from RS-8 to RM-8/Conditional Use for the Brotherton Commons project located in West Asheville on the corner of Virginia Avenue and Brotherton Avenue. In May 2002 the Asheville Council approved the rezoning and Master Site Plan for two lots totaling approximately 7.61 acres to allow for a 32-unit co-housing project. The proposed amendment proposes to remove 1.7 acres from the total site area in addition to an increase in the total number of units to 44. The smaller total site area combined with the increase in units raises the density of the project from the previously approved 4.2 units per acre to 7.8 units per acre. Both density totals are classified as "Medium Density".

Since 2000, the City has invested federal Community Development Block Grant (CDBG) funds in acquiring and improving the Brotherton site. The developer, Morse Properties Inc.,

began development of the site including some infrastructure improvements, as approved by Council in May 2002, but later withdrew from the project in October 2003 after failing to obtain construction financing on terms that were acceptable to the developers.

After the withdrawal of Morse Properties Inc., the Community Development Division drafted a new Request for Proposals of which NHS/Hunter Group and Carolina Cornerstone submitted proposals in September 2004. NHS/Hunter Group was selected as the developer due to their direct access to construction financing without typical pre-sale requirements, and the agency's Loan Program which provides an experienced, full-time staff person dedicated to developing a steady pool of low to moderate income buyers.

The Master Site Plan approved by City Council in May 2002 included the following:

- 2 lots totaling approximately 7.61 acres;
- A co-housing development consisting of 32 units at a density of approximately 4 units per acre;
- Seven residential buildings consisting of a mix of quadraplex and sixplex structures ranging in heights of 2-3 stories;
- A 3500 square foot Common House and several storage shed areas;
- 2 parking lots consisting of 52 spaces (some stacked);
- A central Village Green, Court Yard and Plaza and the proposal of a woodland conservation easement with an extensive network of trails.

On March 21, 2005, the project was presented to the Technical Review Committee (TRC) for review and approval. The project was approved with a number of minor conditions easily addressed in a revised site plan. The most significant condition was that due to the existing low pressure water flow, the applicant had to meet with a representative of the Fire Marshall's office to determine an acceptable alternative to meeting fire building code for the two largest multi-family structures. The applicant has met with the Fire Marshall's office and has resolved the issue by proposing to either add additional fire walls to create areas less than 3600 square feet or to sprinkler the buildings.

In addition to the TRC revisions, the plans reflect previous revisions deviating from the original approved plan for the Brotherton Commons Co-Housing project.

A complete summary of the proposed amendment to the Master Site Plan is as follows:

Proposed Changes to Master Site Plan:

- The removal of the smaller 1.71 acre tract of land from the development which would result in the lot reverting back to an RS-8 zoning designation;
- A change from co-housing units to more traditional condominium units;
- An increase in the number of proposed units to 44-units, for a density of 7.8 units per acre;
- A total of 11 buildings consisting of a mix of duplex and triplex units along Virginia Avenue and Brotherton Avenue, and 3 larger scaled buildings to be located internal to the site. Heights range from 1.5 stories for the smaller buildings, and up to 3 stories for the larger scaled buildings;
- A smaller (1000 s.f.) Community Center;
- A total of 54 off-street spaces and the creation of 21 on-street spaces on both Virginia and Brotherton Avenue; and
- Several designated open space areas and the preservation of approximately 2.1 acres.

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Building details consist of 4 duplex units and 4 triplex units intermixed on the street faces of Virginia Avenue and Brotherton Avenue. These smaller multi-family units will all be 3 bedroom units, 1½ stories, and will range in size from 2460 s.f. for the smallest duplex, to 5718 s.f. for the largest triplex Interior to the site will be the three multi-family buildings; the two larger buildings will include 9 units each while the third building is slightly smaller with 6 units total. The multi-family buildings are 2 and 3 stories and range in size from 7290 s.f. to 11,135 s.f. The total project will consist of 16 two bedroom units, and 28 three bedroom units, for a total of 116 bedrooms and 44 units. All units will be sold as condominiums.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the ***UDO***, the ***Standards and Specifications Manual***, the ***North Carolina Building Code*** and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   Previous grading and retaining wall work on site has constricted the practical building area of the site and the applicant has proposed a revised plan that adapts well to the site constraints utilizing the existing retaining walls and building pads. Where practical, the applicant has also proposed adding basements to some of the units to better accommodate and utilize the existing grades. Lastly, the steep topography and riparian area along the eastern boundary of the site will remain undeveloped and be preserved as open space for the project.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   There is significant evidence that supports the position that the addition of well maintained multi-family or affordable housing does not substantially injure the value of adjoining or abutting property. The applicant has proposed a mix of housing types whose architecture will be in keeping with the character of the neighborhood.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The mix of housing types proposed are designed to place the smaller structures (duplexes and triplexes) along the street faces of Brotherton and Virginia Avenues in order to create a stronger and more compatible relationship between the new units and the existing single family homes; these units are not out of scale with the average new single family home. The larger buildings are placed further from the street and internal to the site effectively buffering their mass. In addition, the architecture of all the buildings

will have features that reflect the character of some of the older craftsman homes in the area by providing a mix of siding materials (hardi-plank and cedar shake), porches, multiple roof lines & pitches, moderate overhangs, exposed end rafters, and windows with craftsman styled muntins. Lastly, the overall density, although higher than most of the adjacent lots, is still within the overall density of the RM8 or RS8 zoning designations and is not out of character with the medium density zoning districts.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The project is supported by numerous goals and strategies in the ***Asheville City Development Plan*** relating to infill development, smart growth policies and affordable housing. The project will provide for a sustainable medium-density residential development within the City Limits. The site is also located within close proximity to transit service along Haywood Road, several area parks (Riverfront Park, Malvern Hills, and West Asheville Park) potential employment centers, restaurants and shopping centers.

In addition, this project will make a significant contribution to meeting the needs for affordable rental housing outlined in the ***Consolidated Strategic Housing and Community Development Plan 2000-2005***.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The subject property is well positioned in respect to transportation facilities with easy access to major thoroughfares and multiple bus lines operating on Haywood Road and Brevard Road. The project has also been reviewed by the technical review committee which did not indicate any problems with providing service to the property (with special provisions to accommodate state fire code requirements).

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed project has been reviewed by the City's traffic engineer who determined that the project would not cause undue traffic congestion or create a traffic hazard due to the relatively modest scale of the project, typical trips generated by residential units, and multiple access points. In addition, the project is proposing a mix of off-street parking with newly created on-street parking that is expected to adequately meet the needs of the residents while providing an improvement to the current on-street parking situation.

Pros

- Provides a variety of housing types accommodating a mix of income levels
- Provides infill housing compatible with the existing neighborhood
- Provides on-street parking improvements

Cons

- Results in a higher density than what had previously been approved.

Staff recommends approval of the proposed masterplan and map amendment to the former Brotherton Commons project, now referred to as Greenwood Point.

Ms. Tuch said that this is a request for an amendment to the Master Plan associated with the Brotherton Commons Co-housing project, originally approved by the City Council back in May 2002. The original application was a request for a Conditional Use Rezoning from RS-8 to RM-8 to allow for a multi-family style co-housing project for 7 buildings and a total of 32 units. The former developers for the project abandoned the approved co-housing development after having done some infrastructure work on site due to financing constraints. The zoning from the original approval the project remains in place and the new developers are requesting an amendment to the approved Master Plan (Attachment to City Exhibit 3 – Aerial Photo).

She pointed out that the original proposal included two lots, of which a 1.7 acre upper lot would remain undeveloped (Attachment to City Exhibit 3 – Location Map). The new proposal removes this lot from the overall project area, which contributes to the increase in density.

The original project proposed 32 units on 7.6 acres which resulted in a density of 4.2 units/acre (Attachment to City Exhibit 3 – Original Brotherton Co-Housing Site Plan). The Master Plan shows 7 buildings, 2 quadraplex buildings, 4 sixplex buildings, and one large community building. There was open space delineated in the center of the development area as well as a preserved area along the eastern boundary buffering the steeper slopes and the creek. In addition, there were 3 curb cuts and a couple of large parking areas.

Among the infrastructure improvements to the site included the addition of a fairly significant amount of retaining walls. The designers for the new Master Plan have attempted to optimize the already disturbed area while minimizing any additional disturbance to the site.

The new Master Plan increases the number of units to 44 which, combined with removing the upper parcel, increases the density to 7.8 units an acre (City Exhibit 4 – Site Plan). Both the original density and the new proposed density are classified as medium density and are within the standards for both the RS-8 and RM-8 zoning districts. The new Master Plan includes 4 triplexes, 4 duplexes, and 3 multi-family buildings with the smaller duplex/triplex structures fronting on the street facing Brotherton and Virginia Avenues. The larger multi-family buildings are placed further away from the street with off-street parking in proximity. The 100 and 200 buildings are 9 units each, 3 stories while the 300 building is 6 units and two stories. As with the earlier proposal, open space is shown central to the project as well as the preserved area along the creek. In addition, there have been a few road and traffic improvements over the original plan including a reduction in the number of curb cuts, off-street parking has been more evenly distributed throughout the site creating a lesser demand on certain spaces, a turn-around has been provided at the dead-end of Brotherton Avenue, and the surface area of both Brotherton and Virginia Avenues has been widened to accommodate on-street public parking, improving the current on-street parking situation. Lastly, the architecture for the project buildings has been revised to better reflect the character of the existing craftsman style homes (City Exhibit 5 – Streetscape Elevations) (Attachments to City Exhibit 3 – Building Elevations for the Different Units).

The revised Master Plan has been reviewed by the Technical Review Committee where the project was approved with a number of minor conditions. The most significant condition dealt with water pressure and fire code compliance to which the applicant has responded by coordinating with the Fire Marshall's office to agree to either adding sprinklers to the two 3 story multi-family buildings or by adding firewalls to create floor areas of less than 3600 square feet. Again, this would only be required of the two largest multi-family buildings. The other buildings all currently comply.

Staff has reviewed this project for compliance with the 7 conditional use standards and has determined that the project does meet these standards.

Mr. Richard Rice, member of the West Asheville Community League, felt the original project did not meet the seven standards that must be met in the Unified Development Ordinance, in particular condition no. 7 dealing with traffic The City of Asheville being the owner of the property creates a problem. He said the City, as owner, is biased and incapable of sitting in judgment oh its own application for conditioning zoning He cited the Supreme Court case of The County of Lancaster SC vs. Mecklenberg County NC (No 293 PA 92) The North Carolina Supreme Court determined that due process requires an impartial decision-maker. He said City Council will probably have to appoint an independent group, hopefully made up from representatives from the neighborhood, to obtain an impartial decision. He would be glad to serve on that group.

Mr. Carlos Montgomery, resident on Virginia Avenue, cited neighborhood concerns of water supply. He said that the I-240 project will cut a connection that was re-established recently to allow the water flow to meet minimum acceptable standards. Since the project size is increasing, the problems exaberates the concerns over traffic, water and pedestrian safety. The only sidewalks installed will be around the project. Access to Haywood Road has not changed - there will be no sidewalks to access City or school buses. When the I-240 project cuts off a piece of the property, there will be only one entrance.

Mr. Anthony Jones, resident on Virginia Avenue, felt the density is too high and the parking is not enough. He feels that the parallel parking on the road will cause more congestion. This development will double the number of houses on Virginia Avenue.

Ms. Katherine Stevens, owner of property on Brotherton Avenue, stated her biggest concern is the on-street parking. She feels that the people who parallel park will use the property owner's driveways and yards to turn around.

Mr. Patrick Stacy, resident on the corner of Brotherton and Virginia Avenue, was concerned about the traffic on Virginia Avenue, the lack of sidewalks, and the water pressure. He feels that once this development is built, there will be no more peace and quite in the neighborhood.

Mr. Christopher Slusher, Executive Director of Neighborhood Housing Services, said that this development will be in high quality and design. They have tried to be respectful of the community by placing the lower denity housing units along the edges of the street. They have met with community representatives on-site and acknowledged their concerns about traffic increases. Unfortunately we see traffic increases all over the City as we grow and try to find decent housing for people. He believed that on-street parking will help slow the traffic down. In addition, the City's Traffic Engineer did not feel that the incrase in traffic is so burdensome that the street cannot handle it. He urged Council to approve the amendment.

Mr. Chris Eller, engineer for the project, said that water has been an issue, but some improvements have been made by the City to improve the water flow. We have worked closely with the water maintenance crew for updated information to verify that our original projections and original design would still incorporate the existing infrastructure that is now in the ground as well as accommodate additional units proposed. We are confident we can meet all building codes and domestic and Fire Code requirements regarding water. We are proposing on-street parking which is a natural traffic calming measure. In addition to the on-street parking there are sidewalks being proposed around the perimeter of the property. All of these measures are mitigating the addition of units requested. They do feel like this revised Master Plan will blend in with the neighborhood.

Vice-Mayor Mumpower closed the public hearing at 7:23 p.m.

Upon inquiry of Councilman Newman, City Attorney Oast said that he didn't think that there is a legal impediment to Council considering this application. The City's ownership of this property has been disclosed and discussed publicly. Council acts on zoning requests involving it's own property not infrequently.

Discussion surrounded the water flow in the area and the potential of I-240 connection cut. Mr. Eller said that they are required to have 1,000 gallons per minute for multi-family if the buildings are not sprinklered. A couple of years ago the flows were 700-730 without sprinkling. With sprinkling, they are allowed to reduce that to 500 gallons per minute. Based on recent flows, the 700's would drop to 650-670, but again, they feel confident they can meet the 500 gallon per minute requirement, coupled with the sprinkling or the additional fire walls that could potentially be added. He felt that if there is a connection cut, he was confident that there will be cross connectivity with other existing lines to supply the availability for water.

When Councilman Dunn expressed concern over the number of parking spaces in the development as well as the on-street parking.

Upon inquiry of Councilman Newman about the people using existing driveways to turn around, Mr. Mitchell Sorin, architect for the project, said that the turnaround is designed for emergency vehicles as well as for people coming to the end of the street.

Upon inquiry of Councilman Davis, Mr. Slusher said that the 1.78 parcel of property has not been included in the design of this project. At present, it is only a request for the City to consider taking that parcel out. They see the extra 1.78 acres as an additional burden of maintenance and insurance risk for a condominium community. We are trying to hold the costs of administration down. He said it can stay as unimproved green space for the City. It is very steep and beautifully wooded and they would prefer not to take it into this project. If they do buy it, it will be undeveloped green space for the condominium community. Again, they do not have any plans for development that 1.78 parcel.

Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford said that they did share the original plans for this property with the N.C. Dept. of Transportation. He said that he does not see that there would be any significant impact impact of the property. They would put in noise walls and other things to mitigate the impact. In addition, if the connection is severed, it may be an opportunity to make better connections.

Councilman Dunn felt this project did not comply with the conditional use zoning standard no. 4, in that it does not fit in the existing neighborhood. He felt the project condenses a lot of people in a small area with no room for the children to play.

Councilman Dunn moved to deny the amendment to the conditional use permit. This motion was seconded by Councilman Davis.

Councilman Newman felt this is a good solid project and the density is very typical in the older neighborhoods in West Asheville. He also felt the quality of the units, in terms of design, is good.

Councilwoman Jones explained why she supported the project since there is such a need for affordable housing and land is scarce.

Vice-Mayor Mumpower's concern is traffic and felt the neighbors voiced legitimate concerns about on-street parking.

The motion made by Councilman Dunn and seconded by Councilman Davis to deny the amendment to the conditional use permit failed on a 3-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

Councilman Newman asked if Council or Mr. Slusher had any ideas to address Council's concerns so the project could move forward. Mr. Slusher explained they tried to scale the project at the absolute minimum to make it work financially and they are right on the cusp at 44 units. They tried to give as much green space in the community as possible within the property. He said they have spent a great deal of time and money on this project trying to design a project that is respectful of the neighborhood by putting duplexes and triplexes along the edge that look like the style of the neighborhood.

Councilman Davis expressed concern about traffic and water flow, even though it will meet the minimum flow standards. He felt the project would be better if it was a little less dense, more than the minimum flow, and provided the extra parcel for open space for kids to play.

Councilwoman Jones moved to table the matter until the developer has had some time within which to think about mitigation and the concerns raised by Council. This motion was seconded by Councilman Newman.

City Attorney Oast said that public comment will need to be taken only on the new information, if any, presented.

Mr. Slusher pointed out that delaying the project will have a big impact on them because construction costs are going up daily. However, he said that he would look at a traffic study to see what kinds of mitigation measures might be implemented to make it safer for the community.

The motion made by Councilwoman Jones and seconded by Councilman Newman to table the matter failed on a 3-3 vote, with Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Mr. Slusher asked City Council to continue this matter until October 12, 2005. Therefore, Councilman Newman moved to continue the meeting until October 12, 2005. This motion was seconded by Councilwoman Bellamy and carried on a 4-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

~~ORDINANCE BOOK NO. 21 - PAGE~~

D. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD GENERAL RETAIL SALES AS A USE OF RIGHT IN THE NEIGHBORHOOD BUSINESS DISTRICT**

ORDINANCE NO. 3279 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD GENERAL RETAIL SALES AS A USE OF RIGHT IN THE NEIGHBORHOOD BUSINESS DISTRICT

Vice-Mayor Mumpower opened the public hearing at 8:23 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of amending the Unified Development Ordinance (UDO) for the purpose of adding general retail

sales as a use of right in the Neighborhood Business District. This public hearing was advertised on September 2 and 9, 2005.

This proposed ordinance was drafted in response to requests from local businesses and property owners to allow a broader range of retail activities in the Neighborhood Business District (NBD). In reviewing this proposal, staff noted that many types of specific retail uses are already allowed within the NBD, including bakeries, bicycle shops, bookstores, candy/snack shops, delicatessens, florists, fruit/vegetable markets, gift shops, grocery stores, hardware/garden supply stores, pharmacies, and video stores. Both Planning staff and the Planning & Zoning Commission gave careful consideration to types of retail uses that would not be desirable in this district. More objectionable uses, such as the sale of adult-oriented items, are subject to more restrictive standards and are not classified as "retail sales". As the NBD does not allow drive-thrus or outdoor storage and limits the size of any building to 3,000 square feet for commercial use, uses are not of a scale or character that could significantly impact a neighborhood.

The intent of the NBD is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. The district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but small neighborhood oriented businesses are useful and desirable. Examples of existing NBD districts include small, traditional commercial areas within Emma, Montford, Oakley, Shiloh, and West Asheville.

Pro –

- This amendment would allow a greater variety of opportunities for the establishment of businesses in the NBD.
- The additional uses allowed would not have a greater impact than the uses presently allowed in the NBD.

Con –

- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 3, 2005 by a unanimous vote of 7-0. Staff recommends approval of the proposed ordinance amendment as well.

Vice-Mayor Mumpower closed the public hearing at 8:25 p.m.

Vice-Mayor Mumpower said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3279. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 155

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. **ORDINANCE NO. 3280 - ORDINANCE INCREASING THE TAXICAB FARES**

RESOLUTION NO. 05-176 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ELIMINATE THE TAXICAB INSPECTION FEE

Transit Services Director Bruce Black said that this is the consideration of an ordinance amending Ordinance No. 2773, § 1, 11-28-00 adopted November 28, 2000, Appendix F Schedule Of Taxicab Fares, and amending the Fees and Charges Manual to reduce the fee for Taxicab inspections from $15.00 to zero.

The Fare Schedule (Appendix F) established by section 18-5 (a) of the Asheville Code of Ordinances establishes the Taxicab Fares for all vehicles operating legally within the City of Asheville. Appendix F established fares of $1.90 for the activation of the meter (Drop Fee), and $0.20 per every 1/10th mile thereafter, or, $2.00 per mile. Appendix F has not been amended since November of 2000.

Two taxicab operators have suggested that the drop charge be increased to $3.00 and the per mile rate be increased to $0.25 per 1/10th mile, or $2.50 per mile. Staff is recommending a drop charge of $2.20 and a per mile rate of $0.22 per 1/10th mile, or $2.20 per mile.

In making its recommendation, staff analyzed both gasoline and overall cost increases that have occurred since the last time fares were increased in November 2000. Staff determined that the average price per gallon of gas in 2005 (prior to Hurricane Katrina) is $1.12 higher than it was in 2000. Assuming that a taxicab gets 13 miles per gallon of gas, this per gallon cost increase translates into a per mile cost increase of only nine cents. Staff also looked at the overall Consumer Price Index (CPI) for the South region and determined that prices overall have increased by 11.8% since November 2000. Staff believes that is more appropriate to use the CPI when adjusting fares since it reflects the overall increase in operating costs as opposed to just the increase in the cost of gasoline. Applying the CPI to Appendix F would yield new fares of a $2.20 drop charge and $0.22 per 1/10th mile, or $2.20 per mile. Appendix F, Schedule of Taxicab Fares should be adjusted to reflect the increase in the overall CPI. Specifically, the drop charge should be increased to $2.20 with a charge of $0.22 for each additional 1/10 mile.

The State of North Carolina requires that taxicabs be inspected annually. There is a great deal of duplication between the annual taxicab inspection performed by the City and the annual vehicle inspection required by the State of North Carolina. The current taxi cab inspections performed by city cover only three additional items: 1) vehicle appearance, 2) company lettering, and 3) top light & trip meter. The City charges taxi cab owners $15 for this annual inspection. Over the last three fiscal years, the City has collected, on average, approximately $600 in annual revenue from taxicab inspections. Since the North Carolina Inspection is identical to all other requirements of section 18-33 except items 1 through 3 above, presentation of a state inspection certificate would satisfy all requirements of 18-33 except for items 1 through 3 above. The inspection of the taxicab for items 1 through 3 above requires minimal staff time and uses no city equipment. If a taxicab has already passed the annual State inspection, then the city need only inspect those three items not covered by the State inspection and since time and labor is minimal, the fee for the inspection should be discontinued.

Benefits to the City of Asheville:

- Preservation of mobility for the citizens of Asheville at a level commensurate with the increase in costs as expressed by the Consumer Price Index, the best available measure of inflation
- Preservation of revenue to the Taxicab operators at a level commensurate with the increase in costs as expressed by the Consumer Price Index, the best available measure of inflation.

Costs to the City of Asheville:

- Increased costs to those who are dependent on taxi transportation

City staff recommends City Council amend Ordinance No. 2773, § 1, 11-28-00 Adopted November 28, 2000, Appendix F Schedule Of Taxicab Fares be amended to increase taxi fares from $1.90 for the initiation of the meter (drop charge) to $2.20 for the initiation of the meter (drop charge), and from $0.20 for each 1/10th mile to $0.22 for each 1/10th mile, and amend the Fees and Charges Manual to reduce the fee for taxicab inspections from $15.00 to zero.

Mr. Fred English felt that poor people can't afford much of an increase and agreed with the City's proposed increase.

The following individuals spoke in support of an increase because of the location of Asheville. They talked about the terrain in Asheville being different from other cities; the rise of gas prices; the higher insurance rates; the increase in the price of tires; and their taxes. They requested a compromise of $2.50 drop charge and $2.80 a mile:

Mr. Jerry Queen, J&J Cab Service
Ms. Georgie Jefferson, owner Your Cab II
Representative from the Blue Bird Cab Company
Mr. Spiro Alferis, A Red Cab Company

Mr. Liverman, visually impaired citizen, said he spends over $2,000 a year on taxicabs. He suggested Council look at the Raleigh system where the federal government subsidizes taxicab fares.

Mr. Peter Dawes commented how Asheville was a tourist town with prohibited taxicab service to our major airport.

Councilman Dunn, member of the Asheville Regional Airport Authority, felt that taxicabs should be allowed to service the Airport and would bring that matter up at the next Authority meeting.

Councilman Davis, owner of a Jan Davis Tire Store, pointed out that our terrain makes a lot of difference on everything automotive, e.g., tires, brakes, etc. He would like the taxicab owners to be able to make a reasonable profit to be able to deliver this important service.

Councilman Davis moved to increase the taxicab rates to $2.50 drop charge and $2.80 per mile. This motion was seconded by Councilwoman Bellamy.

Discussion took place after reviewing a comparison of different North Carolina cities and their taxicab structure.

At 9:10 p.m., Vice-Mayor Mumpower announced a short recess.

Discussion surrounded the appropriate cost increase for taxicab service. Mr. Black recommended Council increase the drop charge to $2.50 and a $2.50 per mile fee, with staff continuing to work with the taxicab companies to refine those figures.

Councilman Davis amended his motion to increase the drop charge to $2.50 with a $2.50 per mile fee, with staff review of the fee schedule in 90 days. Councilwoman Bellamy withdrew her second. However, Councilman Newman seconded Councilman Davis' amended motion.

At the request of Councilwoman Bellamy, Councilman Davis and Councilman Newman amended their motion for review in 30 days rather than 90 days.

Councilman Newman also asked that the Council's Fees & Charges Committee review this matter as well.

Councilman Dunn felt that 30 days will not give an accurate picture of the gas prices. He would vote against this amended motion but would support a higher increase. Councilwoman Bellamy agreed.

The amended motion by Councilman Davis and seconded by Councilman Newman to increase the drop charge to $2.50 with a $2.50 per mile fee, (1) with staff review of the fee schedule in 90 days, (2) with the City Council's Fees and Charges Committee reviewing this matter in conjunction with the staff review, and (3) with staff reviewing the federal subsidizes and tier system that the City of Raleigh is currently using, passed on a 4-2 vote, with Councilwoman Bellamy and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 22 – PAGE 256

Councilwoman Jones moved for the adoption of Resolution No. 05-176. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 214

B. WIRELESS INTERNET NETWORK SERVICE FOR CITY OF ASHEVILLE

Vice-Mayor Mumpower said that on behalf of Councilman Davis and Councilman Dunn and himself, this is a presentation on the possibilities for a citywide broadband wireless system as a utility to city residents and an enhancement to public safety and citywide service delivery.

Discussion surrounded Councilman Newman's questioning of why this matter was being brought up at a formal meeting opposed to a worksession. He felt this was the kind of issue that would normally be reviewed at a worksession, in that it is a new idea. In addition, Mayor Worley and our Information Technologies Director are absent. He understands that Councilman Davis will not be at the September 20, 2005, worksession, but suggested it can be brought up at the October 18, 2005, worksession. He said that it has been mentioned that there is national legislation affecting this and after a little research into that, his research indicates that there is little or no chance that Congress is on the verge of passing some legislation that would pre-empt anything the City of Asheville wants to do this year.

After further discussion, Councilman Davis moved to continue this matter until the September 20, 2005, worksession, stating that he would rearrange his plans in order to attend the worksession. This motion was seconded by Councilwoman Bellamy and carried on a 4-2 vote, with Councilwoman Jones and Councilman Dunn voting "no."

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced activities taking place with the For Our Kids Program.

The following claims were received by the City of Asheville during the period of August 12-25, 2005: J.W. Burris Co. (Water), Ismini Barlas (Engineering), Randolph Carson (Sanitation), Beverly Dillon (Police), Fred Daugherty (Sanitation), Jerry Cook (Water), Lee Davis (Water) and Stoner Giltz (Water). The following claims were received during the period of August 26-31, 2005: Patricia Leake (Streets), Vladimir Shostak (Transit Services) and D'Lorah Small (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the Asheville Citizens for Quality Government is a public information and participation organization whose primary function is government quality assurance. He stated that the NC Citizens for Quality Government Conference will be held on March 25, 2006.

Mr. Mike Fryar commented on how the City can annex when it doesn't have enough Police officers to take care of the existing City limits.

Mr. Joe Minicozzi said that he is working on behalf of some of the residents (in particular Mr. Thompson) in the Maxwell Street neighborhood. He said that Mr. Thompson is not suing the City of Asheville. He said what has happened is that they are following due process that is required by law. We have an issue of what was approved and we filed the challenges administratively to appeal those things. First to staff, and then to the Board of Adjustment. Our case went to the Board of Adjustment and was dismissed by the City Attorney's Office, to which we are now appealing again. We have not had a public hearing on any of this. We have gone before the noise board for the trucks for the air conditioners three different times. The first time it was moved in an order of compromise. The second two times it was dismissed by the City Attorney's Office. This is now a request for the process. He asked that City Council become involved in this. He showed some pictures of Greenlife Grocery and pointed out where Mr. Thompson and Mr. Miller live. They have many issues with this project, but there are some basic problems. First of what is allowed to be administratively approved by City staff. He showed the driveway on Maxwell Street. He said that what is allowed by Code is a 36-foot wide driveway. The driveway is about 78 feet from edge to edge. He has asked Mr. Shuford if this is allowed to be approved and Mr. Shuford stated yes. He questioned the City Attorney if it is allowable for Mr. Shuford to administrative approve a numeric adjustment to the code. After Mr. Shuford makes a decision, we have 30 days within which to appeal it. If it is an administrative decision, how does a neighborhood know about it. There is no way legally, in his experience as a former zoning administrator, that a zoning individual can give an approval for variances without the proper procedure to go before a board of adjustment. The Merrimon Avenue entrance is measured at 69 feet. The allowable dimension is 36-feet. Mr. Thompson has complained about the trucks coming in Maxwell and received a letter from the Police Chief, basically citing that there are large trucks that appear in the driveway. He said that sometimes there are 16 trucks a day on this residential street. The Police Department, in an effort to curb their own manpower that they put on that street, issued a letter to Mr. Thompson, basically saying that if the trucks are too big and they don't fit, so be it – they will not cite. We appealed that decision to the City Manager. They are well aware of the staff time that has gone into this and how complex the issue is, but they are questioning the process. They are basically saying that trucks can appear there and park on sidewalks, block sidewalks all when the code states they are not allowed to block a sidewalk. The Police Chief's letter basically says that if they are too big, they are too big. In addition, the nature of that residential street has been compromised. The law states that you can't have anything greater than a 22-foot long truck on a City street. In addition to that, nothing greater than 10,000 pounds. He showed a picture of a truck on the Greenlife property that was 14,000 pounds. Council has approved Maxwell Street as a residential street that shall have no through truck traffic. There needs to be some due diligence done in a very objective, independent way. Finally, the originally loading area was approved by the City. The only working drawing that he could find in the City's building department has a roof on a pole mounted loading bay that they constructed. Using a picture taken back in 2004, you can see the structure in a distance with the pole. Today, you would see that they have enclosed it. There is no permit for that. He also asked how a truck was allowed to be approved in a visibility triangle. They have brought that to the attention of City staff and nothing has been done. They asked Council to have a worksession on this so they can state their concerns to an objective body. Vice-Mayor Mumpower asked that Mr. Minicozzi summarize his points raised and submit those to the City Manager. The City

Manager was instructed to report back to Council on those concerns raised and Council will in turn, respond to Mr. Minicozzi

Mr. Peter Dawes questioned whether the City of Asheville has an evacuation program in conjunction with Buncombe County. He also spoke about the lack of manpower in the Police Department.

Upon inquiry of Councilman Dunn, Assistant City Manager Jeff Richardson responded to questions raised and updated City Council on the efforts that are underway to address sworn officer vacancies in the Police Department. In addition, City Attorney Oast said that he would respond in a memorandum form to City Council regarding vacancies in the Police Department since we have been challenged in a couple of the annexations. City Manager Jackson also stated that the market competitiveness and analysis of salaries and health care is a major issue for the upcoming budget. He was pleased that Council is open to receive the analysis of that.

Vice-Mayor Mumpower announced vacancies on the Taxicab Advisory Board.

Ms. Mary Steiner spoke about the drug problems near Pisgah View Apartments. At Councilwoman Bellamy's request, City Manager Jackson said that he would provide Council with an update of police services at Pisgah View Apartments.

VIII. ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 11:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – September 20, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding (left at 9:08 p.m.); Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn (left at 8:30 p.m.); Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman (arrived at 3:38); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Acquisition and Acceptance of a Partial Donation of Property on Rocky Ridge Road

Summary: The consideration of a resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

The City of Asheville Fire and Rescue Department (AFRD) has recognized the need for a fire station in the vicinity of the Brevard Road and I-26 interchange in order to provide fire protection for residents and businesses in the area. AFRD staff has selected certain real property located on Rocky Ridge Road, identified as PIN No. 9626.08-78-7720 as the optimal location for the new fire station.

The property is located about 250' west of the intersection of Rocky Ridge Road and Brevard Road at the I-26 interchange. It is rectangular in shape and contains approximately 0.81 acre. It is generally level with the street and forms an elevated flat building site with retaining walls along three sides. There is a traffic signal at the intersection with Brevard Road providing direct access to Brevard Road in either direction and I-26 East. Access to I-26 West is at the next intersection one block away. The site has been evaluated by the architectural firm of Stewart-Cooper-Newell Architects and found to be suitable for its intended use.

The property was appraised by Francis J. Naeger, MAI, at a value of $603,000. Real Estate Manager Ed Vess has reviewed the appraisal and concurred with the fair market value of $603,000 based on the appraisal. In discussing the City's needs and budget limitations with the property owners, Karl and Nick Koon of G. E. Enterprises, they agreed to donate a portion of the purchase price in order to make the purchase possible for the City. The City and the Koons executed an Option to Purchase Real Property, which provided for a purchase price of $603,000 with $303,000 of the purchase price to be donated by the Koons to the City. The remaining $300,000 of the purchase price would be paid in cash by the City.

The AFRD has $300,000 budgeted for the purchase of a site in the Brevard Road area.

The positive aspects of the proposed acquisition are:

- The site is the optimal location for a fire station based on the service area and access.
- There will be significant savings in site preparation costs compared to other available sites.
- The purchase of this site will enable this station to be bid at the same time as the Exit 44 station resulting in construction cost savings.
- It is a voluntary sale at fair market value.
- Includes only the land necessary for the fire station.

The negative aspects are:

- Removes property from the tax base.
- Removes a commercial lot from the market.

Approval of the resolution will establish $603,000.00 as fair market value for the property, authorize exercising the option along with a cash payment of $300,000 and accept the donation of $303,000 from G. E. Enterprises, Inc.

Planning & Development staff and AFRD staff recommend adoption of the resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

Demolition of 34 Crescent Street

Summary: The consideration of an ordinance directing that the dwelling located at 34 Crescent Street be demolished and that all debris removed from the property, and an associated budget amendment, in the amount of $15,000.

The structure located at 34 Crescent Street (PIN No. 9649.15-54-5121) is a two-story wooden frame, severely dilapidated dwelling in danger of collapse. The framing of the dwelling is positioned on 4x4 posts and untreated stiff knees with no footings. The roof of the dwelling has several layers of asphalt shingles in various stages of decay causing water penetration and rot throughout the dwelling. The roof is collapsing in on the dwelling. The porches on the back and side of the house have structurally failed and are collapsing. Still photos further illustrate the condition of the dwelling (to be shown during the presentation).

A hearing was held on March 2, 2004, and a Findings of Fact and Order was issued, ordering the dwelling demolished. The owners, Mr. and Mrs. Eugene E. Galloway, have failed to comply with the order of demolition. Pursuant to N.C.G.S. sec. 160A-443, when an Owner fails to comply with an order of demolition, the City has the option of demolishing the dwelling upon compliance with certain due process requirements. The owners have acknowledged the urgency and need for the dwelling to be demolished by executing a Consent for Demolition for the City to demolish and remove the dwelling. Further, the owners have executed a waiver of any and all further notice requirements pertaining to the demolition of the dwelling.

In order to file a lien against the property for the cost to the City to demolish and remove the dwelling, the City must have an ordinance directing the demolition of the dwelling as required by N.C.G.S. sec. 160A-443 and sec. 4-217(e)(3) of the City's Housing Code.

The following is an overview of some general information regarding this property:

- Buncombe County Tax value: $43,000
- Estimated cost to demolish dwelling: Approximately $15,000
- Notification of affordable housing agencies: Yes (no input received)

Pro: Removes blight and deterioration

Con: Allocation of public funds to demolish private property

This action promotes Goal #4 of the City's Strategic Operating Plan in that as a vacant lot centrally located in downtown Asheville, the lot is appropriate for consideration for the construction of affordable housing.

The Building Safety Department recommends adoption of the ordinance ordering demolition and removal of 34 Crescent Street, and an associated budget amendment.

Acquisition of Property for Grovestone Pump Station

Summary: The consideration of a resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

: City of Asheville has received an Offer of Sale of Land from Robert & Michelle Grabill for land on Lake Eden Road in the amount of $5,000. The subject property is a cut out parcel located at the north east corner of a 2.57 acres parcel at the corner of Lake Eden Road and Eden View Drive. It is an irregular trapezoidal shape containing approximately 0.049 acre. It is generally level with the street wooded and adjacent to a small creek. Its highest and best use per the surrounding properties is residential. It is proposed to be acquired as part of the Grovestone Pump Station project.

Real Estate Manager Ed Vess reviewed the tax values of residential properties in close proximity to the subject property. Six lots were investigated in the Glen Eden subdivision, which is about a quarter mile from the subject property. The lots ranged in size from 0.35 acre to 0.67 acre and values ranged from $36,000 to $38,200. The per acre values calculated from the tax values ranged from $102,857 to $57,000 per acre respectively. This is consistent with the trend in real estate prices that the smaller the parcel the higher the per acre price. The subject parcel is quite small and thus the higher per acre value would be most indicative of the value. Using a per acre value of $102,857 the indicated value for the subject parcel would be $5,000.

The positive aspects of the proposed acquisition are:

1. It offers an efficient and practical site for the needed pump station.
2. The price is consistent with value evidence for property near the site.
3. The purchase will expedite completion of the Grovestone Pump Station.
4. It is a voluntary sale and will not involve eminent domain.
5. It only includes the land necessary for the pump station leaving the remainder of the property in private ownership.

There are no negative aspects to this transaction.

Approval of the resolution will establish $5,000 as the just compensation for the property and accept the Offer of Sale of Land from Robert & Michelle Grabill for that amount.

Planning & Development staff and Water Resources staff recommend adoption of the resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

Contract Renewal with Asheville Claims Corporation

Summary: The consideration of a resolution authorizing renewal of claims administration contract with Asheville Claims Corporation

Since 1993, the City of Asheville has funded and operated a self-funded loss reserve program, as authorized by North Carolina law. This program is administered by the Asheville Claims Corporation (herein "ACC"). Pursuant to this Agreement, ACC is the first referral for claims that are made against the City of Asheville. The claims are reviewed by ACC, and based on that review, determinations are made as to the City's potential liability and damages. In appropriate cases, claims are paid. If a claim develops into a lawsuit, the City's legal defense is provided through ACC. The City Manager, City Attorney, Risk Manager, and Finance Officer are also consulted as and when appropriate with respect to the processing of claims.

The City's "loss experience" since embarking on this self-funded reserve program has improved dramatically over what it was before. Costs are down, and claims are handled better, and there is an emphasis on loss prevention. Asheville's experience as compared to cities with conventional insurance coverage is very favorable. If the City had to obtain insurance on the open market to provide similar coverage, the costs would likely be higher in terms of premiums and claims administration, and the coverage would likely not be as good.

Considerations:

- current arrangement has worked well since 1993
- City is more closely involved in the handling of claims
- costs are lower than for conventional insurance
- coverage is better than with conventional insurance

City staff recommends City Council adopt the resolution authorizing renewal of the claims administration contract with Asheville Claims Corporation.

Grant from N.C. Dept. of Crime Control & Public Safety

Summary: The consideration of a budget amendment, in the amount of $180,000, to receive grant money from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management through the Governor's Crime Commission, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department and 12 other Buncombe County public safety agencies.

With Council approval, the City of Asheville Fire and Rescue Department requested $492,800 from the NC Division of Emergency Management for emergency response by updating communication equipment. Council Resolution Number 05-13 adopted on January 25, 2005, approved applying for the grant. The grant will enhance interoperability between City and County public safety agencies. Staff was successful in obtaining $144,000 of the requested funding. The City share will be $36,000 of which a prorated share will be reimbursed to the City by the other 12 Buncombe County public safety agencies upon purchase of the equipment. A memorandum of understanding was signed by all agencies sharing in this grant on January 19, 2005. This grant will purchase mobile radios for vehicles without communications and additional portable radios for positions without a radio assigned. The added communication will increase firefighter safety during emergency response.

PROS:

- Interoperability between differing agencies and responding units will be increased.
- The equipment will increase the City's ability to protect human life, property, and the environment.
- The equipment will increase firefighter and police officer safety.
- 75% of the funding comes from the State of North Carolina.
- The other 12 Buncombe County agencies would share in the 25% cost not funded by the State.

CONS:

- The City of Asheville's share of the matching grant.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County

Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the City.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

Grant from NC Governor's Highway Safety Program

Summary: The consideration of the resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program (GHSP) for the purchase of computer equipment and travel/training money for the Asheville Police Department's Regional Law Enforcement Liaison, and the associated budget amendment, in the amount of $10,000.

The City of Asheville has been awarded a grant from the GHSP in the amount of $10,000 with no local match required. The purpose of the grant program is to fund highway safety projects, allowed under the grant program, designed to reduce traffic speed, traffic accidents and improve highway safety. We have chosen to purchase a Dell Dimension XPS Gen 5 desktop computer and a Dell Inspiron 9300 Laptop computer totaling $5000.00. The other grant monies would be spent on in-state and out-of-state travel expenses, totaling $5,000.00. The desired equipment is to be located in an office where officers could utilize the desktop computer to complete traffic crash investigation duties. The laptop would be assigned to the GHSP Regional Liaison to aid that person in managing GHSP duties as well as performing traffic crash investigation duties. The travel monies will allow out department's Regional Liaison Officer to maintain contact with other liaisons and attend necessary highway safety functions as requested by the Governor's Highway Safety Program.

Pros:

- Equipment will improve the efficiency and availability of traffic safety computer related resources.
- Will contribute to the enhanced effectiveness of traffic homicide investigators and crash reconstructionists by providing needed computer hardware and software.
- Equipment will facilitate better communication between the Regional Law Enforcement Liaison and other Highway Safety Specialists around the country.
- The travel funds will allow the liaison to attend important training and interact with other highway safety specialists so that highway safety concerns are addressed appropriately.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment including servicing and replacement when needed.

This action complies with City Council's Strategic Operating Plan: Goal #2 A multi-modal and congestion management transportation program – In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective B. Mitigate overall impacts of congestion through effective local partnerships. This is accomplished by identifying areas of the City that are particularly prone to traffic accidents due to speed and other aggressive driving tactics. Through the efforts of the Asheville Police Department and the use of the equipment purchased through the GHSP Grant, this will allow officers and traffic engineers to develop better highway safety goals. This will be achieved by utilizing the computer equipment to aid in the traffic crash investigation area. Better investigations and crash reporting facilitates better policy and engineering decisions, related to highway safety.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program for the purchase of computer equipment and travel/training money for the Asheville Police Department's Regional Law Enforcement Liaison; and (2) the associated budget amendment, in the amount of $10,000.

Contract for Architectural Services for Fire Station 11 Construction

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #11 in the Biltmore Square Mall area on Rocky Ridge Road.

The need of a Fire Station in the southwest quadrant of the City is a priority for emergency response and our community's Insurance Service Office public fire protection rating. This rating directly affects the amount of fire insurance home owners or business owners pay for property insurance. Council allocated funds to purchase land in the Fiscal Year 2004-2005 budget. Property to place the station on has been properly identified and option to purchase signed by both parties. Asheville's fire protection and emergency response standard of cover will increase with the addition of this fire station. A fire station in the Brevard Road and I-26 area is necessary to provide municipal level fire protection and emergency services to the southwestern sections of the City. In addition to the building housing an engine company, the building will also provide some office space for the Asheville Police Department.

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects in conjunction with the relocation of Fire Station 6. The RFQ was specific for the one station with the potential for additional stations in the near future. Written proposals were received by city staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as Budget reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed a number of combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 11 is planned to be approximately 12,000 square feet with approximately 11,000 square feet for fire and rescue use and approximately 1,000 square feet for police use. Construction cost of the project is anticipated at an average of $135.00 per square foot, or $1,620,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at seven and one-half (7.5) percent of the cost of construction, or approximately $121,500.00. The fee is ½ percent lower than previous work due to this station having the same basic floor plan as Fire Station 6. Funding for the entire project including construction, architectural, and utility/site/furnishings and other "soft" costs is budgeted at $2,800,000 as approved within the Fiscal Year 05-06 budget.

Completion of this station would be in approximately 18 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal. Stewart Cooper Newell has designed Fire Station 6 and this station would follow that same format. Both stations would be bid at the same time. It is anticipated that by having the same floor plan and construction simultaneously a significant cost savings could occur.

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #11. The contract is an AIA Document with appropriate modifications for the City of Asheville.

Pros:

- The experience of the firm in designing fire stations for the City of Asheville;
- One design firm bidding two stations with the same basic floor plan;
- Lower architectural fee.

Cons:

- None could be identified.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

The Fire and Rescue Department recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #11.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

ANNOUNCEMENT

City Manager Jackson announced the appointment of Deputy Fire Chief Robert Griffin as the Interim Building Safety Director.

On behalf of City Council, Mayor Worley expressed Council's sincere appreciation to Terry Summey, Director of Building Safety, who will be retiring after 10 years of service with the City of Asheville.

EMERGENCY PREPAREDNESS AND UPDATE ON HURRICANE KATRINA

Fire Chief Greg Grayson recognized Mr. Tim Miller, NC Emergency Management Western Branch Director; Mr. Jerry VeHaun, Buncombe County Emergency Services Director and Ms. Bonnie Spradling, Chairman of the Asheville Mountain Area American Red Cross. He said that roots are found in Civil Defense. The North Carolina Emergency Management Act was established in 1977 and the Federal Emergency Management was created in 1979. Through experience, the function of emergency management has evolved into comprehensive, all-hazards management – from natural catastrophe to technological and nuclear disaster.

The NC's system is an all-hazards approach to emergency assistance: (1) severe weather (hurricane, snow, tornado, flood, drought); (2) technological (hazardous

materials/radiological, fixed nuclear facilities); (3) man-made (weapons of mass destruction, cyber-terrorism); and (4) lost person search/rescue.

Emergency management traditional phases include preparedness (training and equipment), response, recovery and mitigation.

When disaster strikes in Asheville the City of Asheville emergency services respond. If disaster exceeds the City's capability, Buncombe County Emergency Management Services is requested. If disaster exceeds Buncombe County capability, Statement Emergency Management activates resources. If severity and magnitude of disaster exceeds state and local capabilities, the Governor requests federal assistance. If approved, State receives assistance from DHS/FEMA and other federal agencies.

City, County and State agencies as well as Federal agencies operate within an incident management system known as National Incident Management System (NIMS), which is mandated by the Federal government. This system provides for provision of services, command and control and unification of all emergency services agencies.

The City of Asheville primary emergency services include fire; police; public works – fleet, streets; water; and support departments such as finance, information technology, engineering, public information and buildings safety.

The City Manager keeps all elected officials apprised of emergency situations and obtains policy direction from elected officials, when necessary. Fire and Rescue has the key coordinating role to ensure that unified command and control is in place and operates in concert with Buncombe County and the NC Emergency Management efforts. All other operating departments perform specific services as needed for the emergency.

The Buncombe County primary emergency services include the Emergency Medical Services, Emergency Management, Sheriff's Department, Human Services Department, Health Department and support departments.

Regarding the transition from County to State Emergency Management, (1) all 100 counties have an Emergency Management Director whose position is partially funded by state government, (2) the states has three geographical districts that the County directors connect with. The WNC branch headquarters is located in Conover; and (3) NC operates an Emergency Operations Center in Raleigh 7/24/365 and upgrades when needed for all significant emergencies.

He outlined the organizational chart for the North Carolina State Government; the NC Dept. of Crime Control & Public Safety; and the NC Division of Emergency Management.

The Buncombe County and City of Asheville Hazard Mitigation Plan is a plan for response and recovery from emergencies and disasters for Buncombe County and all municipalities in Buncombe County.

In summary, Chief Grayson said that we work in a City/County/State/Federal system whereas the City's primary focus is to provide initial response to all emergencies and work within the Emergency Management system and network to obtain the necessary resources to effectively manage emergencies that may occur within Asheville.

City Manager Jackson noted that the City of Asheville is aggressive and committed to training to handle all types of emergencies.

Fire Chief Grayson, along with Mr. Jerry VeHaun, responded to various questions and comments from Council, some being, but are not limited to: do we have an evacuation plan, and if so, what does it consist of; the City has the reverse 911 system, but does the County have that capability; and if the City of Asheville goes into an emergency mode, do we have enough resources, and if not, do we have mutual aid agreements with other cities and states.

In response to Councilwoman Bellamy about using the Civic Center in case of an emergency, Ms. Spradling said that the Red Cross handles shelter operations and they do not have the Civic Center listed as a shelter. Fire Chief Grayson also noted that the Red Cross has national standards that must be met in order to provide temporary shelter. Some of those standards are at least 50 square feet of space per person, adequate restrooms and shower facilities, disposal of solid waste, provisions for emergency power, and enough space for processing.

In response to Councilwoman Jones, Mr. VeHaun said that the Mayor and the Chairman of the Buncombe County Commissioners makes the call for Asheville and Buncombe County to evacuate, based on input from State and Federal officials.

Upon inquiry of Councilwoman Bellamy, Mr. VeHaun said that when he reviews the evacuation plan and makes revisions to it, he would provide City Council with a copy of it.

Vice-Mayor Mumpower said that since citizens hold City Council members accountable, he wondered if there a way to strengthen utilization of City Council as a resource to emergency response. Ms. Spradling encouraged interested Council members to get involved with the Red Cross training.

City Manager Jackson said that he is continuing to work on verifying long-term housing and what is available.

Civic Center Director David Pisha asked for Council direction to waive Civic Center fees and make the Civic Center available to groups who wish to host a benefit concert with the proceeds going to the victims of Hurricane Katrina. After discussion of the pros and cons associated with such a request, it was the majority of Council's decision to follow the existing policy and not waive the Civic Center fees for requests such as these. City Manager Westbrook said that he would provide Council with a memorandum regarding these requests.

PERFORMING ARTS CENTER PRESENTATION

Ms. Sidney Powell, President of the Asheville Area Center of Performing Arts, said that on September 10, 2004, a diverse group of individuals dedicated to bringing to fruition a true center for the performing arts in Western North Carolina convened for the first time as the independent board of the Asheville Area Center for the Performing Arts. We began the auspicious task of organizing, formulating, defining, and creating our board, mission, structure, and vision, reviewing and building on concepts passed on to us by Peter Collins, Lilian Fischer and Crawford Murphy. This new, independent board has moved mountains in our first year.

We have not only visited, but fully explored the inner workings of some of the greatest performing arts centers in our country: The Meyerson Symphony Center in Dallas, Bass Hall in Fort Worth, RiverCenter in Columbus, Georgia, The Blumenthal in Charlotte, The Eisemann in Dallas, The Fox Cities in Wisconsin, and the Alberta Bair Theater in Billings, Montana. We have talked with numerous executive directors to hear their successes and learn from their mistakes. We understand that while performing arts and entertainment are our product, the center itself must succeed as a business. We have examined the business aspects of these centers, and we have identified a successful business model. We joined the HUB Project, led by the Institute at

Biltmore, working closely with County and City officials and a strong community collaborative group to whom we made a successful presentation. That Collaborative Group of distinguished civic leaders has endorsed our project and featured the Center as a substantial component of the HUB Project. The overwhelmingly positive responses we have received at every turn are invigorating.

We have retained appropriate, experienced consultants on a project-by-project basis and have benefited enormously from consultations generously donated to us by current, seasoned executive directors of successful facilities. In addition to exploring all aspects of a stand-alone performing arts center, we have obtained a concept and financial feasibility study for the complete adaptive reuse of the existing Civic Center and arena. We completed a business plan for a center and an extensive geodemographic marketing study for the region. In all of this, we have identified partners appropriate to share the facility, and we have worked in conjunction with 13 local arts organizations who are now joining us in a committee of our Resource Advisory Council to develop and implement strategies for increasing the visibility of the arts in our region, create new artistic endeavors, explore the creation of a summer arts festival for children, and increase audience attendance for all of the arts. Periodically we have met with City and County officials and they would like to present our concepts for adaptive reuse of the Civic Center to the Asheville City Council.

As we embark on our second year, we have much exciting work to do. We will unite the City, County, non-profit, and private sectors in obtaining the approval and funding to design and build an acoustically excellent, multi-purpose venue for the performing arts for the entirety of Western North Carolina–a facility that will enable Asheville and the entire region to enjoy an international reputation in an appropriate showcase for the amazing talent and spirit that surrounds and beckons us here.

Using a powerpoint presentation, she said that (1) a completely new and independent AACPA Board was formed September 10, 2004; (2) obtained 501 (c) (3) status in early 2005; (3) carefully evaluated numerous other venues and successful economic models; (4) joined the HUB strategy and has the approval and recommendation of the Community Collaborative Working Group; and (5) began partnering with more than a dozen local arts organizations for marketing and development of arts audiences for all.

The Performing Arts Center update (1) due diligence requires us to look at all possibilities; (2) stand-alone facility (a) business plan done, including likely cost; and (b) to include 2150 seats, banquet facilities, be a true multi-purpose hall and related facilities, approximately 150,000 square feet; (3) geodemographic marketing study completed; and (4) possible resident partners: Symphony, Bravo, MAP, URTV.

Possible uses and users include: Broadway shows, Symphony, Bravo, Opera, theater companies, dance companies, chamber music, Asheville Choral Society, Asheville Symphony Chorus, URTV, MAP, corporations/meeting facilities, schools/graduations, UNC-Asheville events/productions, Folkmoot, Brevard Music Festival indoor events, Bele Chere indoor events, Diana Wortham overflow, Children's Summer Arts Festival, Summer Jam Festival, Ashley Capps productions, our own productions, multi-media events, URTV shows, religious functions/events, rent rehearsal space for East Coast productions, and unlimited potential.

She explained the performing arts partners marketing committee.

The adaptive re-use of the Civic Center (1) requires contemporaneous development of an arena/large facility elsewhere (possibility of substantial state funding; igniting economic development in another area of the city); (2) Westlake Architectural firm has completed an initial concept/feasibility and cost study for a re-do of the entire civic center complex into multi-use

space; and (3) costs would be approximately half of that of a stand-alone facility and give us more space – 188,000 square feet. Room for administrative offices for all users and possibly the City.

She explained the space uses as follows: (1) 2150-2400 seats; (2) plenty of bathrooms; (3) state of the art catering kitchen(s) to enable use by existing restaurants and businesses; (4) large/multi-use hall in what is now TWA (rehearsals/concerts/events/exhibits/banquets/ conventions; (5) chamber music/voice venue in the old banquet hall upstairs; (6) room for media arts center/other uses with broadband; (7) room for a funky black box or TV/music small hall on lower level for uses, including residence of URTV and MAP in collaboration with UNC-Asheville and A-B Tech; (8) educational/classroom space; and (9) administrative space for Symphony, Bravo, URTV and MAP.

She said the economic impact is that non-profits add more than $1.8 billion to the Western North Carolina economy and studies of comparable facilities show substantial economic impact. She used the example of the $67 Million facility from the Long Center of Austin.

She pointed out the number of private donors totaling gifts to date of more than $200,000.

Ms. Powell then reviewed with Council the sales and demographic data for 2004-05 for Broadway in Asheville. For the four shows of Fosse, Fiddler on the Roof, Male Intellect and Crazy for You, gross sales totaled $171,768.20 with a gross attendance of 5439. She then showed a breakdown of attendance based on zip codes – out of state 0.5%; Virginia 0.4%; North Carolina 96.0%; and South Carolina 3.1%. Out of the 96% in North Carolina, 37.0% was from Asheville and 63.0% were from North Carolina counties.

She showed facilities in York, Pennsylvania; Rockford, Illinois; Wausau, Wisconsin; Cleveland, Ohio; and Denver, Colorado.

Using the powerpoint, she showed concept designs for the different areas of the Civic Center.

She asked City Council to form a public/private partnership with the AACPA and Buncombe County. The partnership with the non-profit AACPA will secure funding from County, State, Federal and private sources. The partnership will contract for and oversee design, construction and operation of the facility. She requested City Council's commitment to the public/private partnership and authorization to proceed to work with the City Attorney on the partnership papers, in addition, Council's commitment to proceed with the transformation of the Civic Center. They are prepared to get the paperwork done and get started before the end of the year.

Vice-Mayor Mumpower felt that the examples offered are of large cities and Asheville is a city of 75,000 people. He was concerned of going from one facility to two facilities and the dramatic expenses with that. After talking with four architects about possibilities of the Civic Center, reports and dollars are always high. There is always hopeful optimistic interest in getting those dollars and creating special initiatives, but he had concerns based on what he has learned. He felt that whatever they do will be subsidized by City taxpayers and it is impressive that they are trying to pull the County into this, but again, the City taxpayers will be subsidizing whatever they do. He doubted you can find a free-standing performing arts center in America that wasn't subsidized and would be interested in receiving information on that if he is incorrect. He said he was concerned about partnering with the AACPA in pursuing a project with dollars that he believed are not realistic.

Ms. Powell said they are planning to build in an endowment that will help subsidize the facility without looking to the taxpayers to do that every year. They've also identified successful economic models in other communities where they are running the business in the black and we do view this as a business.

Upon inquiry of Mayor Worley regarding cost estimates, Ms. Powell said that for a completely new ground up-stand alone, the cost was around $100 Million. For a complete re-do of the entire Civic Center complex, the ballpark is $50 Million. They are part of the HUB strategy and the HUB project and the community collaborative working group are in the process of putting together a package for the entire county and community that will include a substantial component of funding for this facility. She felt that if the City would put in what it would simply cost for the City to alone repair the Thomas Wolfe Auditorium, we can fundraise from the private sector to raise the rest of the money and look to some federal and state assistance and we could get it done.

Ms. Powell responded to various questions and comments from Council, some being, but are not limited to: have they consulted with John Cort, architect of the original structure; what type of state funding has been discussed; and has this concept been discussed with the Civic Center Commission.

Upon inquiry of Councilman Dunn, Ms. Powell said that there is an initiative underway now to look at the possibility of putting an arena facility on the river with state funding available for that. She said that she understands that the legislative delegation has indicated some support for that project.

Councilman Newman said that their focus is on the performing arts, however, there is a need for some space to do other things that currently happen at the Civic Center, e.g., the gun show. He wondered how much demand there would be for an additional stand-alone facility just to cover those other things, in light of the fact that sports are not on the horizon.

Councilman Davis felt that a number of events happen at the Civic Center that are successful and people want to see at the Civic Center. He was concerned that if we are so limited to just have a performing arts center, we are missing an opportunity for an occasional big event to lower the deficit. He was also concerned about how many performing-art type events is the community willing to support.

Councilman Dunn expressed concern of the cost and the potential of overruns. He felt we need a hard, firm cost for this project.

Civic Center Director David Pisha responded to various questions from Vice-Mayor Mumpower. He said that live entertainment goes through cycles. The current facility the way it basically operates is that about 2/3 of our revenues come out of the arena, but in the long-run, we probably get more diversity of events happening in the Auditorium. One side supports the other in terms of finances, while the other side supports a broader base of entertainment.

Councilwoman Jones felt City Council needs to have a discussion on what they want to see happening with the Civic Center. She was grateful that there are energized citizens behind this proposal. She felt that if we don't do anything with the Civic Center because of money, there will always be a stalemate.

Councilwoman Bellamy agreed that Council needs a discussion whether we should renovate the existing Civic Center or if we want to build a new performing arts center.

Mayor Worley felt that the essential steps to move forward would be for (1) identify the funding sources and get commitments from those funding sources; and (2) collaborate together on what Council wants, what the performing arts organization wants, and what the community wants so we can move to a true conceptualization. From the construction drawings and after it goes out to bid will we get a true cost.

Mr. Battle Haslam felt the first thing is not a commitment from the funding sources, but a commitment from City Council that this is a good plan. If Council commits that in principle, then they can go to the funding sources.

Councilman Newman wondered if UNC-Asheville is building a new sports facility.

There was considerable discussion on how City Council wished to move forward. In summary, it was the consensus of City Council to hold a special worksession on Tuesday, October 4, 2005, at 3:00 p.m. in the First Floor Conference Room of City Hall. City Manager Jackson said that he provide Council with the policy analysis and alternatives so that Council can provide direction and decide how they want to participate or lead a community process. It was also the consensus of Council for City Manager Jackson to prepare a list of resource people to invite to this special meeting and circulate that list to Council for possible additions.

At 6:45 p.m., Councilman Dunn moved to go into closed session in Room 209 of the City Hall Building to consult with attorneys employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:08 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE REPORT

Mr. Chuck Tessier, Vice-Chair of the Sustainable Economic Development Strategic Plan Implementation Task Force said that City Council has requested a report from the Task Force on the progress to date for the implementation of the recommendations of the Sustainable Economic Development Plan by Lockwood Green Consulting.

In May 2000, Asheville City Council established the Sustainable Economic Development Plan Implementation Task Force to assist and advise the City Council and City staff in implementation of the Lockwood Green Report. The Task Force was reauthorized for an additional two years in 2003 and the terms of all members expired on June 30, 2005. The Task Force has had four primary focus areas: City development process improvements, riverfront redevelopment, real estate/development pattern, and workforce education and training.

Major implementation accomplishments of the Task Force are many, including: working with staff and a citizen-led review team on a comprehensive review of the City permitting process; creation of educational materials to assist those customers in the development process; establishment of regularly-held developer forums; increase in the use of technology applications to speed the process; improvements to the Technical Review Committee process; support for implementation of the Riverway Redevelopment Plan; support of an entrepreneurial network by working with AB Tech, AdvantageWest and the Chamber; support for the operations of the Small Business Incubator; support for the creation of the Urban Village Zoning District; support in the buildout of the Broadband technology infrastructure through Congressman Taylor's ERC; support

of the Engineering degree programs at UNCA and WCU; and support for the work of the Advisory Committee for Biotechnology in WNC.

The members of the Task Force have met several times with new City Manager Jackson and Economic Development Director Powers, and the Task Force would like to be reauthorized to become a Standing Committee of the City of Asheville as outlined in this report.

Defined role and responsibility:

A. A Standing Committee of the City of Asheville made up of community and economic leadership recommended to City Council by the committee for terms established by Council. Current members of the task Force recommend that Chuck Tessier become the Chair of the Committee.

B. Established to assist Council to:

1. Maintain an overview on the economic health of the City and those programs, initiatives and developments impacted.

2. Propose priorities among those programs, initiatives, investments, and developments to be supported by the City which will have the most positive impact on improving the long-term, sustainable, economic health of the City of Asheville while adhering to the basic underlying principles including: affordability, sustainability, livability, commitment to quality, maximizing job creation, promoting creation of local wealth capital, and insuring equal opportunity for all citizens.

3. Seek advice and information, invite and receive presentations, conduct research, formulate strategy, make recommendations, and, where necessary, propose programs, initiatives, financing alternatives, and developments to further established goals.

4. Review and make recommendations on economic development policy to be established by Council.

5. Coordinate between City and other economic development organizations and initiatives within the region.

Immediate areas of focus and attention:

A. River development including flood studies, river way plan, river redevelopment plan.

B HUB Project.

C. Land use policies and initiatives that will open areas for new development and make better utilization of existing land areas, building stock and infrastructure (water, sewer, gas, fiber, roads, etc.) within the City.

D. Sense of Place, Heritage, and Arts: Assess the impact of performing arts, festivals, and events on tourism, business, and local citizens.

E. Small business and workforce development.

F. Creation of development capital and growth of locally owned businesses.

G. Affordability of housing and business locations related to their impact on economic development.

H. Project Development Financing.

As reported to Council in 2003 by the Task Force in its report, the members believe that the group can help prepare Asheville to be a competitive community for the 21st century knowledge-based economy, by advocating for community-based priorities promoting a diversified and sustainable economy which increases the tax base and improves the standard of living for all residents.

Discussion surrounded ways within which to strengthen a stronger role of communication between City Council and the Task Force.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda to establish an Economic Development Advisory Committee, with three-year staggered terms, along with defining their responsibilities

WIRELESS INTERNET NETWORK SERVICE

Councilman Davis said that on behalf of Vice-Mayor Mumpower, Councilman Dunn and himself, this is a presentation on the possibilities for a citywide broadband wireless system as an enhancement to public safety and service delivery and utility to city residents.

Wireless broadband service will (1) improve the efficiency of City services; (2) assure that City residents have widespread, reliable, and affordable high speed internet access; and (3) high speed internet access represents crucial infrastructure in today's world.

Regarding improving the efficiency of City services, it will (1) enhance public safety through greater information access, intelligence sharing, and communication speeds; (2) improve city services (sanitation, street maintenance, permitting, inspections, etc.) through enhanced communication and information access; and (3) improve the quality of communication between all City departments due to efficiencies of high tech applications over voice, letter, or other communication means.

Regarding the assurance that City residents have widespread, reliable and affordable high speed internet access, (1) wireless internet access is a utility that the City government is in a unique position to provide on a timely basis due to infrastructure advantages; (2) it is possible for this City service to be self-supporting; (3) high speed internet access is an increasingly necessary commodity that the City can provide as a service to its citizens in partial compensation for the additional tax burdens of living within the City limits; and (4) affordable high speed internet access is not readily available to a majority of City residents and the picture on the horizon is foggy at best.

High speed wireless internet access is one of the primary tools for success in the 21st century. Our children and citizens need the tools necessary to compete in a global economy. High speed access is an economic development resource and is about the future.

How we can do this is by (1) partnerships with private and public entities; (2) use of our traffic signals and street lights to create our net; (3) incremental investment; (4) external management; (5) Congressman Taylor's educational network; (6) establish a utility; (7) explore advantages of WiMAX (new technology with broader scope than Wi-FI); and (8) other ways.

Other models of success include cities of Winston-Salem, Corpus-Christy and Philadelphia.

Pros include (1) minimal cost; (2) we have existing infrastructure (traffic signals and street lights); (3) economic development impact; (4) enhances City services; (5) benefit to City residents; and (6) propels us into the 21st Century.

Cons include (1) competes with the private market; (2) initial tax dollar investment; and (3) risks (and rewards) of a bold initiative.

We are soliciting Council support in directing the City staff to explore the possibility of establishing a citywide wireless broadband internet access service for our City departments and citizens. In addition, we are asking that City staff report back to Council within 30-60 days with recommendations on this issue.

Discussion surrounded looking at not only government involvement on the internet, but also looking at some immediate opportunities as well.

Vice-Mayor Mumpower reiterated his concerns about government partnering with a political entity, such as Mountain Area Information Network.

Information Technologies Director Jonathan Feldman indicated that as general policy towards this project is formed, this will allow staff to better focus their efforts and create a more in-depth and realistic proposal.

Mayor Worley suggested that this be a two-phase approach, where staff has an initial presentation followed up by a later in-depth presentation. Mr. Feldman agreed and will report back within the next 30-60 days.

STAPLES SITE DESIGN

Planning & Development Director Scott Shuford said that this is a report to City Council addressing the Staples Development on Merrimon Avenue.

Staples submitted design plans in July 2004 for design review by the Downtown Commission. The subject property, located at the corner of Orange Street and Merrimon Avenue, is in the gateway corridor area for design review. The design review process is mandatory review/voluntary compliance. The Downtown Commission made a wide range of comments concerning the design. There was strong effort on the part of both the Commission and City staff to encourage a 2-story façade that would begin at the Merrimon Avenue sidewalk level. Staples chose not to pursue a multi-tenant, multi-story design due to its focus on a single-use building and site design. Staples did agree to utilize brick for the exterior façade, an upgrade over their standard design.

Staples submitted for site permits in August 2004; staff comments were issued in August, revisions were received in October, new staff comments were issued in October, revisions were received in mid-December, and the site permits were approved December 29, 2004. All code conditions for development in the CB-II zoning district have been complied with. The design meets all height, floor area, parking, setback, and other technical requirements of our codes.

Issues identified include retaining wall location and height, building design, and site layout. The following information is provided for each of these three issues.

250

Retaining Wall. The height is more pronounced on the northern end due to site topography. The wall height and location complies with our code requirements. If this type of design is a concern for Council, staff can develop some regulations to address this issue. The regulations could apply to height of retaining walls adjacent to all streets or to major thoroughfares or to selected "gateway" streets, depending on Council direction. We would suggest that such regulations also address berms and non-structural banks that create similar visual issues (for example, the Red Lobster bank on Tunnel Road).

Building Design. There are no design requirements for building appearance in the CB-II district (this is the case in all of our "suburban" districts; only CBD, Urban Village District, Neighborhood Corridor District, Urban Residential District, and Urban Place District contain what could be considered as "building design" requirements). For gateway corridors like Merrimon Avenue, it may be appropriate to consider one or more of these districts to replace the "suburban" CB-II and CB-I zones that regulate most of the properties fronting the roads along these gateway corridors. The Planning and Zoning Commission has requested a zoning study for Merrimon and staff plans to complete that analysis in the fall of 2005. Implementation of the components of this study may be facilitated by new planning legislation that may authorize a greater degree of control over structure design in areas outside local historic districts. Additionally, City Council will most likely see a NCD rezoning request for the Burger King site at Merrimon and Fenner in November 2005. This request utilizes a 2-story design that seems similar to the more desirable development along Merrimon Avenue, such as the new Medicine Shoppe building. A multi-story requirement like that found in the NCD and other "urban" zoning districts would have resulted in the following differences in building design on the Staples site. First, there would likely have been excavation of the area now devoted to the retaining wall to accommodate a sidewalk-level building façade along Merrimon at the southern end of the site. This may have resulted in a lower retaining wall on the northern end of the Merrimon Avenue frontage since the elevation at that location might not have accommodated a full street-level story. Second, a "one-size-fits-all" design would likely not be accommodated in NCD; inflexibility on the part of the developer would most likely have resulted in selection of another site having different zoning. Third, the building design would have had more fenestration (door and window openings) and direct pedestrian access to the adjacent sidewalks.

Site Layout. The CB-II zoning requires parking to be located behind the building. This resulted in the site design of the Staples site. An alternate "suburban" zoning district might have required the developer to set the building back behind the parking, creating less building mass at the street but presenting a definitely non-urban appearance. As with the building design, an "urban" zoning designation would likely have addressed the site design issues in a more positive way since the pedestrian access, building fenestration, and multi-story requirements would have generated a building more sensitive to the street than the Staples design.

Mr. Shuford said that City staff is working on (1) a revised definition of "height" is in process as part of ridgetop/steep slope and open space ordinance; (2) Merrimon Avenue zoning study is ready to be initiated as directed by Planning & Zoning Commission; and (3) Central Business District UDO requirements and design guidelines are under review by the Downtown Commission, including gateway areas.

He said that basically City Council can: (1) do nothing; (2) address future retaining wall/building height design through general UDO amendment(s); or (3) address future retaining wall/building height design through zoning study of Merrimon Avenue.

After discussion, it was the consensus of City Council that staff provide Council with more information on (1) what the Downtown Commission has been working on; (2) the mandatory review/voluntary compliance issue, (2) the potential for this type of situation in other areas and whether we can address it through some specific focus-type language; and (4) what the

Downtown Commission is going to propose to see if it's going to address the issue about over a certain height, certain design standards needs to be met.

LEAGUE OF WOMEN VOTERS BOARD/COMMISSION STUDY FOLLOW-UP

Vice-Mayor Mumpower, Chair of the Boards and Commissions Committee, said that he has met with City Clerk Burleson and outline the some changes to the City of Asheville's Board and Commission application process, suggested by the League of Women Voters of Asheville-Buncombe County Study on Appointed Boards and Commission Study.

ASHEVILLE TRANSIT COMMISSION RETREAT

Transit Services Director Bruce Black said that the Asheville Transit Commission (ATC) held a retreat August 24, 2005. The morning agenda included a presentation from staff about the context of change within a government structure, including the alignment of goals and values, the current state of the transit system, the future of mass transportation in the area, and some alternative ways to gain the participation of the major employers in the area. The afternoon agenda included discussion amongst members of the commission concerning the morning's presentation. The purpose of this memo is to convey to council a summary of the content of the retreat, and to summarize the conclusions that followed form it.

Over the five year period from 2000 to 2005 the Asheville Transit System has increased ridership by just over 11%, or slightly over 105,000 trips. During that same period, the city, not including annexed areas, has grown 2.19%, and the county, including those areas annexed by the city during this time frame, has grown by 5.7%. This indicates that growth in demand within the current service area is greater than the growth in population, and that growth is happening around the perimeter of the city.

So far in Fiscal Year 2006, ridership has been up significantly. Ridership in August of 2005 was up by more than 9,500 trips over August of 2004, which in turn was up only 2800 trips from August of 2003. This is primarily attributed to the fuel price increases that started in August, and for a short period, Hurricane Katrina. It is anticipated that fuel costs will moderate from their Katrina induced highs, but still remain higher than the cost prior to August. This is significant because it is the first time that an increase in ridership coincided with an increase in gasoline prices.

The public transit bus system is within a quarter mile of about 75% of the city's population, 83% of all rental housing, and 85% of all job opportunities in the City. Declining ridership per mile reflects the influence of the longer and newer partnership routes, inherently less productive that most urban routes. Controlling for partnership routes such as the Warren Wilson College Route, the passengers per mile decline is much smaller, but indicates that increasing coverage is responsible for fewer additional trips. The transit system now covers most areas of significant demand.

Land use issues of concern include the migration of some social services to the outskirts of the city, or to places where access by transit is severely limited. This appears to be a function of the increasing costs of space within the City. The population around the city has increased significantly, and affordable housing developments are beginning to occur in the county, where land use is unregulated. The expectation for transit service is very strong, and continues to draw transit focus away from the center of the city.

Financial concerns include the increasing cost of fuel and labor, the flat funding, and the decrease in funding which will affect transit in Federal Fiscal Year 2007.

Staff also presented maps for discussion of the locations of all Mission Hospital and City of Asheville Employees. Analysis indicated that these employers had enough employees living within a quarter mile of a bus route, that, when combined with projected use by UNC-Asheville, they represented a market potential of 66,000 trips per year, and that over 5,178 employees, equivalent to over 3.1 million trips per year, lived beyond a quarter mile from a transit route and were unlikely to consider transit as a transportation alternative. To put it in perspective, Mission Hospital employees alone travel more than 35,000,000 miles to and from work every year, and 5,000,000 miles of those trips occur on streets within the city. Analysis of these demand patterns based on place of residence for two large employers suggests that programs other than transit will be needed to address the needs of the community.

The Commission discussed the feasibility and need for park and ride facilities combined with aggressive ride sharing programs for those not living within a quarter mile of a transit route.

The Commission discussed and recognized that alternative transportation efforts also needed to include programs, which emphasized convenience as the next operational goal. This would include increasing frequency and extending span of service into the evening.

A corporate rate program similar to one used in Olympia Washington was discussed to offer discounted rates with a cap to reduce risk, and a decreasing rate for an increasing number of trips. If demand should become strong enough, additional programs would be considered to deepen discounts, ultimately leading to fare free service in future years.

Staff is planning to present further information to Council during a future worksession, and solicits any specific questions that council may wish to hear addressed.

Mr. Black responded to questions raised by Vice-Mayor Mumpower about bus shelters.

REVIEW OF CITY PROPERTY

Planning & Director Scott Shuford showed a map of the downtown area that contained City properties. They included the Civic Center; ABC area; Battery Park private sector project site; City Hall parking lot; Public Works Facility that houses the Building Safety Department and Public Works Department; Fleet Management building; Water Resources building; Asheville Transit Center; Aston Park; Parks & Recreation Maintenance Facility; and a variety of different outparcels in that area.

Councilman Newman said that the Housing & Community Development Committee has been exploring various "out of the box" ideas to address the scarcity of housing that is affordable to people who work in our service oriented economy. One of the major challenges to the creation of more workforce housing is the scarcity and high-price of good, building land. The City of Asheville owns a large amount of land in Asheville, especially in downtown and near downtown. Most of the properties that are owned by the City of Asheville are needed for governmental operations or are designed for specific community uses, such as parks and recreation or other purposes. However, there may be some properties that are being under-utilized and could have good potential for community redevelopment. He has asked staff to conduct a review of City-owned properties to determine if some of our land may represent good opportunities for community redevelopment, especially redevelopment that significantly adds to our base of workforce housing. In addition, he asked for staff's analysis of any opportunities to consolidate some governmental facilities and thereby potentially free up valuable land for community redevelopment.

He said the potential advantages from conducting such a review could include: (1) creation of workforce housing, especially in areas near major employment destinations in

Asheville; (2) strengthen the City's tax base; (3) consolidation of government facilities; (4) neighborhood enhancements and revitalization; and (5) potential partnerships with for-profit and non-profit builders and neighborhood organizations.

After a brief discussion, City Manager Jackson said that we see there some opportunity to do mixed-use developments downtown and near downtown to accomplish these objectives, that is workforce housing, mixed-use redevelopment, higher and better use, developing tax base, and stimulating private development on our property. We see some prime property downtown that may fit into some of these Civic Center/performing arts facility kind of projects as potential reinvestment opportunities. He said that he would like the opportunity to do some further examination and bring back some candidate evaluations after looking at these properties and seeing where we see the greatest potential. He said those are policy considerations but feels that some preliminary evaluation of these candidate sites is necessary. Council can then give policy direction and instruct staff to perform further due diligence.

MAXWELL STREET

Vice-Mayor Mumpower moved to excuse Mayor Worley from participating in this matter. This motion was seconded by Councilwoman Bellamy and carried unanimously. At this time Mayor Worley left the meeting.

City Attorney Oast it is his understanding the purpose of the topic is to allow Mr. Joe Minicozzi and Mr. Reid Thompson to make a presentation to Council about issues that have arisen with respect to the permitting and occupancy of the Greenlife Grocery store on Merrimon Avenue. As Council knows, many of those issues have been appealed to the Board of Adjustment. That process is still on-going and because of that he views the City of Asheville being in litigation over that issue. If it is Council's determination to move forward with allowing Mr. Minicozzi to make his presentation, he cautioned Council to only receive the information. Ms. Patsy Brison, attorney representing Greenlife Grocery, also has an interest on what is going on here. Once Mr. Minicozzi is finished, in the interest of appearing to be fair, he suggested Council allow Ms. Brison to make a statement. In addition, he said that Mr. Thompson is represented by an attorney. That attorney is not present but he knows that Mr. Thompson is here.

Mr. Joe Minicozzi presented Council with a petition containing 11 signatures, said petition stating "as a resident of Maxwell Street, I/we request that the City Council enforce the requirements of the City's Code. We would like the truck traffic off the residential street and kept on the commercial property of Greenlife. Additionally, we would like to see the required landscape buffer adjacent to Maxwell Street as required by Code. All the truck traffic and designated truck parking on Maxwell Street should be removed and replaced by the original resident parking that was removed without public notice. Finally, we would like the Police department to enforce the requirements of the Code and disallow the commercial truck traffic on Maxwell Street. We want the trucks off the street, and we want our neighborhood back. Greenlife has turned Maxwell into a loading bay and alley without any public process." Mr. Minicozzi also presented City Council with three exhibits (1) e-mail dated March 25, 2005 to Scott Shuford from Joe Minicozzi; (2) e-mail dated March 30, 2005, from Scott Shuford to Reid Thompson; and (3) bullet points representing a breakdown of issues Mr. Thompson has raised with City staff.

Mr. Minicozzi used a powerpoint presentation to address the following issues, outlining the concerns and alleged Code violations: (1) Maxwell Street designation; (2) the first loading bay on Maxwell Street; (3) amended loading bay or #2 bay on Maxwell Street; (4) dumpsters in the first loading bay; (5) driveway at Maxwell Street; (6) driveway at Merrimon Avenue; (7) use of public rights-of-way; (8) nuisance issues (a) loading in the morning; (b) trucks parking in no parking areas; (c) trucks parking on the sidewalk; and (d) mechanical equipment; (9) due

process. He felt all administrative decisions should be published in some form; administrative decisions that happen without public notice should have an appeal period greater than 30 days; and the formation of an ombudsman to guide citizens situations like this. He felt a solution would be to have trucks come up Bordeaux, circulate through the site.

Ms. Patsy Brison, attorney representing Greenlife Grocery, presented to Council a letter dated September 20, 2005, which states "Our firm represents Greenlife Grocery. We understand that City Council has scheduled discussion of Maxwell Street for its worksession agenda on September 20, 2005. As the City Attorney may have informed you or will inform you, the matters about which Mr. Minicozzi complained to you at your City Council meeting on September 13, 2005, have been addressed by the City of Asheville Noise Ordinance Appeal Board and the Board of Adjustment. The matter before the Board of Adjustment has been decided but the appeal time may not yet have expired, and the matter may be subsequently heard in Buncombe County Superior Court. We do not believe, therefore, that a City Council worksession or a regular meeting of the City Council is an appropriate forum for discussion of these issues. We would respectfully request, therefore, that the matter not be discussed at your worksession on September 20, 2005, and any other meeting until the matter has been resolved through other legal processes." She assured Council that we have done everything that was required of us and beyond that under the City's permitting process. They have tried to be a good neighbor as a whole and have made lots of accommodations to try to improve it for our customers and for our neighbors and will continue to do that.

Vice-Mayor Mumpower said that City staff will proceed with the request of September 13, 2005, for staff to review the concerns and report back to City Council. In turn, City Council will follow-through as appropriate.

ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 9:39 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – September 27, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Mumpower led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

ADDITION TO AGENDA

Councilman Dunn asked that an item be added to the Agenda regarding Police Department vacancies and how that affects annexation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2005 AS "SISTER CITIES MONTH"

Mayor Worley read the proclamation proclaiming October, 2005, as "Sister Cities Month" in the City of Asheville. He presented the proclamation to Mr. Dick Hall, President of Asheville Sister Cities Inc., who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING OCTOBER 8, 2005, AS "RIDE TO CURE DIABETES DAY"

Councilwoman Jones read the proclamation proclaiming October 8, 2005, as "Ride to Cure Diabetes Day" in the City of Asheville. She presented the proclamation to Mr. Brian Sarzynski and his family, who thanked Council for their support and them on some activities taking place during that day.

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "B" be removed from the Consent Agenda for discussion.

Councilman Newman asked that Consent Agenda Item "K" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 13, 2005, AND THE WORKSESSION HELD ON SEPTEMBER 20, 2005

B. RESOLUTION AUTHORIZING ACQUISITION AND ACCEPTANCE OF A PARTIAL DONATION OF PROPERTY ON ROCKY RIDGE ROAD

This item was removed from the Consent Agenda for further discussion.

C. RESOLUTION NO. 05-178 - RESOLUTION ACCEPTING AN OFFER OF SALE OF LAND ON LAKE EDEN ROAD

Summary: The consideration of a resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

: City of Asheville has received an Offer of Sale of Land from Robert & Michelle Grabill for land on Lake Eden Road in the amount of $5,000. The subject property is a cut out parcel located at the north east corner of a 2.57 acres parcel at the corner of Lake Eden Road and Eden View Drive. It is an irregular trapezoidal shape containing approximately 0.049 acre. It is generally level with the street, wooded and adjacent to a small creek. Its highest and best use per the surrounding properties is residential. It is proposed to be acquired as part of the Grovestone Pump Station project.

Real Estate Manager Ed Vess reviewed the tax values of residential properties in close proximity to the subject property. Six lots were investigated in the Glen Eden subdivision, which is about a quarter mile from the subject property. The lots ranged in size from 0.35 acre to 0.67 acre and values ranged from $36,000 to $38,200. The per acre values calculated from the tax values ranged from $102,857 to $57,000 per acre respectively. This is consistent with the trend in real estate prices that the smaller the parcel the higher the per acre price. The subject parcel is quite small and thus the higher per acre value would be most indicative of the value. Using a per acre value of $102,857 the indicated value for the subject parcel would be $5,000.

The positive aspects of the proposed acquisition are:

1. It offers an efficient and practical site for the needed pump station.
2. The price is consistent with value evidence for property near the site.
3. The purchase will expedite completion of the Grovestone Pump Station.
4. It is a voluntary sale and will not involve eminent domain.
5. It only includes the land necessary for the pump station leaving the remainder of the property in private ownership.

There are no negative aspects to this transaction.

Approval of the resolution will establish $5,000 as the just compensation for the property and accept the Offer of Sale of Land from Robert & Michelle Grabill for that amount.

Planning & Development staff and Water Resources staff recommend adoption of the resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

RESOLUTION BOOK NO. 29 – PAGE 217

D. RESOLUTION NO. 05-179 - RESOLUTION AUTHORIZING RENEWAL OF CLAIMS ADMINISTRATION CONTRACT WITH ASHEVILLE CLAIMS CORPORATION

Summary: The consideration of a resolution authorizing renewal of claims administration contract with Asheville Claims Corporation

Since 1993, the City of Asheville has funded and operated a self-funded loss reserve program, as authorized by North Carolina law. This program is administered by the Asheville

Claims Corporation (herein "ACC"). Pursuant to this Agreement, ACC is the first referral for claims that are made against the City of Asheville. The claims are reviewed by ACC, and based on that review, determinations are made as to the City's potential liability and damages. In appropriate cases, claims are paid. If a claim develops into a lawsuit, the City's legal defense is provided through ACC. The City Manager, City Attorney, Risk Manager, and Finance Officer are also consulted as and when appropriate with respect to the processing of claims.

The City's "loss experience" since embarking on this self-funded reserve program has improved dramatically over what it was before. Costs are down, and claims are handled better, and there is an emphasis on loss prevention. Asheville's experience as compared to cities with conventional insurance coverage is very favorable. If the City had to obtain insurance on the open market to provide similar coverage, the costs would likely be higher in terms of premiums and claims administration, and the coverage would likely not be as good.

Considerations:

- current arrangement has worked well since 1993
- City is more closely involved in the handling of claims
- costs are lower than for conventional insurance
- coverage is better than with conventional insurance

City staff recommends City Council adopt the resolution authorizing renewal of the claims administration contract with Asheville Claims Corporation.

RESOLUTION BOOK NO. 29 – PAGE 218

E. ORDINANCE NO. 3281 - BUDGET AMENDMENT FROM THE NC DIVISION OF EMERGENCY MANAGEMENT FOR PROCUREMENT OF EMERGENCY RESPONSE AND PREPAREDNESS EQUIPMENT FOR THE FIRE & RESCUE DEPARTMENT AND 12 OTHER BUNCOMBE COUNTY PUBLIC SAFETY AGENCIES

Summary: The consideration of a budget amendment, in the amount of $180,000, to receive grant money from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management through the Governor's Crime Commission, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department and 12 other Buncombe County public safety agencies.

With Council approval, the City of Asheville Fire and Rescue Department requested $492,800 from the NC Division of Emergency Management for emergency response by updating communication equipment. Council Resolution Number 05-13 adopted on January 25, 2005, approved applying for the grant. The grant will enhance interoperability between City and County public safety agencies. Staff was successful in obtaining $144,000 of the requested funding. The City share will be $36,000 of which a prorated share will be reimbursed to the City by the other 12 Buncombe County public safety agencies upon purchase of the equipment. A memorandum of understanding was signed by all agencies sharing in this grant on January 19, 2005. This grant will purchase mobile radios for vehicles without communications and additional portable radios for positions without a radio assigned. The added communication will increase firefighter safety during emergency response.

PROS:

- Interoperability between differing agencies and responding units will be increased.
- The equipment will increase the City's ability to protect human life, property, and the environment.

- The equipment will increase firefighter and police officer safety.
- 75% of the funding comes from the State of North Carolina.
- The other 12 Buncombe County agencies would share in the 25% cost not funded by the State.

CONS:

- The City of Asheville's share of the matching grant.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the City.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

ORDINANCE BOOK NO. 22 – PAGE 258

F. **RESOLUTION NO. 05-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE PURCHASE OF COMPUTER EQUIPMENT AND TRAVEL/TRAINING MONEY FOR THE POLICE DEPARTMENT'S REGIONAL LAW ENFORCEMENT LIAISON**

Summary: The consideration of the resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program (GHSP) for the purchase of computer equipment and travel/training money for the Asheville Police Department's Regional Law Enforcement Liaison, and the associated budget amendment, in the amount of $10,000.

The City of Asheville has been awarded a grant from the GHSP in the amount of $10,000 with no local match required. The purpose of the grant program is to fund highway safety projects, allowed under the grant program, designed to reduce traffic speed, traffic accidents and improve highway safety. We have chosen to purchase a Dell Dimension XPS Gen 5 desktop computer and a Dell Inspiron 9300 Laptop computer totaling $5000.00. The other grant monies would be spent on in-state and out-of-state travel expenses, totaling $5,000.00. The desired equipment is to be located in an office where officers could utilize the desktop computer to complete traffic crash investigation duties. The laptop would be assigned to the GHSP Regional Liaison to aid that person in managing GHSP duties as well as performing traffic crash investigation duties. The travel monies will allow out department's Regional Liaison Officer to maintain contact with other liaisons and attend necessary highway safety functions as requested by the Governor's Highway Safety Program.

Pros:

- Equipment will improve the efficiency and availability of traffic safety computer related resources.
- Will contribute to the enhanced effectiveness of traffic homicide investigators and crash reconstructionists by providing needed computer hardware and software.
- Equipment will facilitate better communication between the Regional Law Enforcement Liaison and other Highway Safety Specialists around the country.

- The travel funds will allow the liaison to attend important training and interact with other highway safety specialists so that highway safety concerns are addressed appropriately.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment including servicing and replacement when needed.

This action complies with City Council's Strategic Operating Plan: Goal #2 A multi-modal and congestion management transportation program – In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective B. Mitigate overall impacts of congestion through effective local partnerships. This is accomplished by identifying areas of the City that are particularly prone to traffic accidents due to speed and other aggressive driving tactics. Through the efforts of the Asheville Police Department and the use of the equipment purchased through the GHSP Grant, this will allow officers and traffic engineers to develop better highway safety goals. This will be achieved by utilizing the computer equipment to aid in the traffic crash investigation area. Better investigations and crash reporting facilitates better policy and engineering decisions, related to highway safety.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program for the purchase of computer equipment and travel/training money for the Asheville Police Department's Regional Law Enforcement Liaison; and (2) the associated budget amendment, in the amount of $10,000.

RESOLUTION BOOK NO. 29 – PAGE 219

G. ORDINANCE NO. 3282 - BUDGET AMENDMENT FROM A GRANT FROM THE NC GOVERNOR'S HIGHWAY SAFETY PROGRAM

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 22 – PAGE 260

H. RESOLUTION NO. 05-181 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH STEWART-COOPER-NEWELL ARCHITECTS FOR ARCHITECTURAL SERVICES FOR THE CONSTRUCTION OF FIRE STATIONS 11 IN THE BILTMORE SQUARE MALL AREA

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #11 in the Biltmore Square Mall area on Rocky Ridge Road.

The need of a Fire Station in the southwest quadrant of the City is a priority for emergency response and our community's Insurance Service Office public fire protection rating. This rating directly affects the amount of fire insurance home owners or business owners pay for property insurance. Council allocated funds to purchase land in the Fiscal Year 2004-2005 budget. Property to place the station on has been properly identified and option to purchase signed by both parties. Asheville's fire protection and emergency response standard of cover will increase with the addition of this fire station. A fire station in the Brevard Road and I-26 area is necessary to provide municipal level fire protection and emergency services to the southwestern sections of the City. In addition to the building housing an engine company, the building will also provide some office space for the Asheville Police Department.

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects in conjunction with the relocation of Fire Station 6. The RFQ was specific for the one station with the potential for additional stations in the near future. Written proposals were received by city staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as Budget reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed a number of combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 11 is planned to be approximately 12,000 square feet with approximately 11,000 square feet for fire and rescue use and approximately 1,000 square feet for police use. Construction cost of the project is anticipated at an average of $135.00 per square foot, or $1,620,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at seven and one-half (7.5) percent of the cost of construction, or approximately $121,500.00. The fee is ½ percent lower than previous work due to this station having the same basic floor plan as Fire Station 6. Funding for the entire project including construction, architectural, and utility/site/furnishings and other "soft" costs is budgeted at $2,800,000 as approved within the Fiscal Year 05-06 budget.

Completion of this station would be in approximately 18 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal. Stewart Cooper Newell has designed Fire Station 6 and this station would follow that same format. Both stations would be bid at the same time. It is anticipated that by having the same floor plan and construction simultaneously a significant cost savings could occur.

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #11. The contract is an AIA Document with appropriate modifications for the City of Asheville.

Pros:

- The experience of the firm in designing fire stations for the City of Asheville;
- One design firm bidding two stations with the same basic floor plan;
- Lower architectural fee.

Cons:

- None could be identified.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services

provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

The Fire and Rescue Department recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #11.

RESOLUTION BOOK NO. 29 – PAGE 220

I. RESOLUTION NO. 05-182 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: Bill Schaefer has resigned as the City's Finance Director, thus leaving a vacancy on the Firemen's Relief Fund until January 1, 2006. This resolution will appoint Ben Durant, City's Chief Financial Officer, to fill the unexpired term of Mr. Schaefer, term to expire January 1, 2006, and then to serve a full two-year term, term to expire January 1, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 221

J. RESOLUTION NO. 05-183 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: Bill Schaefer has resigned from the Board of Directors of Victoria of Asheville Inc, thus creating a vacancy until November 29, 2006. This resolution will appoint Bob Oast, City Attorney for the City of Asheville, to fill the unexpired term of Mr. Schaefer, term to expire November 29, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 222

K. RESOLUTION ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

This item was removed from the Consent Agenda for individual discussion.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FUTURE DISCUSSION

RESOLUTION NO. 05-177 - RESOLUTION AUTHORIZING ACQUISITION AND ACCEPTANCE OF A PARTIAL DONATION OF PROPERTY ON ROCKY RIDGE ROAD

Summary: The consideration of a resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

The City of Asheville Fire and Rescue Department (AFRD) has recognized the need for a fire station in the vicinity of the Brevard Road and I-26 interchange in order to provide fire protection for residents and businesses in the area. AFRD staff has selected certain real property

located on Rocky Ridge Road, identified as PIN No. 9626.08-78-7720 as the optimal location for the new fire station.

The property is located about 250' west of the intersection of Rocky Ridge Road and Brevard Road at the I-26 interchange. It is rectangular in shape and contains approximately 0.81 acre. It is generally level with the street and forms an elevated flat building site with retaining walls along three sides. There is a traffic signal at the intersection with Brevard Road providing direct access to Brevard Road in either direction and I-26 East. Access to I-26 West is at the next intersection one block away. The site has been evaluated by the architectural firm of Stewart-Cooper-Newell Architects and found to be suitable for its intended use.

The property was appraised by Francis J. Naeger, MAI, at a value of $603,000. Real Estate Manager Ed Vess has reviewed the appraisal and concurred with the fair market value of $603,000 based on the appraisal. In discussing the City's needs and budget limitations with the property owners, Karl and Nick Koon of G. E. Enterprises, they agreed to donate a portion of the purchase price in order to make the purchase possible for the City. The City and the Koons executed an Option to Purchase Real Property, which provided for a purchase price of $603,000 with $303,000 of the purchase price to be donated by the Koons to the City. The remaining $300,000 of the purchase price would be paid in cash by the City.

The AFRD has $300,000 budgeted for the purchase of a site in the Brevard Road area.

The positive aspects of the proposed acquisition are:

- The site is the optimal location for a fire station based on the service area and access.
- There will be significant savings in site preparation costs compared to other available sites.
- The purchase of this site will enable this station to be bid at the same time as the Exit 44 station resulting in construction cost savings.
- It is a voluntary sale at fair market value.
- Includes only the land necessary for the fire station.

The negative aspects are:

- Removes property from the tax base.
- Removes a commercial lot from the market.

Approval of the resolution will establish $603,000.00 as fair market value for the property, authorize exercising the option along with a cash payment of $300,000 and accept the donation of $303,000 from G. E. Enterprises, Inc.

Planning & Development staff and AFRD staff recommend adoption of the resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

Vice-Mayor Mumpower thanked Karl and Nick Koon of G. E. Enterprises for helping the City of Asheville secure a safe and more accessible site for a fire station.

Councilman Davis moved for the adoption of Resolution No. 05-177. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 216

RESOLUTION NO. 05-184 - RESOLUTION ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Summary: On September 20, 2005, City Council heard a report from the Sustainable Economic Development Implementation Plan Task Force on the progress to date for the implementation of the recommendations of the Sustainable Economic Development Plan by Lockwood Green Consulting.

Pursuant to their recommendation, City Council felt it was in their best interest to establish an Economic Development Advisory Committee.

Councilman Newman wanted to make sure that this new standing committee of Council will go through the normal board/commission appointment process.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-184. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 223

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

RESOLUTION NO. 05-185 - RESOLUTION TO CLOSE AN UNNAMED ALLEY OFF CLINGMAN AVENUE

At the request of Councilman Bellamy, Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Worley opened the public hearing at 5:27 p.m.

Public Works Director Marks Combs said that this is the consideration of a resolution to permanently close an unnamed alley off Clingman Avenue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mountain Housing Opportunities has requested the City of Asheville permanently close to public use as an unnamed alley off Clingman Avenue. This alley is more particularly described as the alley mentioned in Deed Book 1700 at page 471 and prior deeds in the same chain of title, said alley being further described as Lot 1 of a plat of property of Wilson and Teasley as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 2 at page 24 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress as Mountain Housing Opportunities has submitted to the Planning Department a recombination request for the parcels affected. There are three parcels that abut this section of alleyway. They are identified by PIN Nos. 9648.05-08-4179, 9648.05-08-5118, and 9648.05-08-4248. The petitioner has authority over all the abutting parcels.

Pros:

- The closure allows the property to be used to its maximum (density) potential.
- Affordable housing can be constructed on the consolidated site.

- There will be no future compromise of ingress/egress to other property.

Cons:

- In consideration of the proximity of the alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution to permanently close an alley off Clingman Avenue.

Mayor Worley closed the public hearing at 5:28 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 05-185. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 224

B. PUBLIC HEARING TO CONSIDER EXCLUDING TWO PROPERTIES FROM THE CITY'S EXTRATERRITORIAL JURISDICTION

ORDINANCE NO. 3283 - ORDINANCE EXCLUDING 143 AND 145 AVONDALE RIDGE ROAD FROM THE CITY'S EXTRATERRITORIAL JURISDICTION AREA

Mayor Worley opened the public hearing at 5:29 p.m.

Planning & Zoning Director Scott Shuford said that this is the consideration of an ordinance amending the City's extraterritorial jurisdiction to excluded two properties known as 143 and 145 Avondale Ridge Road. This public hearing was advertised on September 16 and 23, 2005.

The properties identified by address and PIN below were added to the City of Asheville's extraterritorial jurisdiction (ETJ) in 2001 as part of a large-scale expansion of the ETJ. The purposes behind that expansion included: Preservation of land suitable for industrial development; securing the development of critical City gateways; and bringing areas likely for rapid, character-defining development under City regulatory authority.

143 Avondale Ridge Road	PIN 966713032937
145 Avondale Ridge Road	PIN 966713031539

Staff was approached by an owner of one of these two properties about further residential development on his property. Because his land did not front on a public or private street in general compliance with City standards, we were unable to accommodate his request. Further staff investigation revealed that the subject properties are not accessed through the City of Asheville's ETJ, that the likelihood of annexation of these properties in the future is extremely remote, and that it is unlikely that their further development will significantly alter the character of the surrounding area. The properties are not suitable for industrial development, nor are they critically situated along a gateway corridor. Consequently, staff was not able to identify a public purpose in maintaining these properties in the City's ETJ.

City staff recommends City Council remove 143 and 145 Avondale Ridge Road from the City of Asheville's extraterritorial jurisdiction.

Mayor Worley closed the public hearing at 5:32 p.m.

Councilman Davis was asked to relay that the property owner was pleased with the Planning Department's quick action and courtesy regarding this matter.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3283. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 262

C. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

Mayor Worley said that this public hearing was originally scheduled for August 23, 2005, however, the applicant had requested the hearing be continued until September 13, 2005, in order to have a full Council present for the hearing. That request was granted.

On September 13, 2005, Mr. Albert Sneed requested that this public hearing be continued until September 27, 2005, in order to have a full Council present for the hearing. That request was granted.

Mr. Craig Justus, representing the applicant, said that this is a unique project and has a lot of merit. In the last week or so there has been a lot of information they have received from the community that is based in part on principally the issue of where the main building is located on the property and how big the main building is. It is clear that not all of us agree with where the main building is planned. In talking with staff, we are still trying to figure out, based on their objection to the location and size of the building, what would work from the staff's standpoint. We think the Planned Unit Development (PUD) process is very helpful because Council is controlling how the property will be tailored and they would hate for it to go to something that is more traditional cookie-cutter subdivision. He asked for a continuance to allow them to meet with staff and to also allow them to meet with Ms. Patsy Brison, who has just been retained by the Kenilworth Residents Association. It has been very difficult talking to one representative of a neighborhood with so many others communicating via e-mails, etc. Now that they have an attorney representing an Association, they are hopeful that they can meet with staff and Ms. Brison and her client, to see if we can come to an agreement of the location and size of the main building on this project. We also understand there is some confusion about the tax consequences. He stated that they are not like Deerfield, or Givens Estate, but that we intend to pay taxes and carry their burden as it relates to infrastructure and paying taxes. They would like for it to be a condition of the development that they plan on paying taxes, but we don't understand the legal vehicle to accomplish that. In talking with the City Attorney, it is his understanding that Council cannot condition the approval of this project on them paying taxes. But there may be some method through restrictive covenants that would allow that to occur. In the next 30 days,

they would like to meet with City staff, Ms. Brison and her client to talk about the location and size of the main building on this property, and to also find a better way to lock them in on the representation that they have made that they intend to pay taxes.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that City Council always has the option to remand matters back to the Planning & Zoning Commission and if the changes to the site plan are significant enough, that is an option. By requesting this continuance, it would come back to City Council, not to the Planning & Zoning Commission. Regarding the protest petition, it is his opinion that unless the site plan changes significantly (although they do not have the percentages that they originally had) the protest petition is still valid. He said that the access to this project has to be included within the zoning that they are requesting, thus making the protest petition continue to remain valid. The protest petition would continue to be valid, even into the continuation of the hearing.

Mr. Justus said that they have a 6-1 favorable vote from the Planning & Zoning Commission. What he is suggesting would be changes that would be favorable to the neighborhood, and which typically have been treated as not being significant to have to start over again with the Planning & Zoning Commission.

Upon inquiry of Councilman Newman, Mr. Justus envisioned setting up a charette, where we have staff, representatives from the developer, representatives from the neighborhood and perhaps a Council member to talk about the issues that separate us. Then, they would come back to City Council in approximately 30 days.

Mayor Worley confirmed that if Council continues this public hearing and as a result of whatever discussions take place, City Council can still remand this back to the Planning & Zoning Commission.

Councilwoman Bellamy's only concern regarding process is ensuring that there is due process on both sides, specifically with the validity of the protest petition.

Councilman Dunn didn't see a reason to remand this back to the Planning & Zoning Commission at this point. He was hopeful that the attorneys and the neighborhood could reach a compromise.

Ms. Patsy Brison said that she is representing the Kenilworth Residents Association, not everyone who might wish to speak or who may have signed a protest petition. She only represents the Kenilworth Residents Association. Her client is concerned about continuing this process again. However, they desire to be cooperative in this process. Therefore, it seems like the fairest way to proceed is if there is to be an opportunity for change, which other people can look at and consider whether or not they believe it is appropriate for this property, that the developer should instead withdraw their application and begin anew. That gives everyone a fair change at what the process would be and would remove the question of what happens with the protest petition. That would be their preference. Another reason is a question arises that the ownership of the property has changed during this process. The current property owner has not made application for this project. We would prefer that they withdraw their application at this point. If Council decides it is appropriate to continue it based upon their request, we would not oppose that and will work with the process, at least the client she represents, to have some dialogue. She is not saying that they would agree to anything, but they would be willing to engage in that process.

Mr. Justus said that they are trying to work things out and felt it wasn't fair to make them start all over again.

Upon inquiry of Councilman Newman, Mr. Justus said that they have made a number of efforts to address the concerns raised. Despite those efforts, after they bought the property, they have not gotten a position from staff of what staff would be satisfied with. If the project is turned down, his client already owns the property and will be left with the traditional methods of development, which may not be as good for the property.

Urban Planner Shannon Tuch said that from the very beginning they advised the design team that the number of units, the type of community and traffic weren't huge concerns. Our biggest concern was the amount of disturbance caused as a result of the placement of the two largest buildings on the site. We recommended from the very beginning to keep the buildings off the slopes of 20% or more. If we can keep the buildings off the slopes of 20%, there is no need for a rezoning or a height variance. It would simplify the application significantly. There are portions of this property that are well below 20%. We also cautioned the applicant from the beginning as to whatever development they put forward that it be harmonious with the neighborhood and be sensitive to hillside and ridgeline aesthetics. We don't think that the project that came forward has accomplished that. She felt that staff has been clear from the beginning what their biggest concerns were.

Upon inquiry of Vice-Mayor Mumpower, said they are preserving 50% of open space on this property and where the views are happen to be in an area that is more elevated than where the valley is on this property. It is correct that we want the residents of this community to enjoy views from this property, so we have been trying to balance where we locate the buildings with the views.

Planning & Development Director said that what has been put on the table today is the willingness on the part of the developer to try to reach a better balance between the City's requirements and what the community desires. From that standpoint, staff would support that. It has been staff's position all along that we would prefer to see a clustered development on this property rather than it be developed with a standard subdivision, because the property does vary in elevation, it's not a uniformed site and doesn't lend itself well to standard single-family type of developments.

Councilman Newman wondered if Council continued the meeting if the developer would seek to make further changes to invalid the protest petition. Mr. Justus responded that at this meeting was the first time he heard that the protest is still valid. He said they don't want to remove the access road. He thinks the access road is important for this development. He said that the first continuance was requested because they were informed that there was a protest petition and they were entitled under state law to reduce the project scope to avoid it. We didn't increase the project scope, but actually reduced the density on the property.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that it is state law and this occurs in other communities. This is not peculiar to Asheville. He said that a lot of the issues concerning protest petitions are being addressed in the new legislation, which takes effect on January 1, 2006.

Ms. Brison said that the kind of changes being talked about are substantial changes so it would seem that the developer would withdraw their application and give us a chance to do the charette. However, in order to move forward, we would not oppose the continuance. We have a lot of concern about this being continued before, and the reason for the continuance was perhaps to redraw the lines. She argued that the changes that they made do not help the neighborhood. We believe that the protest petition submitted originally is still valid. We are very concerned that if the public hearing is continued again, the lines will be moved and the project changed, which might lose the protest petition validity that we have today. It is her view that the law in North Carolina is not clear on being able to move the lines after the advertisement has been made for

the public hearing. The case law talks about moving the lines before the public hearing, so then you can determine where the protest petition area is. If it's moved afterwards and it's not a benefit to the neighborhood, our argument that it is an evasion and a subterfuge and we believe that is what was done and we do not want that to happen again.

Upon inquiry of Councilman Newman, City Attorney Oast said that our position is that the PUD consists of two elements – the PUD overlay, which is a zoning decision, and then the Master Plan. It is his position, after talking with staff, that the two have to be co-extensive. To drop that access road, which is to be constructed as part of the project, out of the consideration for zoning purposes, but leave it in for master planning purposes, gives us somewhat anomalous situation where you have a piece of the Master Plan that exists outside of the PUD overlay. For that reason, we felt like the access road needed to be included within the amount of the zoning being requested. If the access road were deleted from the project, then it may be that the protest petition is not valid, but as of this morning, we made a determination that the access road needed to be included, meaning that some of the protesters that were adjacent to the access road made the protest petition valid again.

After a brief discussion, Councilman Davis moved to continue the public hearing until November 9, 2005. This motion was seconded by Councilman Dunn.

When Councilman Newman asked if public comment would be allowed on the continuance request, City Attorney Oast said that Council has heard from both sides and if Council wants to take a limited amount of public comment, that would be up to Council. Usually a motion to continue is within the discretion of Council. Those motions are debatable amongst Council and it's not really a substantive motion and public comment is not required, however, Council usually does take some.

Councilwoman Bellamy wanted to reserve the right to remand whatever comes back from the charette to the Planning & Zoning Commission if it is a substantial difference to the process. She thinks it's important that people who are part of the process, have the right to the protest petition process.

The motion made by Councilman Davis and seconded by Councilman Dunn carried on a 6-1 vote, with Councilman Newman voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A RENEWAL CONTRACT WITH BALL-JANIK, LLP

Economic Development Director Sam Powers said that this is the consideration of a resolution authorizing the Mayor to enter into a renewal contract through June 30, 2006, with Ball Janik, LLP, to provide advocacy for the City's federal appropriations and legislative agenda.

Beginning in March 2003, Asheville retained the firm Ball Janik, LLP, to provide advocacy for the City's federal appropriations and legislative agenda. The firm has been retained for two one-year contracts; the third renewal contract is presented for review with no increase in the fee structure as in 2004.

In March 2005, Council agreed on federal priorities for FY 2006. These included City Bus Acquisition; Methamphetamine Response, and Water System improvements as Tier 1 priorities. Additionally, a placeholder for Veteran's Memorial, and Thomas Wolfe Cabin Restoration were

submitted since Council had not voted on priorities by the March 1st deadline, and advocacy with TEA-21 Reauthorization issues, including Pack Square Pedestrian and Roadway Improvements, and Transit Funding flexibility. Ball Janik staff has recently visited Asheville along with congressional staff members, to review current appropriated projects and begin to develop timelines for submittal of any 2007 city priorities.

Funding for this contract renewal has been appropriated in the approved 2005-06 Annual Operating Budget.

Pros: During the two years that the firm has been under contract and tentatively for '06, the City has been successful in receiving $9.99 Million in federal appropriations commitments. The City has also received alerts and analysis about potential legislation and grant opportunities from the firm.

Con: There is no certainty that future federal funding will be secured as a result of the contract renewal.

This action would support the City's Strategic Operating Plan in the following focus areas: Sense of Place, Heritage, and Arts, thru the support for funding of the Pack Place renovations; and Partnerships to improve critical services and infrastructure, thru the efforts to secure funding for programs and policies to defeat street level drug problems and crime.

City staff recommends City Council renew the agreement with Ball Janik for the remainder of the Fiscal Year 05-06 year, with a Request for Proposals process for future contracts when the current agreement expires. Staff also recommends seeking direction from Council to determine any benefits of long-term representation, opposed to one-year contractual agreements for future contracts.

Mr. Fred English requested information regarding how much the City has spent on the lobbyists and what kind of commitments they secured for Asheville for that money.

There was a brief discussion about the good work of Ball-Janik and the reasons why the City originally contracted with them, however, the majority of Council stated that they felt that in a time of growing federal deficit, the City of Asheville doesn't wish to request special appropriations. However, some Council felt they would be open for using lobbyists in the future.

Councilman Newman moved to not renew the contract with Ball-Janik, LLP. This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Mayor Worley voting "no".

VI. OTHER BUSINESS:

ANNEXATION

Councilman Dunn felt that since public safety should be City government's first priority, he was concerned how the City can annex when the Police Department already has 29 vacancies. He felt the City did not have enough police to cover what is currently in the City. He asked Council to rescind our most current annexation ordinances.

Planning & Development Director Scott Shuford updated City Council on the most recent annexation ordinances. In summary, out of the six annexations, two (Ridgefield and Airport Road) have been challenged; two (Ascot Point and Long Shoals Road) are scheduled to come into the City on December 31, 2005; and two are scheduled to come into the City on September 30, 2005 (Two Town Square and Town Square East). The two coming into the City on

September 30 have a total population of 40 people, in an area that is already being well-served in the Biltmore Park area. He explained that we do intend to implement our Annexation Services Plan and will be prepared to give Council a full report for action to implement the Annexation Services Plan.

Assistant City Manager Jefferson reviewed with Council the Police Department staffing issues, some being, but are not limited to: obligated/unobligated times, districts, scheduling, rookie schools, minimum requirements, recruiting and retention.

City Attorney Oast said that it is his opinion that there is not a process that he is aware of for Council to de-annex the areas that are not under appeal. There is a method available to those people in those annexation areas, where if they feel like they are not receiving services at the level that was promised and the level that we are required to deliver. they can petition for relief in Superior Court to require us to provide those services at that level.

There was considerable discussion about annexation, police officer salaries, and vacancies in the Police Department.

It was the consensus of City Council to review the Police Department staffing at the October 18, 2005, City Council worksession.

CLAIMS

The following claims were received by the City of Asheville during the period of September 1-15, 2005: Marilyn Gray (Streets), Alvin Fate Jr. (Police), Deloris Cunningham (Transit Services), Terrie Attwood (Parks & Recreation), Teresa Balding (Fire), Bill Wolfe (Sanitation) and Shawn Hallums (Sanitation).

The following claims were received during the period of September 16-22, 2005: Beverly Belden (Water), BellSouth (Water), BellSouth (Water), Billy Owenby (Water), Penny Benson (Transit Services), Chris Blackwell (Water), David Roberts (Water) and Jonah Phillips (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the City's need for a quality management system.

Mr. Fred English felt that the City should hire him as a recruiter for police officers.

Mr. Bill Fishburne, member of the Public Art Board, said that he was requested by the Chair of the Public Art Board to show Council a sketch of the Veterans Memorial, which the Public Art Board approved unanimously earlier today.

Mr. Peter Dawes said that the Sheriff's Department has had to respond to calls in the City of Asheville due to the number of vacancies in the Police Department.

Mr. Mike Fryer presented Council with a petition, containing 183 signatures, opposing annexation of Wellington Park. The petition states "We are residents in Wellington Community Estates Mobile Home Park. We understand that Wellington Park is included in one of the current annexations by the City of Asheville. By this petition we ask that the City of Asheville stop all efforts to annex Wellington Park or any area including Wellington Park. Wellington Park is one of the few affordable housing communities in South Buncombe County. Annexing Wellington Park will nearly double the taxes for the properties in Wellington Park, and will increase our housing

expenses each month. This will make our affordable housing all the less affordable. For these reasons we ask the City of Asheville to discontinue all efforts to annex Wellington Park and to repeal any annexation ordinance that includes Wellington Park." He was concerned that if they move their trailers out for some reason, another one cannot be put back.

Ms. Julia Brant, representing for Asheville Park Community Group, spoke about the City's poor public process. She felt City Council should have given the public the opportunity to speak on the motion to continue in the Kenilworth Heights matter heard earlier in the meeting. She urged Council to take citizen input seriously.

Mr. Martin Reidinger, attorney who has filed the two annexation lawsuits, spoke in support of the City petition to de-annex Wellington Park. It was his opinion that any ordinance City Council has the authority to pass, City Council has the authority to repeal. Once the ordinance becomes effective, you cannot de-annex the area, but until the effective date of that annexation, you can repeal that ordinance.

Mr. Walter Plaue spoke about the shortage of police officers.

Ms. Mary Steiner urged City Council to protect the senior citizen population in Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:22 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 4, 2005 - 3:00 p.m.

Special Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

City Manager Gary Jackson gave Council an overview of the programs held at the Asheville Civic Center. He said that the Civic Center is a multi-purpose, regional facility serving the cultural and entertainment needs of Asheville and Western North Carolina; it has distinct areas – arena, auditorium, exhibit hall and banquet hall; the arena produces most of the revenues; and the auditorium provides event diversity.

The event overview consists of: (1) 9-10 Arena concerts per year; (2) 12-18 Auditorium concerts per year; (3) 6 Major trade shows per year; (4) The Asheville Symphony and Bravo concerts; (5) Public skating and youth hockey; (6) Broadway productions; (7) Family shows; and (8) Many exhibit hall and local events.

A Partial Event Listing includes: (1) Recent concerts by Toby Keith, Trey Anastasio, Willie Nelson, B.B. King, Alison Krauss and numerous others; (2) Trade shows including Home Show, Boat Show, Gun & Knife Show, Gem & Jewelry Show, Log Home Expo, etc.; (3) Warren Haynes Christmas Jam; (4) Asheville Symphony; (5) Asheville Bravo; (6) Craft Fair of the Southern Highlands; (7) High School Graduations; (8) Disney on Ice; (9) Harlem Globetrotters; (10) Sesame Street Live; (11) Public Skating and Youth Hockey; and (12) Asheville Antique Fair.

He reviewed the sources of revenue as follows: the Banquet Hall produces approximately $8,500 (1%), Exhibit Hall produces approximately $98,000 (9%); the Auditorium produces approximately $441,000 (38%); and the Arena produces approximately $604,000 (62%).

He reviewed significant dates from 1901 when the privately-owned City Auditorium opened to 2005 with the Civic Center Commission's white paper.

Many facility alternatives have been presented and summarized as follows: (1) Renovate with conference component (Hunter); (2) Renovate, add ballroom and construct adjacent performance hall (Heery); (3) Renovate only - $10 M, 2001 (Heery alternative); (4) Construct performance hall downtown; (5) Modify to house state of the art performance hall (Asheville Area Center for Performing Arts); (6) Relocate the arena to the river area (AACPA alternative); and (7) Relocate performance hall within mixed use development (new concept).

Potential Funding Sources include: General – property /sales tax; Debt financing; Hotel occupancy tax; Food and beverage tax; Federal and state grants; Foundations; Private sector/Non-profits investment; Tax Increment Financing; and Other including alcohol, rental car, etc.

The Civic Center ties in with three of City Council's Strategic Goals: (1) Sense of Place, Heritage & Arts – Goal #1A: A renovated CC that is the premier entertainment destination (regional entertainment and event hub) - Tasks: establish and secure funding and schedule phasing for renovation; (2) Sense of Place, Heritage & Arts - Goal #1B: Generate community support by developing partnerships to advocate and fund-raise - Task: Create a non-profit structure to develop social capital and supplement funding; and (3) Partnerships to Improve Critical Services & Infrastructure Goal #2A: Research and develop strategies for securing

significant new, recurring revenue sources - Task: Attain local legislation to provide revenue source.

City Manager Jackson said that the Fiscal Year 2005-06 budget allocates $1.0 million for roof repairs. Mr. John Cort, the original architect, was contacted for consultation and has submitted City Council with a letter dated October 3, 2005, with a total construction cost (only for the roof membrane) of $775,700 for a new roof system over the concourse and arena. He pointed out other issues, which may result in additional costs.

He suggested the following steps moving forward: City Council policy discussion; Form a Council task force; Research recent models of success in NC; Prepare updated cost analysis of preferred model(s); Schedule a follow-up work session to review successful models, updated cost estimates, and hear from community resources; Conduct informal meetings with potential partners: NC Legislators and County Commissioners, Tourism Development Authority, and AACPA and other major stakeholders; Conduct public hearings/community meetings for public input; and Form a community coalition.

He suggested Council consider the following policy questions: (1) Does Asheville need to host a multi-purpose, regional facility? If so, should it be a "state of the art" facility?; (2) What is the preferred location for each component? (a) Downtown in one shared location?; (b) Multiple downtown locations?; or (c) Outside downtown? (Riverfront, Airport Road area, etc.); (3) Total budget?; (4) Phases?; (5) Sources of funding?; (6) Desired partners/coalition?; (7) What trade-offs are acceptable to secure support?; and (8) Location? Design? Management?

Upon inquiry of Council, City Manager Jackson said that he will provide Council with the types of activities that take place in the Civic Center, as well as the expenses for those activities and details regarding the net revenue for each of the four areas in the Civic Center. In addition, he would provide Council with information on the indirect and direct activity downtown and how the Civic Center supports the revitalization of downtown.

Considerable discussion was held regarding policy direction.

Mr. John Cort, architect, and Mr. Richard Fort, architect, responded to various questions/comments from Council, some being, but are not limited to: is it possible to upgrade the Civic Center into a sophisticated capable facility that will carry us into the future; what are the problems associated with the Thomas Wolfe Auditorium, in particular with regard to the Americans with Disabilities Act; is it possible for the Auditorium to be kept open for events while the Arena is being renovated and vise versa; and could the area behind the Civic Center be for future development.

Civic Center David Pisha responded to various questions/comments from Council, some being, but are not limited to: over the past 3-4 years, how many events brought in more than 6,000 people; out of the concerts this past year, how many brought in more than 5,000 people; when building a Civic Center, do you build for maximum utilization or averages; how many people can stand in the Arena; do performers like to do two shows in one night; what are the pros and cons of moving the arena to a different location, e.g., box office personnel, event staff, maintenance staff, supplies, equipment, etc.; and what is our budget deficit and the deficits of other civic centers.

In summary, each Council member voiced their opinion on how to proceed.

Councilman Newman wanted to look at all the options, not just the renovation of the existing Civic Center.

Vice-Mayor Mumpower wanted to learn about the possibilities of fixing up what we have in the most cost effective way. He felt the issue of multi-purpose facility downtown more or less

resolves itself because one area supports the other; we have one staff, it's in our downtown, which encourages others to come downtown; and we will have a parking garage across the street which will improve accessibility.

Councilwoman Bellamy felt we should renovate what we have and keep it a multi-purpose facility, using the land we have around the Civic Center.

Councilwoman Jones was not interested in the City taking the lead in another facility initiative in Asheville. She would be willing to partner, but not to lead. She felt she needed more data to decide on a multi-purpose facility or a performing arts center. She said the point is where the profit centers and how much subsidy do the City taxpayers have to put into this. She also wanted to know how many patrons of the Civic Center are City residents. She felt we needed to sit down with the community first and see what they want and then meet with the legislators for their support.

Mayor Worley felt there was a desire on the part of Council to move forward in some fashion and that Council needs more specific information (technical and usage) on the questions raised today. That would involve input from stakeholders and potential partners. The discussions that will follow will mold exactly what that fashion is. He supported moving forward with a multi-purpose or mixed-use facility, depending on the cost.

Councilman Dunn felt we need a multi-purpose facility downtown with legislative support, but stressed the need for a cost figure.

Councilman Davis felt Council needed to have a vision on the Civic Center, but that we can safely rule out that the Thomas Wolfe Auditorium renovation will be affordable. He said that the Civic Center Commission will provide the City Manager with the results of a survey from a recently held public forum.

Discussion then surrounded the make-up of a task force. In summary, it was the consensus of Council for the following Task Force make-up: Mayor Worley, Councilwoman Bellamy, Councilman Davis, the Chair of the Civic Center Commission, a Buncombe County Commissioner, a representative from the Asheville Area Performing Arts Center, and a representative from the Buncombe County Tourism Development Authority. Once that group meets, they can discuss whether there needs to be other complimentary people brought to the table. The charge of that group, along with the resources and people in the community, will be to go forward and assess possibilities and come back to Council with an action plan in five months consisting of 1-2 specific alternatives along with the pros and cons for each and costs associated with said alternatives, after public comment. Said Task Force is to report back to Council monthly on their progress giving the Council the opportunity to narrow their focus.

City Attorney Oast said that he would prepare a resolution and bring that forward to City Council for consideration at their next meeting.

Mayor Worley adjourned the meeting at 5:17 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Wednesday – October 12, 2005 - 3:00 p.m.
Public Works Facility

Special Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Worley announced that this special worksession is held to allow the N.C. Dept. of Transportation (NC DOT) representatives to discuss the recent CORSIM analysis studying the proposed traffic flow with 6 vs. 8 lanes on the I-26 Connector Project.

Ms. Debbie Barbour reviewed the steps of the project development process. She described that the process is very collaborative and the NC DOT does not totally control but a very few of the activities. They are in the process of preparing the Draft Environmental Impact Statement (EIS) and analyzing the alternatives. Every time they are asked to re-review or to re-analyze, they have to pause in the process and go into a redo loop. This, of course, adds time to the process and can eventually cause delays.

They currently anticipate that having the draft EIS document completed a year from now or October 2006. This will be a major project milestone. After the draft EIS is complete, they will hold a public hearing, gain input, review input and make a selection of an alternative. After the alternative selection, they will then have a more predictable schedule.

The traffic forecast is a major factor and a foundational component of their planning and design process. In the design of projects across the state, they are charged to ensure they deliver safe designs and designs that will adequately accommodate for traffic for a period of 20 years beyond the project opening.

Over the course of this project study, several traffic models have been developed for the Asheville region with the last model being developed in 2003. They have reviewed capacity analysis and have consistently concluded that 8 lanes are needed on I-240 from I-40 to Patton Avenue. The NC DOT is very confident in the various analysis work and the NC DOT is proceeding with 8 lanes as their studies have indicated.

Late last year, Mayor Worley requested that they review the capacity again by using CORSIM as an analysis tool. They have completed that study and it did not alter their recommendation to continue with 8 lanes.

Mr. Nathan Phillips, representing the N.C. Department of Transportation, reviewed with City Council the transportation decision-making process, topics of discussion, why perform traffic analysis, and level of service concepts. He then explained the different segments of a freeway and the highway capacity analysis, with is the Federal Highway Administration (FHWA)'s standard and the most widely used and accepted traffic analysis procedures in the United States for many applications. He pointed out the different factors affecting speed and flow rates. He then reviewed with Council the 8 lane freeway analysis results and the 6 lane freeway analysis results. He explained about using the CORSIM as a tool, noting that as with any tool, the results must be evaluated and used with other knowledge. He reviewed the capacity analysis of (1) the Highway Capacity Standard, which is both NC DOT's Consultant and FHWA's analysis indicate 8 lanes are required to provide Level of Service D or better for the entire project (some sections will function adequately with 6 lanes); and (2) the CORSIM indicates some sections are identical whether 6 lane or 8 lane alternative is chosen, and it did not alter the NC DOT's previous recommendation of 8 lanes. In summary, based upon the CORSIM analysis and the additional

evaluated criteria, the NC DOT has determined an 8 lane basic freeway facility is needed for the I-26 Connector under the Transportation Improvement Project I-2513A.

Mr. Don Voelker, Assistant Director of Administration of the FHWA, explained that the NC DOT has met the test of the FHWA policy. He said they stand by the NC DOT decision for 8 lanes and considers the issue to be closed.

Representatives of the NC DOT and the FHWA responded to various questions and comments from Council, some being, but are not limited to: is the CORSIM a more accurate tool that other models; is the CORSIM a state-of-the-art analysis and more accurate that the FHWA manual; does the CORSIM analysis determine the Level of Service; did you use Asheville data on the CORSIM analysis or assumptions; who pays for aesthetics; will the money be there when the project begins; how can we communicate support to the NC DOT to move forward; what is the timeline for the specific stages; will citizens be allowed to have input at the design table; and why is the City's Traffic Engineer's interpretation of the CORSIM analysis different than the NC DOT's analysis.

Mayor Worley adjourned the meeting at 4:45 p.m.

Magdalen Bowlerson
CITY CLERK

Charles R. Worley
MAYOR

Wednesday – October 12, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "J" be removed from the Consent Agenda for discussion.

Mayor Worley asked that Consent Agenda Item "K" be removed from the Consent Agenda for discussion.

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 27, 2005, AND THE WORKSESSION HELD ON OCTOBER 4, 2005**

B. **ORDINANCE NO. 3284 - ORDINANCE DIRECTING THE HOUSING CODE COORDINATOR OF THE BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 34 CRESCENT STREET**

Summary: The consideration of an ordinance directing that the dwelling located at 34 Crescent Street be demolished and that all debris removed from the property, and an associated budget amendment, in the amount of $15,000.

The structure located at 34 Crescent Street (PIN No. 9649.15-54-5121) is a two-story wooden frame, severely dilapidated dwelling in danger of collapse. The framing of the dwelling is positioned on 4x4 posts and untreated stiff knees with no footings. The roof of the dwelling has several layers of asphalt shingles in various stages of decay causing water penetration and rot throughout the dwelling. The roof is collapsing in on the dwelling. The porches on the back and side of the house have structurally failed and are collapsing. Still photos further illustrate the condition of the dwelling (to be shown during the presentation).

A hearing was held on March 2, 2004, and a Findings of Fact and Order was issued, ordering the dwelling demolished. The owners, Mr. and Mrs. Eugene E. Galloway, have failed to comply with the order of demolition. Pursuant to N.C.G.S. sec. 160A-443, when an Owner fails to comply with an order of demolition, the City has the option of demolishing the dwelling upon compliance with certain due process requirements. The owners have acknowledged the urgency and need for the dwelling to be demolished by executing a Consent for Demolition for the City to

demolish and remove the dwelling. Further, the owners have executed a waiver of any and all further notice requirements pertaining to the demolition of the dwelling.

In order to file a lien against the property for the cost to the City to demolish and remove the dwelling, the City must have an ordinance directing the demolition of the dwelling as required by N.C.G.S. sec. 160A-443 and sec. 4-217(e)(3) of the City's Housing Code.

The following is an overview of some general information regarding this property:

- Buncombe County Tax value: $43,000
- Estimated cost to demolish dwelling: Approximately $15,000
- Notification of affordable housing agencies: Yes (no input received)

Pro: Removes blight and deterioration

Con: Allocation of public funds to demolish private property

This action promotes Goal #4 of the City's Strategic Operating Plan in that as a vacant lot centrally located in downtown Asheville, the lot is appropriate for consideration for the construction of affordable housing.

The Building Safety Department recommends adoption of the ordinance ordering demolition and removal of 34 Crescent Street, and an associated budget amendment.

ORDINANCE BOOK NO. 22 – PAGE 263

C. **ORDINANCE NO. 3285 - BUDGET AMENDMENT FOR THE DEMOLITION OF 34 CRESCENT STREET**

Summary: See Consent Agenda "B" above.

ORDINANCE BOOK NO. 22 – PAGE 265

D. **RESOLUTION NO. 05-186 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR RE-INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM**

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. The program is funded 80% through federal funds and 20% through City funds and administered by the N.C. Dept. of Transportation (NCDOT). To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; or (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983 the City has elected to execute an agreement with NCDOT to accomplish the required inspection thorough their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in

minimum inspection cost per bridge. It is anticipated the inspections cost to be $2,500 per bridge for the upcoming inspections. The City has 25 bridges requiring inspection this year, which bring the cost to $62,500. The City's share of 20% is $12,500. Funds for the City's share are budgeted in the Public Work's Contracted Services budget line.

Pros:

- Lower cost of bridge inspection due to high volume.
- Use of qualified engineering firms through NCDOT.
- Fulfills requirement for bi-yearly bridge inspections.
- Indicates areas for repair for Public Works staff.

Cons:

- None identified.

The Public Works Department recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with NCDOT for inspection of bridges.

RESOLUTION BOOK NO. 29 – PAGE 226

E. RESOLUTION NO. 05-187 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 25, 2005, TO CONSIDER THE VOLUNTARY ANNEXATION OF 75 LONG SHOALS ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on October 25, 2005, for property located at 75 Long Shoals Road.

Robert Hayes, owner of 75 Long Shoals LLC, has petitioned the City for the annexation of one lot owned by the LLC and located at 75 Long Shoals Road (PIN No. 9644.07-79-1146) containing 4.542 acres. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N.C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

This area is in the Long Shoals Road annexation that will become effective December 31, 2005, however, in order to proceed with plan approvals, the owner has requested earlier voluntary annexation.

The next step in this process is for City Council to fix the date for the public hearing on this matter. The petitioner has requested that the annexation be effective on the date of adoption of the ordinance if City Council decides to proceed with this request.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and approve future plans for this parcel as it is developed.
- Assists the developer of the property in achieving his desired development plan and schedule.

Cons:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the resolution setting the date for a public hearing on the annexation petition.

RESOLUTION BOOK NO. 29 – PAGE 227

F. RESOLUTION NO. 05- 188 - RESOLUTION DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF WATER SYSTEM REFUNDING REVENUE BONDS; REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE CITY'S WATER SYSTEM REFUNDING BONDS, SERIES 2005A; AND CERTAIN RELATED MATTERS

Summary: The consideration of a resolution directing the application to the Local Government Commission for approval of the City's Water System Refunding Bonds, 2005A and certain related matters.

The City has an opportunity to refund outstanding Water System revenue bonds and realize a substantial savings in annual debt service costs. In order to execute this refunding, City Council must adopt the resolution, giving staff direction to apply to the Local Government Commission (LGC) for approval of the refunding.

Specifically, the resolution: (1) Provides for the issuance of $42,000,000 in bonds to refund outstanding water revenue bonds, purchase municipal bond insurance and reserve fund policy in lieu of funding a debt service reserve and pay the cost of issuing the Bonds; (2) Appoints bond counsel, underwriters, underwriter's counsel and the trustee and escrow agent for the Bonds; (3) Directs the Chief Financial Officer to file an application with the LGC for approval of the issuance of Bonds; (4) Acknowledges that the City Council and the LGC have determined that the issuance of the Bonds is necessary or expedient, etc.

The ability to take advantage of this refunding opportunity, which will produce significant annual debt service savings, is a key benefit derived from achieving our strategic goal of *establishing an improved governance structure and model for the Water System.*

Pros:

- Based on preliminary estimates, the Water System will realize a total of $3.87 million in savings, or approximately $200,000 per year in annual debt service costs.

Cons: None noted.

City staff recommends City Council adopt the resolution directing the application to the Local Government Commission for approval of the City's Water System Refunding Bonds, 2005A and certain related matters.

RESOLUTION BOOK NO. 29 – PAGE 230

G. RESOLUTION NO. 05-189 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON CIRCLE STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Circle Street in the East End community.

A bid has been received from Brandon Knolls LLC in the amount of $1,400 for the purchase of land on Circle Street in the East End Community.

The land on Circle Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plicso. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a trapezoidal shaped lot comprising 0.03 acre±. From street grade it slopes down substantially to the rear property line and is covered with non-significant trees, vines and brush. It is zoned RM-8, but the size, shape and topography render the lot unsuitable as a home site. The tax value is $1,400. The bid from Brandon Knolls LLC, owner of an adjacent parcel is in the amount of $1,400. Brandon Knolls LLC proposes to assemble enough property to construct a small affordable home for sale.

This action complies with the City Council Strategic Operating Plan in that the proposed construction will increase the supply of affordable housing and encourages infill development.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A non-buildable lot will be assembled with adjoining land to provide an affordable home site.
- The sale of this lot to Brandon Knolls will facilitate infill development.

Planning & Development staff recommends adoption of the resolution, which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 29 – PAGE 233

H. RESOLUTION NO. 05-190 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON HAZZARD STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Hazzard Street in the East End community.

A bid has been received from Brandon Knolls LLC in the amount of $7,000 for the purchase of land on Hazzard Street in the East End Community.

The land on Hazzard Street was one of ten (10) parcels conveyed to the City by the State in 1983, after the construction of South Charlotte Street, as part of a municipal agreement providing for conveyance of residues to the City. A slightly irregular, rectangular shaped lot comprising 0.07 acre±, it is generally level with street grade and mostly covered with grass. It is zoned RM-8, but the size renders the lot unsuitable as a home site. The tax value is $7,000. The bid from Brandon Knolls LLC, owner of property in the vicinity is in the amount of $7,000. Brandon Knolls LLC proposes to assemble enough property to develop the lot consistent with the zoning.

This action complies with City Council's Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A sub-standard lot will be assembled with adjoining land to provide a developable site.
- The sale of this lot to Brandon Knolls will facilitate infill development.

Planning & Development staff recommends adoption of the resolution, which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 29 – PAGE 234

I. RESOLUTION NO. 05-191 - RESOLUTION ACCEPTING STONEBRIDGE DRIVE IN THE HAW CREEK AREA AS A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Stonebridge Drive as a publicly maintained street in Haw Creek area.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Stonebridge Drive is a developer-constructed street that has an average paved width of 19.5 feet and a length of 0.35 miles. Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Stonebridge Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Advantages:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Challenges:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Stonebridge Drive in Haw Creek area as a City maintained street.

RESOLUTION BOOK NO. 29 – PAGE 235

J. BUDGET AMENDMENT TO PROVIDE FOR LEGAL SERVICES

This item was removed from the Consent Agenda for individual discussion.

K. RESOLUTION ESTABLISH TASK FORCE REGARDING THE ASHEVILLE CIVIC CENTER

This item was removed from the Consent Agenda for individual discussion.

L. RESOLUTION NO. 05-193 - RESOLUTION AMENDING THE RESOLUTION OF CLOSURE FOR WEST GREENBRIAR ROAD

Summary: The consideration of a resolution modifying a previous resolution closing West Greenbriar Road

In September of 2003, the City Council adopted a resolution closing a portion of West Greenbriar Road in West Asheville. This road ran through the old Parkwood apartment complex in West Asheville, which is currently developed as a business park. It is located just south of Patton Avenue. Pursuant to discussions with the applicant and owners, the closing was to be subject to a condition that an easement for public access be maintained across the property.

The resolution as signed did not reflect this condition accurately, but rather required the construction of a public road. However, rather than amending the resolution at that time, the applicant and staff agreed to wait on some of the build-out on the site to be completed, and amend the resolution to reflect conditions on the ground.

The plat submitted for redevelopment of the property, and approved by the City, shows a public right-of-way providing pedestrian and vehicular access between Bent Street and Parkwood Road, which remain public streets. Accordingly, even though the right-of-way is not dedicated to the public, to the extent that the City's approvals (including building permits and certificates of occupancy) were based on the existence of the right-of-way, it may not be closed or altered without the City's approval. Also, the right-of-way may be enforced by the abutting property owners.

The resolution of closure contains other conditions that have been satisfied as well. With this in mind, the developer and property owners are requesting that the resolution adopted in 2003 be amended to delete the condition that a public road be constructed across the property, which was never intended, and that the closing be made unconditional.

Staff recommends that the resolution of closure (Resolution No. 03-165) be amended to remove the conditions.

RESOLUTION BOOK NO. 29 – PAGE 242

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

ORDINANCE NO. 3286 - BUDGET AMENDMENT TO PROVIDE FOR LEGAL SERVICES

Summary: The consideration of a budget amendment, in the amount of $50,000, to provide for legal services.

This past summer, the Water Agreement terminated, and operation of the water system became the City's responsibility. Almost coincident with the June 30 effective date of the termination of the agreement, the North Carolina General Assembly adopted Sullivan Acts II and III, which limit the City's ability to operate the water system as a public enterprise. These restrictions apply only to the City of Asheville.

The Council has authorized the filing of a declaratory judgment action by the City against the State of North Carolina. The complaint, filed in Wake County on August 10, asks the court to determine the constitutional validity of these local acts. The City has engaged a Charlotte law firm to handle this litigation. This proposed budget amendment will increase the City's legal services budget by $50,000 to cover the City's costs for the lawsuit. It is difficult to estimate with accuracy how much will ultimately be required, and we may have to make a supplemental request later in the fiscal year. However, in the current budget crunch – precipitated in part by the very legislation we are challenging – we thought it better to make these requests incrementally.

City staff recommends City Council adopt the budget amendment to provide for legal services.

Vice-Mayor Mumpower felt it would be less than responsible to accept the legislation that has been placed uniquely upon Asheville. Council doesn't like spending this money, but we have no choice and we will stand up to what we feel is an abusive intrusion on local governmental affairs.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3286. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 267

RESOLUTION NO. 05-192 - RESOLUTION ESTABLISH TASK FORCE REGARDING THE ASHEVILLE CIVIC CENTER

As a result of City Council discussion of October 4, 2005, a task force of the Asheville City Council be, and is hereby, established, to be named the "Asheville Civic Center for the 21st Century Task Force," and consisting of the following three City Council Members and representatives of community organizations:

a. Mayor Charles Worley
b. Council Member Terry Bellamy
c. Council Member Jan Davis
d. Member of the Buncombe County Board of Commissioners
e. Member of the Tourism Development Authority
f. Member of the Asheville Area Center for the Performing Arts
g. Civic Center Commission

The members of the Task Force shall serve a six month term for purposes of recommending a specific policy direction for the City Council.

Mayor Worley felt it may be more appropriate for Council to appoint someone other than him to this Task Force, since he will no longer be a seated member of City Council.

Council members spoke in support of retaining Mayor Worley on this Task Force due to his knowledge and experience in the Civic Center.

City Manager Jackson explained the Civic Center Task Force's Action Plan, which includes a meeting agenda and schedule; and an extensive communications plan. The Task Force's final recommendation and report will be delivered to City Council by he end of February 2006.

Councilman Newman moved to keep Mayor Worley on this Task Force. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER REZONING PROPERTY AT 309 SUMMIT STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

ORDINANCE NO. 3287 - ORDINANCE TO REZONE PROPERTY AT 309 SUMMIT STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Worley opened the public hearing at 5:13 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property at 309 Summit Street from RS-8 Residential Single-Family High Density District to Office District. This public hearing was advertised on September 30 and October 7, 2005.

Ms. Cogburn said that the subject property is located on Summit Street, one block off of Hendersonville Road. The property currently contains a single-family home. The property is a through lot, abutting both Summit (to the west) and Reed Street (to the northeast) and is one lot removed from the right-of-way for the Interstate 40 exit ramp.

The property is bordered on two sides by property zoned Office and on the other two sides by property zoned RS-8.

The land uses in the area are varied. Immediately to the north is a Masonic Lodge and vacant parcels associated with this use. To the west, are the developments along Hendersonville Road (hotels, restaurants) and most directly across from the subject property, medical office buildings that are accessed via Summit Street. Immediately to the south are single-family homes (before reaching the highway) and to the east, the land use is single-family in nature. The land uses that currently have access off of Summit Street include single-family and multi-family residences, a church, the lodge and medical offices.

Developing this property for office uses would involve some challenges without combining this property with additional land. The lot does conform to Office District standards. However, the lot is relatively narrow, so that compliance with all the parking and landscaping requirements would be challenging. As Reed Street is a residential street, it is unlikely that access for an office use would be permitted off of Reed.

Office zoning does allow for single-family detached dwellings, so the existing structure would not become nonconforming with this rezoning.

Pros

- The property is bordered on two sides by nonresidential uses and is on a street that is lined with nonresidential uses on one side.
- The property is bordered on two sides by property zoned Office.
- The proximity to the highway and Hendersonville Road (and the uses located along this thoroughfare) make this a less desirable residential location. Noise from the surrounding uses has been an issue as Hendersonville Road has developed more intensely.
- The current use as a single-family dwelling would remain a conforming use.

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Cons

- If the use were converted to office, there would be a loss of a single-family house in this area.
- Development of this lot for office purposes would be challenging without combining this property with additional land.
- The rezoning could be viewed by some as an incursion of nonresidential uses into a residential area.

The Planning and Development Staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on September 7, 2005, the Planning and Zoning Commission unanimously (6-0) voted to recommend approval of this rezoning to the City Council.

Ms. Dawnn E. Vaughan, property owner, spoke in support of this rezoning request.

Mayor Worley closed the public hearing at 5:19 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3287. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO A PREVIOUSLY APPROVED MASTER PLAN ASSOCIATED WITH THE FORMERLY KNOWN BROTHERTON COMMONS PROJECT, NOW KNOWN AS GREENWOOD POINT, TO ALLOW FOR A MULTI-FAMILY PROJECT LOCATED AT VIRGINIA AND BROTHERTON AVENUES

ORDINANCE NO. 3288 - ORDINANCE AMENDING A PREVIOUSLY APPROVED MASTER PLAN ASSOCIATED WITH THE FORMERLY KNOWN BROTHERTON COMMONS PROJECT, NOW KNOWN AS GREENWOOD POINT, TO ALLOW FOR A MULTI-FAMILY PROJECT LOCATED AT VIRGINIA AND BROTHERTON AVENUES

Mayor Worley said that this public hearing was held on September 13, 2005, and the matter was continued until this date in order to give the developer an opportunity to try to mitigate some of City Council's concerns.

City Attorney Oast said that Mayor Worley was not present at the September 13 meeting, however, it was his opinion that it would be appropriate for the Mayor to participate in the vote on this matter provided he studied the staff report and reviewed the minutes. Mayor Worley acknowledged that he had.

Ms. Shannon Tuch, Urban Planner, said that the applicant, the Hunter Group working with Neighborhood Housing Services (NHS), is requesting an amendment to the Master Plan and Conditional Use Permit associated with a Conditional Use Rezoning from RS-8 to RM-8/Conditional Use for the Brotherton Commons project located in West Asheville on the corner of Virginia Avenue and Brotherton Avenue (Attachment to City Exhibit 3 – Aerial Map; City Exhibit 6).

Ms. Tuch then reviewed with Council the following information, which was requested at the September 13 meeting:

Water: The City Water Resources Department has responded that a new 6" water line was installed for the area approximately 2 years ago. The water flow is sufficient for domestic service for the number of multi-family units proposed. The flow at the nearest hydrant was checked 3 separate times (Mar 04/ Aug 05/ Sept 14, 05) and flow was recorded to be between 600 to 780 gallons per minute at 20 PSI. This is sufficient for the proposed residential use of this site.

In the event that lines are relocated due to the N.C. Dept. of Transportation (NCDOT) road widening plans, NCDOT will contract out the relocation and normally increases the size of lines (to accommodate future growth). The increase in the size of lines normally increases flow and that would result in an improvement to water service.

Fire: A flow of 1250 gpm is required for serving the 3-story buildings without additional fire protection. As this site averages around 700 gpm, any wood-frame structure 3-stories or greater requires the addition of sprinklers or the addition of extra fire walls that reduce floor areas to no more than 3600 square feet. The need to mitigate is not uncommon and sprinkler systems are the more common solution, although the applicant hasn't yet decided on the preferred option. Sprinklers have been used in both the Appeldoorn and Campus Crest developments, for example.

Traffic: According to traffic engineering trip generation standards, a condominium/ townhome unit generates 40-45% less traffic than an average single family home (primarily due to smaller family sizes, fewer drivers, more singles, etc.). The proposed increase in density from the prior approved project will increase the trips generated during the peak hour from 17 (Brotherton) to 24 (Greenwood). Developing this site with single family homes would require removal of some acreage for right-of-way (20%) and stream buffer (1.3 acres) to determine development potential. If you then developed the balance of the property at 4 units an acre (pretty typical for the area), that would produce approximately 20 homes. Twenty homes would generate approximately 20 trips in the peak hour. Building to the zoned density, less the right-of-way and stream buffer areas, could result in up to 40 homes, with an associated 40 peak hour trips.

The addition of the road widening to improve the on-street parking situation would result in less congestion while the on-street parking would still provide a modest amount of traffic calming and improved pedestrian environment on Virginia Avenue. Virginia Avenue is suitable for traffic calming measures with a traffic count of around 1,700 per day, and an 85% speed of 35 (posted 30). It is wide enough to accommodate speed humps or islands, depending on neighborhood preference. Using the Appeldoorn model of $500/affordable unit for traffic calming, the City could contribute $12,000 for traffic calming in support of affordable housing. This amount would likely accommodate several speed humps or one island on Virginia Avenue. As with the Appeldoorn case, the developers' financials do not accommodate any traffic calming contribution so the allocation would be from the City.

Mass: The architect for the project and staff had stated during the public hearing that mass of the buildings will be mitigated by the existing topography and position on site. The architect has produced the elevation drawings (City Exhibit 7) demonstrating that much of the building mass will not be visible from the street.

Density: The most recent plan presented to Council proposed to remove the 1.71 acre northern lot from the development proposal in the interest of limiting liability insurance and maintenance fees that would be passed onto the homeowner's through association fees. The

applicant has agreed to retain the upper lot as part of the project, keeping it in its current single family zoning classification and reserving it for open space. Including this upper lot would reduce the overall density from 7.8 units/acre to 6.1 units/acre and provide additional open space for the residents of the development.

Density comparison:

Brotherton Commons - 32 units on 7.2 acres = 4.4 units/acre
Greenwood Point - 44 units on 7.2 acres = 6.1 units/acre
Appeldoorn - 168 units on 11.4 acres = 14.7 units/acre
Prospect Terrace - 21 units on 2.6 acres = 8.1 units/acre

Open Space: The Greenwood Point project proposes:

- 13,400 square feet (.30 acres) of active open space, the largest area being over 8,300 square feet. Note: 8,300 square feet is enough to hold 1 basketball court plus 1 volleyball court side by side.
- Over 1.3 acres of undisturbed green space along a riparian corridor on the east side of the site.
- Over 1.7 acres of undisturbed open space on the north side of the site.

In addition to providing a 1,000 square foot community center, the applicant will work with the condominium association to provide amenities identified by the association in the area reserved for active open space. Ideas discussed with the applicant include an association "playground-build" with the applicant providing materials and technical advice to the residents as they design and construct their own playground as part of a community building effort.

Mayor Worley opened the public hearing at 5:30 p.m.

The following individuals spoke against the proposed amendment to the Master Plan for various reasons, some being, but are not limited to: Virginia Avenue is narrow and increased traffic will endanger the children that live in the area; no sidewalks on Virginia Avenue; lack of existing water pressure; project is not in scale with the rest of the neighborhood; improvements made will be to the project, not benefiting the surrounding neighborhood; speeding on Virginia Avenue; the additional 1.7 acres are not suitable for recreation;

Ms. Marsha Hammond, resident on Virginia Avenue
Mr. Patrick Stacy, resident on Virginia and Brotherton Avenues
Mr. Carlos Montgomery, resident on Virginia Avenue
Ms. Brown, resident on Drake Street
Mr. Brown, resident on Drake Street
Resident at 115 Virginia Avenue
Mr. Leslie Hammond Jones, resident on Virginia Avenue
Resident on Hubbard
Ms. Ballew, resident on Virginia Avenue
Mr. Anthony Jones, resident on Virginia Avenue (Neighborhood Exhibits 2 – Photos)

Ms. Christy Carter, resident on Langwell Avenue, expressed her support for this project. She felt that this is an avenue to get traffic calming on Virginia Avenue.

Mr. Gerald Green, former Board member of Neighborhood Housing Services, spoke in support of the amendment in that the developer has met the Unified Development Ordinance (UDO) standards and will continue to work with the neighborhood to address their concerns. He stated that a multi-family type condominium development generates less traffic than single-family.

Mr. Christopher Slusher, Executive Director of Neighborhood Housing Services, spoke in support of the project and addressed the concerns which Council brought up during the September 13, 2005, public hearing.

Mr. Michael Soren, architect on the project, spoke in support of the amendment. He urged Council not to require this developer to solve the bigger community issue of traffic on Virginia Avenue. He felt this is a good solid project that will increase the property values in the area.

Mayor Worley closed the public hearing at 6:06 p.m.

In response to Councilman Dunn, Community Development Director Charlotte Caplan explained who has paid for the $307,000 in infrastructure on the property.

Ms. Tuch responded to various questions/comments from Council, which include, but are not limited to: how were the traffic counts arrived at; what type of road improvements are proposed and where are those road improvements scheduled to be located; why isn't the developer just building recreational facilities for the project; how big is the open space inside the project area; if the City contributes $12,000 for traffic calming, and how will the City determine the type of traffic calming measures necessary on Virginia Avenue.

Councilman Dunn supported affordable housing, however, he felt this project did not fit in with the scale of the neighborhood and would cause an increase of traffic on Virginia Avenue. In addition, he felt that the proposed open space in the project was not big enough for children to play.

Councilman Newman moved for the adoption of Ordinance No. 3288, subject to all outstanding TRC conditions being met. This motion was seconded by Councilwoman Jones.

Councilman Newman felt this project does meet the standards and felt that the density per acre is not unusual for older residential neighborhoods or streets the size of Virginia Avenue. He knew of many other developments in the City that doesn't have as much open space as this project. He also agreed with the developer to let the homeowners of the project decide the type of recreational facility they would like to have.

When Councilwoman Bellamy questioned if we could use the Housing Trust Fund monies for sidewalks, Planning & Development Director Scott Shuford suggested Council direct staff to come back with options for sidewalks.

In response to Councilwoman Bellamy, Mr. Slusher said that they would be willing to develop a passive park. In response to that, Mr. Shuford suggested the following condition: "That the area set aside for passive recreation shall be cleared to create opportunities for improved access including the possibility of stairs being installed in some of the steeper areas."

In response to Councilwoman Bellamy, Mr. Slusher said that they will be committed to talking with the neighborhood about other recreational needs for the area children.

Councilman Newman and Councilwoman Jones agreed to amended their motion to include the following additional condition: "That the area set aside for passive recreation shall be cleared to create opportunities for improved access including the possibility of stairs being installed in some of the steeper areas."

Vice-Mayor Mumpower was appreciative of Neighborhood Housing Services trying to do something with this land, however, he did not feel they met the standards relating to traffic and being in harmony with the neighborhood.

Councilman Davis also felt that this project was out of character with the surrounding neighborhood and would not be supportive of the amendment.

The amended motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Councilwoman Bellamy moved to direct City staff to bring back options for (1) funding $12,000 for traffic calming; and (2) funding options for sidewalks on Virginia Avenue. This motion was seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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At 6:46 p.m., Mayor Worley announced a recess.

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 6 EDWIN PLACE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED BED AND BREAKFAST HOMESTAY

Mayor Worley opened the public hearing at 7:21 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of conditional zoning for property located at 6 Edwin Place from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Zoning for a proposed bed and breakfast homestay. This public hearing was advertised on September 30 and October 7, 2006.

The applicant, Jean M. Cassidy, owns a residence located in an RS-4 zoning district within the corporate limits of the City of Asheville and seeks to rezone the property to RM-6 in order to operate a bed and breakfast homestay. The lot is 0.31 acres in area and is located on the south side of Edwin Place.

Bed and breakfast homestays are a use by right subject to special requirements in the RM-6 district, and the proposed project appears to meet all the requirements. Operation of the bed and breakfast homestay would require no changes to the exterior of the existing structure, and the rented rooms would use less than 25 percent of the residence's 2,850 square feet of floor area. The applicant has predicted an average of six visitors a month, typically staying 2-4 days each.

While the property is located in a block face which is zoned entirely RS4, there are a variety of other zoning districts in close proximity. The lot is faced by multi-family zoning districts to both the front and rear. Approximately 30% of the lots on this block face are occupied by multi-unit dwellings (existing nonconformities).

At their July 18, 2005, meeting, the Technical Review Committee (TRC) reviewed the Conditional Zoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows:

1. A combination of vegetation and fence screening meeting type A buffer requirements will be required along the south and west property lines, and a type B buffer will be required along the east property line.
2. Concept plan "title block" lacks the following information: map of the vicinity, date of drawing, zoning district, and parking calculations.
3. Information about driveway and pedestrian paths, setbacks, encroachments into setbacks, parking lot layout, location of nearest fire hydrant, accessibility compliance, street trees, and vehicular use area plantings must be provided.
4. Applicant will need to provide floor plan of building with each room existing use and new use identified.
5. The owner must contact water resources for information regarding required backflow prevention on all commercial water taps.
6. A separate driveway permit must be applied for.
7. Disabled parking will be required, and location depicted on the plans.
8. Show all existing and proposed utilities on the plan.

At their August 3, 2005, meeting, the Planning and Zoning Commission voted 4-3 to deny the request. Two of the four Commission members who voted against the rezoning explained their reasoning; their chief concerns were compatibility and the possibility of a detrimental effect on the neighborhood. The applicant subsequently decided to appeal the Planning & Zoning Commission decision.

Staff has received a number of communications about the proposed rezoning from neighbors, both those for the conditional rezoning and those against. The current and previous presidents of the Grove Park/Sunset neighborhood association have expressed their resistance. The primary reasons for opposition have been concerns about encroachment, traffic, spot zoning, and the applicant's having previously operated this business without a zoning permit (the applicant has since suspended operations). Those in support argued that the business would be beneficial for the community.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards. Staff's review indicates that all seven standards are met as proposed in the conceptual site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** *The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.*

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** *The proposed use is highly compatible with the surrounding natural features and topography, in that the site would hardly be changed at all from its existing state. The only significant changes to the site required thus far would consist of additional plantings and a pervious surface over two parking spaces.*

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** *Staff does not expect that the proposed use*

would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction..

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** *The proposed project would be in harmony with these characteristics of the area. The existing residence fits in seamlessly with the surrounding properties, and the proposed use would change very little about the appearance or character of the site.*

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** *The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the City Council in 2000. The plan also recognizes the "New Urbanism" concept and includes as an appendix this movement's charter, which mentions tenets such as the promotion of neighborhoods with a variety of land uses and increased land use intensity. Approval of the proposed plan could perhaps encourage a small business, but excepting that, it would neither support nor hinder the goals and tasks of the Strategic Operating Plan. Thus, it can be said that the proposed use would generally conform to these plans and policies.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** *The project's location near Charlotte Street ensures access to transportation facilities and other services. Transit route 5 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.*

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** *The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.*

Pros

- Proposed use is highly compatible with surrounding area.
- Bed and breakfast homestays have successfully coexisted with residential uses in other neighborhoods.
- The property would maintain its existing residential appearance.

Cons

- Spot zoning has been raised as an issue.

Staff recommends approval of the Conditional Zoning based on the submitted concept plan subject to the conditions listed in the TRC staff report.

Ms. Jean Cassidy, applicant, said that she preferred to remain RS-4, however, she had to apply for conditional zoning since that was the only option to allow her to maintain her homestay. She said that in 1999 she came to the City to find out what she needed to operate a homestay at 6 Edwin Place. She was told she didn't need anything because she hadn't taken in enough yet from the business. She has had limited homestay over previously years while she restored the house. In 2004 she completed the restoration totaling approximately $100,000. She bought a privilege license from the City and was told she needed nothing else, except to have fewer than five rooms. In June 2005, she then received a letter stating that she was in violation of the zoning ordinance. She said that the surrounding properties are multi-family. Her homestay resembles a more of a single-family residence than those around her. The homestay is not just a smaller version of a Bed & Breakfast Inn, but it is an in-home business with an owner/manager on site.

The conditional zoning will restrict what she can do with this property and it will not increase the traffic on Edwin and will not open the doors for businesses in the area. She urged Council to allow her to stay open while discussions continue.

The following residents spoke in opposition of the conditional zoning for various reasons, some being, but are not limited to: Grove Park/Sunset Neighborhood Association has consistently over the years opposed Bed & Breakfast Inns and similar ventures in their residential area; conditional zoning would negatively impact the neighborhood; the multi-family housing in the area is just grandfathered in; Edwin Place is shown to be single-family; the area has many non-confirming multi-family units and could readily reach a tipping point as incremental changes to the RS-4 are made; rezoning of this will result in spot zoning; rezoning this property will limit the rights of many neighboring property owners because those within 500 feet of a Bed & Breakfast cannot apply for a Bed & Breakfast on their property; a Bed & Breakfast homestay is not affordable housing; a Bed & Breakfast homestay is for transient visitors which will increase traffic in the neighborhood; there are plenty of guest accommodations in the area already; and this rezoning will diminish the residential use and allow commercial intrusion into the neighborhood:

Ms. Grace Curry, President of the Grove Park/Sunset Neighborhood Association
Mr. Kevin Huston, resident on Lawrence Place
Ms. Barber Melton, member of Coalition of Asheville Neighborhoods
Ms. Jane Mathews, area resident
Ms. Barbara Hodgson, resident on Edwin Place
Mr. Dennis Hodgson, resident on Edwin Place

Mayor Worley closed the public hearing at 7:51 p.m.

A short discussion was held whether this would constitute spot zoning and what would happen if the owner sells the property.

Councilwoman Bellamy moved to not conditionally rezone the property from RS-4 to RM-6/Conditional Zoning. This motion was seconded by Councilman Davis and carried unanimously.

D. **PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON CATAWBA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR A PROPOSED GREENWAY, OVERLOOK AND OUTDOOR EXHIBIT SPACE FOR THE PROPOSED HEALTH ADVENTURE PROJECT**

ORDINANCE NO. 3289 - ORDINANCE TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON CATAWBA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR A PROPOSED GREENWAY, OVERLOOK AND OUTDOOR EXHIBIT SPACE FOR THE PROPOSED HEALTH ADVENTURE PROJECT

Mayor Worley opened the public hearing at 8:04 p.m.

Urban Planner Alan Glines said that this is the consideration of conditional zoning for property located on Catawba Street from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning for a proposed greenway, overlook and outdoor exhibit space for the proposed Health Adventure project. This public hearing was advertised on September 30 and October 7, 2006.

The Asheville 2025 Development Plan recommends that key corridors (such as Broadway) be redeveloped with a higher intensity, mixed use pattern of development. The proposed Health Adventure project would be consistent with these objectives and encourage additional development of the Broadway corridor. The plan also specifically notes the completion of the Reed Creek Greenway as a goal for the City.

The Strategic Operating Plan encourages greenway development in throughout the community. The plan also lists several goals relating to improving gateways and corridors into the downtown. The Health Adventure project could be a positive step toward achieving these goals.

This property has been in City ownership since a portion of the parcel was donated to the City from the Penick family in the late 1960's. The property has been used as the City leaf mulch pile for many years. Over the last few years the Health Adventure has planned an expansion and relocation from their existing downtown site. They were able to purchase the neighboring eight acre parcel a few years ago. The Health Adventure approached the City about acquiring the 'leaf pile' parcel to combine with their land. In 2004 City Council agreed to sell the parcel to be used for the Health Adventure expansion. The conditional zoning request to Institutional District will provide space for the Health Adventure expansion but will limit the use of the City owned parcel to providing outdoor exhibit areas, structures to support these exhibits, greenway and overlook areas and landscape screening. The Reed Creek Greenway section will be located at the outer edges of the property closer to Catawba Street and Broadway. The museum exhibit areas will be located in from the corner.

The specific development plans for the entire Health Adventure project site will be reviewed by the City of Asheville Technical Review Committee (TRC) when they are formally submitted. Plans may be submitted later in the year but this is dependent on the Health Adventure internal schedule. The Health Adventure site development will comply with City development standards.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The development of the site will comply with all codes and regulations and will not create a public hazard.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use of the site will be a low impact development in a mostly natural state. The project there will be compatible and complement the significant natural features of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property is not expected to injure the value of adjoining or abutting property. The use of the property will provide a community amenity.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed use of the property will be in harmony with the scale, bulk, coverage and density and character of the neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The Comprehensive plan notes the completion of the Reed Creek Greenway as an outlined goal for the City. This parcels is partially be used to provide a section of the greenway. In addition, the Health Adventure museum is an enhancement to the quality of life for the community.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The parcel has suitable infrastructure in place to serve the requirements of the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed use is not expected to create a traffic hazard.

Pros

- Supports the use and expansion of the Health Adventure Museum
- Provides space for the Reed Creek Greenway
- Transfer of the property retains its use and access by the public

Cons

- Could facilitate driveway access from Catawba (could be a pro)

At their September 7, 2005, meeting, the Planning and Zoning Commission voted 6-0 to recommend in favor of the rezoning request. Staff concur with that recommendation with TRC comments as conditions.

A resident on Cumberland Circle questioned what measures would be in place to ensure the developer uses the property for the specific purposes outlined.

A resident on Panola Street felt that the Health Adventure will be environmentally aware of what they are doing, however, she wanted to make sure there are good buffers for the neighborhood. In addition, she suggested the service entrance be moved from the top of Catawba closer to Broadway. She felt Council should deny this request until they have those type plans in place.

Mr. Michael Hunter, resident on Panola Street, agreed that the service entrance should be moved. He felt Catawba Street is narrow with no sidewalks and drainage ditches on both sides. Residents will be affected by traffic and urged Council to deny this rezoning.

The following individuals spoke in support of the conditional zoning for various reasons, some being, but are not limited to: this property will be improved at their cost, making it a safer place for children to play and bicycle; the greenway will be built at their cost; the Health Adventure's mission is about safety and community values; the Health Adventure is willing to continue to work with the neighbors; the leadership of the Health Adventure is one of stewardship and that will guide their work; the Health Adventure has over 40 years of success and this project will match their quality work;

Mr. Sam Stickney, Chairman of the Board of the Health Adventure
Volunteer and Member on the Board of Directors of the Health Adventure
Ms. Jane Mathews, partner on architectural team for the Health Adventure
Mr. William Wolcott, member of the Board of Directors and Chairman of the Building Committee

Mr. John Spake, member of the Board of Directors and Building Committee for the Health Adventure
Mr. Tom Boyette, Chief Executive Officer of the Health Adventure

Mayor Worley closed the public hearing at 8:23 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

City Attorney Oast stated that the City of Asheville does not have a contractual obligation to rezone this property.

There was a brief discussion about how the Health Adventure would continue to work on issues raised regarding buffering for the neighborhood and the impact of the Catawba Street service entrance.

Vice-Mayor Mumpower moved to approve Ordinance No. 3289 to conditionally zone property at Broadway and Catawba to Institutional District/Conditional Zoning with uses limited to those noted above and subject to the TRC conditions being met. This motion was seconded by Councilman Dunn.

A brief discussion surrounded a possible change to the service entrance in that it would be angled away from the front door of more homes.

Vice-Mayor Mumpower moved to amend his original motion to not only conditionally zone the property to those uses noted above and subject to the TRC conditions being met, but to also permit the developer to change the angle of the service entrance from the conditionally zoned property on Catawba Street. This amendment was agreed to by Councilman Dunn with said amended motion being carried unanimously.

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E. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON DOGWOOD ROAD FROM INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3290 - ORDINANCE TO REZONE PROPERTY ON DOGWOOD ROAD FROM INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley opened the public hearing at 8:47 p.m.

Urban Planner Blake Esselstyn said that this is the consideration to rezone property on Dogwood Road from Industrial District to RS-4 Residential Single-Family Medium Density District. This public hearing was advertised on September 30 and October 7, 2006.

Mr. Esselstyn said that as property is located at the westernmost end of the extraterritorial jurisdiction area (ETJ), much of the property around it is not zoned.

One of the City of Asheville's adopted Smart Growth Land Use policies noted in the ACDP 2025 states that Industrially zoned land should be reserved for industrial purposes. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our

area. It further stresses the importance of strengthening the current zoning ordinance to preserve and maintain selected existing areas of the City that allow industrial type uses.

An application for rezoning of these same two parcels to RM-8 was submitted in January of this year and withdrawn in February, before any public hearing.

The subject site is located in the westernmost section of the City's ETJ area, less than ½ mile off of Smoky Park Highway on Dogwood Road. The property consists of approximately 31 acres and is currently zoned Industrial. The majority of the property is vacant with the exception of a single-family dwelling that is located on the smaller parcel within the site.

Surrounding land uses and zoning include manufactured housing, zoned RS-4 and Industrially zoned land containing multiple dwelling units along the east side of property. Properties to the north, south and west of the site are all outside of the City's Jurisdiction. Land uses, classified by Buncombe County, indicate vacant rural residential land to the north, agricultural land with multiple dwellings to the south and agricultural land plus a single dwelling unit to the west.

The subject site is located within a very low-density rural area of the City's ETJ. The lots surrounding the property range in acreage from less than one acre to 72 acres. The property was zoned Industrial as part of the 2001 ETJ Expansion area for Sardis Road and Brevard Road. The entire area off of Dogwood Road identified for Industrial zoning consists of approximately 103 acres. It was targeted for industrial zoning based on its vicinity to major road facilities (Smokey Park Highway-19/23, and I-40 where the MPO has identified the need for a new interstate interchange at Dogwood Road), the amount of contiguous acreage and the gentle sloping topography of the land making it suitable for industrial development.

The applicant has applied for a rezoning of the lot from Industrial to RS-4 (Residential Multi-family Medium Density District). Based on acreage and density permitted within the RS-4 district, as many as (approximately) 120 units could be permitted. The RS-4 zoning district was intended to establish a medium density for single-family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living.

The purpose of the Industrial zoning district is to reserve land for existing and future industrial activities. Sites are located, where possible, near existing infrastructure and transportation facilities, and also where surrounding land uses provide support to the industrial development and its employees. Development standards within the district were intended to ensure that land uses outside of the Industrial zoning area are not adversely affected by the negative impacts of industrial uses.

At their September 7, 2005, meeting, the Planning and Zoning Commission approved the rezoning by a 5-1 vote. Four neighbors spoke to express their preference for residential use as opposed to industrial.

Information about this application has been passed on to the City's Economic Development Advisory Committee.

Pros

- A residential development in this vicinity would be close to major road facilities, shopping venues and potential employment centers.
- RS-4 zoning would be consistent with the area to the northeast of this property.
- Because the topography of the land is relatively flat, a residential development could be designed to minimize land disturbance.

Cons

- A rezoning of the lot to primarily residential development would go against the practices and policies of several adopted City plans supporting future industrial development.
- The rezoning of the lot would result in the loss of valuable land well suited for a large-scale industrial development that has the potential of generating jobs and contributing to the local economy's tax base.
- Any development on the lot would require a significant extension of public utilities to service the site.

Due to importance of industrial uses to the local economy and given the shortage of land within the City's jurisdiction that is suitable for industrial type development, it has been a practiced policy, based on adopted City Plans and Smart Growth policies, to discourage the rezoning of large tracts of land zoned Industrial.

Based on the above policy and the suitability of this land for industrial uses, staff feels strongly that this rezoning is not in the best interests of the community.

Mr. Gerald Green, representing the property owner, urged Council to rezone this property in that to convert the property to Industrial would require the extension of water and sewer and grading of the property. He reviewed with Council a chart showing the industrial land absorption rates, prices and current stock in Buncombe County. He noted that information provided by the Chamber of Commerce shows that industrial uses typically look for land that is close to an interstate or other major collector road, has good access, is graded, and has utilities installed and internal roads constructed. In addition, the N.C. Dept. of Transportation staff said that it would be at least 10 years before the interchange at Dogwood Road and I-40 would be built.

Mr. Bob Penland, President of an area Homeowners Association, spoke in support of rezoning the property to residential in that they would prefer to have homes in their backyards and not industrial uses.

Ms. Joanne Young, area resident, felt it was out of character for that property to be zoned Industrial and urged Council to rezone it to residential.

Mr. James Harkins, resident on Valleyview Drive, spoke in support of rezoning the property to residential. He felt the industrial zoning will devalue adjacent properties.

Mayor Worley closed the public hearing at 9:04 p.m.

Upon inquiry of Councilman Newman, Economic Development Director Sam Powers said that in general what we see in Buncombe County are projects that are looking for buildings, more so than for green sites. However, he felt it is important to preserve and maintain the limited amount of property that is suitable for industrial development. This property is not fully serviced, but generally speaking the property lends itself to industrial development, especially with the property's location close to a proposed interchange. He pointed out that we can zone the property Industrial, but if the owner is not willing to make it available to be an industrial site, then it doesn't really do us any good. The Economic Development Advisory Committee did receive this information and agreed it was a tough issue in trying to preserve and maintain limited amounts of property that would be suitable for industrial uses vs. making land available for residential growth.

Planning & Development Director Scott Shuford said that assuming Buncombe County has 280 acres of available industrial land, that is less then ½ a square mile in the entire County. Asheville is over 40 square miles, resulting in 1/80th of the City of Asheville available for industrial development. He said this is a classic property rights issue vs. a long range planning issue that

Council has to debate. In the future, if the property is rezoned to residential, people will be wondering why there is a low-density single-family subdivision located right at a highway interchange. In addition, if a large industry does come into that area, he didn't think it would take long before the N.C. Dept. of Transportation builds the interchange.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Because since this is in a rural area in the City's extraterritorial jurisdiction area, Councilman Davis moved to adopt Ordinance No. 3290 to rezone the property from Industrial District to RS-4 Residential Single-Family Medium Density District. This motion was seconded by Vice-Mayor Mumpower.

Councilwoman Jones and Councilman Newman felt that land planning was very important and we need to preserve the little industrial acreage that we have identified.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

Mr. Shuford said that City staff will be bringing back to Council a recommendation to rezone the adjacent industrial land RS-4 Residential Single-Family Medium Density District or a similar residential district, due to the residential districts surrounding the Industrial District property.

ORDINANCE BOOK NO. 22 - PAGE 279

F. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON STATE STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 9:20 p.m.

Urban Planner Blake Esselstyn said that this is the consideration to rezone property on State Street from Neighborhood Business District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on September 30 and October 7, 2006.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Mr. Esselstyn said that rezoning this lot from Neighborhood Business to RM-16 would be in keeping with the Strategic Operating Plan's objective of encouraging higher-density infill development. Such a rezoning *would* remove an area currently available for a small business (whose development the Strategic Operating Plan aims to facilitate); however, the viability of a business in that location is uncertain.

The subject site is located in West Asheville, within the City of Asheville's corporate limits, two blocks east of where State Street passes beneath I-240. The property consists of approximately 1.2 acres of vacant area and is currently zoned Neighborhood Business.

Surrounding zoning is mostly Residential Multi-Family Medium Density and High Density (RM-8 and RM-16), with the exception of the area across Hanover Street and two small adjacent parcels to the south, which are zoned for neighborhood business. The adjacent residential areas are mostly single-family homes or vacant residential lots. The properties across Hanover Street

300

include one housing businesses which have been closed and boarded up. The average area of parcels in this vicinity is approximately 0.3 acres.

The southern corners at this intersection were zoned Neighborhood Business for the potential development of small businesses to serve the surrounding area. The southeastern corner was developed with a laundromat, restaurant, and grocery, but reportedly problems including theft and vandalism impelled the operators to close the businesses, and they now stand unused.

The applicant, Robert "Tico" Espinosa, has applied for a rezoning of the lot from Neighborhood Business to RM-16 Residential Multi-Family High Density District. Based on acreage and density permitted within the RM-16 district, up to 19 units could theoretically be permitted on the project site (though issues with the right-of-way and the stream bed would have to be addressed). The RM-16 zoning district was intended to permit a full range of high density multi-family housing types along with limited institutional, public, and commercial uses appropriate to the area.

The Neighborhood Business District was established to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhood. The intent of the district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. In this district, residential uses are restricted to parts of a building other than the first floor or street level.

At the September 7, 2005, meeting, the Planning and Zoning Commission approved the rezoning by a 6-0 vote. Four neighbors voiced their opposition to the project primarily on the grounds that they felt it could exacerbate existing problems with crime in the neighborhood.

Pros

- The RM-16 zoning designation is highly compatible with the surrounding zoning.
- The area can be shown to support residential use, whereas recent attempts at neighborhood businesses have not succeeded.
- The potential for higher-density infill development is consistent with both the City's Comprehensive Plan and Strategic Operating Plan.

Cons

- Loss of a potential site for a new small business.

While the encouragement of small business and the provision of services accessible to businesses at this particular intersection indicates that residential use may be a more appropriate use for the subject property. In addition the adopted City plans' promotion of high-density residential infill supports the type of use, which the proposed rezoning would allow. Based on the above policies and observation, staff recommends approval of this request.

The following individuals spoke against the rezoning for various reasons, some being, but are not limited to: existing crime in the area; proposed units will be low cost housing because no one will build in an environment of drugs and crime that surround them; there is already enough multi-family housing in the area; increase of traffic in the area; State Street is a cut-through street with speeding;

Ms. Mary Steiner, resident on Stewart Street
Ms. Fisher Caldwell, area property owner
Ms. Leslie Cowan, area resident
Ms. Rene' Treece, resident on State Street (presented petition with 7 signatures)

Ms. Sandy Dryman, resident on Stewart Street

Mr. Roberto Espinosa, property owner, suggested the neighborhood get together and organize a neighborhood watch to help with the crime in the area. He urged Council to support his rezoning request in order to build some affordable housing.

Mayor Worley closed the public hearing at 9:46 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved to rezone the property from Neighborhood Business District to RM-16 Residential Multi-Family High Density District. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower would not support the rezoning in that he felt we are not protecting the neighborhood and should not be adding any more people to the dangerous mix.

Councilwoman Bellamy felt to rezone the property residential would not be an effective use of land use planning.

Councilman Newman agreed that the area has major crime problems, but you shouldn't have empty lots in neighborhoods that have crime. The more eyes on the street and the lack of vacant lots will help with that crime problem.

There was a brief discussion on the possibility of having this property owner withdraw his application until the City gets a tighter hold of the harsh reality of crime in that area.

With the approval of Mr. Espinosa, Vice-Mayor Mumpower moved to postpone this matter indefinitely, with the understanding that it be remanded back to the Planning staff and then to the Planning & Zoning Commission prior to it coming back before City Council. This motion was seconded by Councilwoman Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of September 23-October 6, 2005: Errol A. Green (Police), Lynn Frazier (Civic Center), William A. Chase (Sanitation), Heather Smith (Sanitation), Patricia Mejia (Sanitation) and Larry Motsinger (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Reid Thompson presented City Council with alleged violations of different sections of the Unified Development Ordinance regarding Greenlife Grocery. After a brief discussion of enforcement avenues, City Attorney Oast cautioned City Council in this matter as the City is in litigation on this issue.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:05 p.m.

Magdalene Bourdeson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 18, 2005 - 5:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Assignment of Lease for Use of McCormick Field

Summary: The consideration of a resolution approving the assignment of lease for the use of McCormick Field to Palace Baseball, L.L.C for the continued operation of minor league baseball for the community.

On July 1, 2005, the City entered into a lease with Asheville Tourist Baseball Club, Inc., for the use of McCormick Field to operate a minor league baseball program. Prior to this lease agreement on June 28, 2005, the Asheville Tourist Baseball Club, Inc entered into an asset purchase agreement with Palace Baseball, L.L.C. Palace Baseball, L.L.C., is part of Palace Sports and Entertainment which also owns the Detroit Pistons of the National Basketball League and the Tampa Bay Lightning of the National Hockey League. The Parks and Recreation Department has been and will continue to work with Palace Baseball, L.L.C., to make McCormick Field a major part of the community. Both parties are interested in making improvements to the facility and incorporating a number of ideas that will make the venue a year-round facility to be enjoyed by the region.

Pros

- Palace Baseball, L.L.C., is committed to keeping minor league baseball in Asheville.
- Palace Baseball, L.L.C., is interested in making improvements to the facility in conjunction with the City of Asheville.
- The facility has the potential of becoming a year round facility.
- Current staff will be retained which will allow for continuity in the transition.

Cons

- Asheville Tourist Baseball, Inc. was an excellent owner and well liked by the community. New ownership will have to establish the same respect from the community.

This action will meet one of the objectives established by the Strategic Plan regarding the termination of the water agreement and operations of facilities formerly operated by Buncombe County.

The Parks and Recreation Department recommends City Council approve the assignment of the lease for the use of McCormick Field from the Asheville Tourists Baseball Club, Inc., to Palace Baseball, L.L.C.

Superintendent of Parks Jim Orr responded to questions from Council regarding the lease.

Vice-Mayor Mumpower was concerned about locking the City into a 10-year lease.

City Attorney Oast stated that Council approved the lease in July of 2005, and the lease included an assignment provision.

Mayor Worley said that a valid, binding lease is already in effect and we are bound to assign that lease unless the new entity is not suitable for the assignment.

Renaming of Shiloh Complex for Linwood Crump

Summary: The consideration of a resolution renaming the Shiloh Recreation Complex for Linwood Crump.

At its September 2005 meeting, the Parks and Recreation Board unanimously voted to rename the Shiloh Recreation Complex after Linwood Crump who recently passed away. The Board approved naming the facility the Linwood Crump/Shiloh Recreation Complex. Linwood was instrumental in making the Shiloh Complex the focal point for the community. He dedicated much of his life to the children who frequented the center and park. He worked many long and hard hours in the concession operation, donating his time so all of the profits could go back to the center and the programs he loved so dearly. Know affectionately as the "Mayor of Shiloh", Linwood made sure that the Shiloh community received its fair share of resources and attention by the City This recommendation is also supported by the Shiloh Advisory Board. The staff plans to hold a formal ceremony in the future and recognize the family for this honor with a new sign placed at the entrance of the facility.

Pros

- This effort is supported by the Parks and Recreation Board as well as the Shiloh community
- This effort will be a great tribute to the leader of the Shiloh community.

Cons

- None

City staff recommends that City Council approve the renaming of the Shiloh Complex as the Linwood Crump/Shiloh Recreation Complex.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

QUARTERLY FINANCIAL REPORT

Chief Financial Officer Ben Durant stated that the reason for this quarterly financial report was to (1) increase the cycle of management information provided to Council; and (2) present key financial data to facilitate informed decision-making.

His presentation consisted of an overview: (1) Asheville is living within its means; (2) Fund balance will be maintained; (3) continued fuel and energy conservation efforts are necessary; and (4) staff recommends no major mid-year budget additions.

In Fiscal Year 2005-06 the adopted budget was $74,357,126. Additions included (1) amendment for County park facilities in the amount of $503,936; and (2) prior year encumbrance rollovers in the amount of $820,071. The Amended Fiscal Year budget is $75,681,133.

General fund revenue highlights include (1) intergovernmental will fall short of budget by $996,436; (2) shortfall will be made up by $337,562 in additional property tax revenue growth,

$460,596 in additional sales tax, and $441,214 in other higher than anticipated revenue growth; and (3) overall, general fund revenues will exceed budget by a net of $242,936.

He reviewed the natural gas projections by saying that (1) Fuel costs are $200,000 higher than last fiscal year; (2) Energy costs may exceed budget by $170,000; and (3) Staff will undertake various conservation efforts to minimize fuel and energy cost impacts.

Overall, departments will save approximately $1.0 Million through targeted savings plans, normal attrition and other operating savings. These savings combined with $242,936 in total revenues over budget will nearly offset $1.37 Million in budgeted use of fund balance. The projected actual use of fund balance use is $110,000.

Mr. Durant then reviewed the fund balance and the enterprise funds.

He mentioned that outstanding budget issues include (1) roll-out containers for duplexes - $80,000; (2) take home vehicles for police - $272,184; and (3) recruitment and retention analysis/compensation plan adjustment.

Throughout the presentation, Mr. Durant responded to various questions/comments from Council, with ultimately the following additional information being requested: is a comparison of the first quarter last year compared to the first quarter this year; a breakdown of revenue and expenditures for all the City's parking decks; what is the capital improvement plan and long-range plan (in terms of strategies to make money) for the Golf Course; long-range cost analysis for police take-home vehicles; full cost analysis for Bele Chere; capital improvement plans for the recreation centers; information on the communication plan for the stormwater utility fee and the possibility of delaying billing until the educational component has been addressed; what is the capital improvement plan for Recreation Park; and the numbers of people who want to lease a parking space in the decks and on the surface lots.

Regarding the Parking Fund, City Manager Jackson said that they will be refreshing the parking plan and bringing that back to Council near the first of 2006. In addition, they will address some of the questions Council has about the design of the additional parking deck. He said it's also time to look not only at capital planning questions, but the operating basis, fee recovery, monthly lease rates, and a wide variety of issues. Discussions will occur with the Fees & Charges Committee regarding if we are operating this like a business, what should those rates be, how do we manage those with better design and purpose in mind, and also linking this Fund to the overall transportation planning.

Regarding the police take-home vehicle policy, Mayor Worley said that there was an indication by Council to have this policy discussion revisited at the Council's retreat.

Interim Water Resources Director David Hanks summarized the Water Resources Department as follows: (1) Fairview Road project – replace existing lines with a new 8-inch line; (2) ISO 15001:2004 – first water utility in North Carolina to be certified; (3) QualServe – American Waterworks Association (AWWA) Customer Service program to enhance and benchmark department against other water utilities; (4) Asset Management implementation has enhanced department culture and decision-making; (5) Drought Management modeling to forecast drought and lake level conditions; (6) current treatment capacity is adequate for near-term demands; (7) new French Broad River supply (intake) provides water resources to support long-term growth; (8) low treatment cost of upland supplies being used to save money; (9) Water Treatment Plan upgrades continue to progress towards completion; (10) reservoir operations (North Fork and Bee Tree) – selection process for new Emergency Action Plan and Operations & Maintenance Plan engineering firm is being finalized; (11) Computerized Maintenance Management System to enhance current work order system and integrate with GIS system being finalized; (12) meter

replacement and testing program – testing all meters 2-inch and larger and replacing non-compliant meters (AWWA standards) to ensure reliability and accuracy; (13) actively managing leaks and breaks; (14) obtaining hydro-stop valve installation equipment to install valves on large lines without cutting off water. This will enable valves to be installed on lines we currently have difficulty cutting off water. This will enhance customer service by keeping more customers in water while repairs are being made; and (15) leak detection – using leading edge leak detection equipment to find underground leaks.

Throughout the presentation, Mr. Hanks responded to various questions/comments from Council, resulting in a request to see the long-range plan on how we anticipate improving the water system.

On behalf of City Council, Mayor Worley thanked City Manager Jackson for bring this and future quarter financial updates to Council.

TAXICAB RATE RECOMMENDATION

Vice-Mayor Mumpower, Chair of the Fees & Charges Committee, said that in the Council meeting of September 13, 2005, City Council voted to increase taxi fares from $1.90 for the activation of the meter (Drop Fee), and $0.20 per every 1/10th mile thereafter, or, $2.00 per mile to a drop fee of $2.50 and a per mile charge of $2.50 (.25 per each 1/10th mile). The inspection fee of $15.00 was also eliminated.

At the same meeting, Council asked that the Fees and Charges Committee review these revised fees within thirty days, taking into consideration the high gasoline prices engendered by the recent hurricanes Katrina and Rita.

City staff was asked to convene a meeting and report to the Fees and Charges Committee on how the taxi companies might be reimbursed for the increasing cost of fuel. The Committee met on Tuesday, September 27, 2005. Public notice was given, and all licensed taxi companies were notified of the meeting, with the exception of one, whose telephone number was listed as disconnected. Representatives of the J&J Taxi Company were in attendance. After significant discussion between the committee, staff, and the taxi company representatives, the committee voted unanimously to recommend the following:

1. Current fares should be set at $2.50 for the "Drop Fee", and $2.80 per mile ($0.28 per 1/10th mile);

2. The fares be reviewed on an annual basis, beginning with the Fiscal Year 2007 budget cycle, and that if no agreement can be reached between the taxi companies and staff, that the Fees and Charges Committee act as the next level to try to resolve outstanding differences; and

3. City staff should review the current regulation of cab companies to determine if current level of regulation is sufficient or necessary, and to recommend changes to the ordinance to the Fees and Charges Committee.

Vice-Mayor Mumpower and Transit Services Director Black responded to various questions from Council, some being, but are not limited to: what impact will the rate increase have on a 10-15 mile trip; are the rates being increased based solely on the rising gas costs; are there opportunities for discounts to members of our community who are visually impaired; what process does the City of Raleigh use to subsidize taxicab fares; and what percentage of the rate increase is attributed to gas prices.

Councilman Newman said that this is an issue that City Council is unaccustomed to handling, where City Council sets rates for businesses that work out in the community. In areas where you have government regulating the pricing for business, like utilities, they have the ability to open the books of those companies and they can make a very informed decision about rate increases and make the company justify their request in a very specific way. He feels like in many ways we are without the true information we need to decide.

Councilwoman Jones felt that Council has heard from the taxicab owners, but City staff needs to try to reach out and hear from the users of taxicabs to get their input on the rate increase and how it, or if, it will affect them.

At the majority of Council's request, Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the November 22, 2005, City Council agenda.

ECONOMIC DEVELOPMENT UPDATE

HUB Project

Mr. Dan Keith Ray, Director of Institute at Biltmore, said that the HUB Project is a consolidated effort by public, private and non-profit participants to create sustainable community building options for Asheville and Buncombe County that will strengthen its role as the regional economic engine, or "Hub" of Western North Carolina.

HUB's strategic parameters include: (1) build critical mass geographically and by business cluster; (2) build critical mass that can expand throughout the region; (3) build business clusters from existing resources; (4) build business clusters that can be sustained; and (5) build through orchestrated public, private, and nonprofit sector collaborations.

He outlined the following strategic goals, noting the specific strategies and key performance targets and measures for each goal:

STRATEGIC GOAL I:	To establish a Community and Economic Development Authority to leverage Buncombe County's unique assets to attract, create and expand business opportunities while improving the well-being of our citizens.
STRATEGIC GOAL II:	To expand our community organizing capability to ensure that both urban and rural communities throughout Buncombe County can play an active role in their future development.
STRATEGIC GOAL III:	To implement inter-related strategies, that combine our unique assets and existing initiatives, and bring about synergy for implementation.
STRATEGIC GOAL IV:	To foster public, private and nonprofit investment in the development of strategic elements of the HUB Project.
STRATEGIC GOAL V:	To work with existing industry in the preservation of productive manufacturing operations and target manufacturing niches that build on our unique assets.
STRATEGIC GOAL VI:	To complete the build-out of broadband and high performance computing and storage infrastructure.

STRATEGIC GOAL VII:	To utilize the world's largest environmental database to lure federal government and private meteorological agencies and companies to Western North Carolina.
STRATEGIC GOAL VIII:	To establish a Digital Media Center as a public, private, nonprofit partnership to spur growth and development of our existing multimedia industry.
STRATEGIC GOAL IX:	To build the Western North Carolina Center for Technology Commercialization into a technology hub for research and development.
STRATEGIC GOAL X:	To utilize the existing technology infrastructure, and the desirability of our location, to promote economic development options in the public, private and nonprofit sectors for secure data storage and retrieval.
STRATEGIC GOAL XI:	To build the "Asheville Brand" as an international identity for our people, culture, products, and services.
STRATEGIC GOAL XII:	To further develop the region as a center for rejuvenation of the mind, body and spirit.

Throughout the presentation, Mr. Ray responded to various questions/comments from Council about the HUB Project Plan, the structure of the organization, the City's financial commitment, and the opportunity for partnership with others.

It was the consensus of Council to have Mr. Ray meet with individual Council members to address to their questions/comments. After those meetings have occurred, and if it is Council's wish, then Council would be requested to adopt the HUB Project Plan and then work out the details of how we partner with Buncombe County on this

Advantage Asheville

Mr. Rick Lutovsky, Chief Executive Officer of the Asheville Area Chamber of Commerce explained how the Chamber of Commerce has participated financially in the HUB Project Plan and how they are excited about expanding their economic development effort. He then updated City Council on the Advantage Asheville 2000 Campaign, the new Advantage Asheville 2010 Campaign.

At 7:46 p.m., Mayor Worley announced a short recess.

POLICE DEPARTMENT STAFFING

Police Chief Bill Hogan updated City Council on the status of recruitment and retention of sworn positions in the Asheville Police Department.

Chief Hogan said their recruitment and retention goals consist of (1) attracting and hiring qualified and motivated employees; (2) developing and improving our outreach efforts to recruit more minority candidates; (3) hiring a work force that reflects the makeup of our community; and (4) creating a work environment that supports and rewards long term careers with the city and police department.

Chief Hogan then reviewed the vacancies of sworn personnel from July 2004 – October 2005: Current Vacancies as of 10/18/05 – 14; Increase in authorized positions - 15; New hires – 31; Loss of sworn officers - 28 (through Retirements – 7; Resignations to other LE positions – 7; Resignation to pursue other interest - 5; Resignation or termination for cause – 5; and Unable to complete training – 4.)

He outlined some major accomplishments at the Police Department including, but not limited to: (1) First year - Focused on organizational culture/guiding principles and leadership; (2) Filled Lieutenant position in Recruitment & Career Development; (3) Evaluated and Redesigned the Hiring Process; (4) Amended Educational Requirements; and (5) Recruitment Outreach; (6) Established Recruitment Teams, Background Investigation Teams, and Mentors; (7) In cooperation with A-B Tech created the First APD Police Academy; (8) Continue to recruit certified officers; and (9) Increased Applications (2004 – Received 79 Applications; and 2005 – Received to date 117 Applications).

Future Considerations include: Competitive wage and benefits (City Human Resources); Special Incentives; Equipment & Technology; Police Training Officer Program; Career Development; Over hire at start of police academy; In-House Police Corps Scholarship Program; and Paid Reserve Police Officer Program.

He outlined the following other vacancy issues: (1) Desirable attrition 6% (190 sworn = 11.4); (2) 2003 survey by NC Criminal Justice Analysis Center – 14% Statewide (190 = 26.6); (3) Baby Boomers retirement bubble; (4) Two State Police Corps Positions; (5) Recruiting underway for 2nd Academy in the Spring; and (6) Continue to receive and process Certified Officer Applications.

He reviewed with Council the Patrol workload & distribution: (1) Council's commitment to Community Building; (2) Police Department is committed to the Community Oriented Policing (COP) Philosophy; (3) Effective COP requires a 2 to 1 ratio for officers' time; and (4) Police Vacancies reduce COP time but not the response time to emergency calls.

He explained the following redistricting and beats: Sheriff's Department – Response to city calls for service; Crime Trends (West Asheville); Redistricting; Work Schedule; and Beat Structure.

Human Resources Director Belinda Odom explained the following (1) Entry Level Police Salary; (2) City Wide Salary Compression; (3) Compression Factors – including (a) Salary offers above minimum; (b) Market outpacing City Compensation; and (c) Not enough difference between pay levels.

Ms. Odom then explained the following Recruitment/Compensation items (1) Ranges/Bands/Steps – evaluation of relative value; (2) Assessing Organizational Challenges; (3) Consideration of Environmental Factors – (a) Cost of Living; (b) Number of employees below the midpoint of salary range; (c) Service based organization; (d) Differentials for Labor Costs; and (e) Incentives; (4) Total Compensation; (5) Rising Cost of Health Care; and (6) Recruitment and Retention – Salary and Benefits.

There was a brief discussion about the actual number of vacancies in the Police Department. Chief Hogan stated that as of today, there are 14 vacancies.

Council members felt the presentation given to Council was very informative and instructed City staff to prepare a video containing this information to play on our Government Channel.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on October 25, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Deadline Requirements

Mr. Joe Heard, Development Services Director, said that this is the consideration of this amendment to the Unified Development Ordinance (UDO) for the purpose of amending specific deadline requirements for rezoning applications and zoning study petitions.

Presently, the UDO outlines a deadline of 9:00 a.m. on the first Monday of the month for the submittal of rezoning applications and zoning study petitions. This day/time conflicts with the application deadline for all other types of applications (conditional use permits, Level II/III projects, etc.). This amendment is proposed by staff to set a consistent deadline for the types of larger scale applications heard by the Technical Review Committee, Planning & Zoning Commission, and/or City Council.

Pro –

- The amendment would make application deadlines consistent for all larger development applications.

Con –

- Moves the currently stated deadline 5.5 working hours earlier.

The Planning and Zoning Commission recommended approval of these code amendments on September 7, 2005, by a unanimous vote of 6-0.

City staff recommends City Council adopt the ordinance to amend specific deadline requirements for rezoning applications and zoning study petitions.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

UPDATES TO THE STORMWATER, EROSION CONTROL AND FLOODPLAIN ORDINANCES

Stormwater Coordinator Chad Pierce said that City staff is in the process of evaluating changes to the Stormwater, Erosion Control and Floodplain ordinances. Staff has prepared a Request for Proposals and received proposals for the above work. Staff reviewed the proposals and is recommending the City contract with Woolpert, LLC in the amount of $85,500 to perform this work.

Regarding the stormwater ordinance, the City is required as part of the NPDES – Phase II regulation to add post-development construction requirements to address water quality. This ordinance must be adopted by July 1, 2006. Additionally, our current ordinance is out-dated for calculating stormwater runoff.

Regarding the erosion control ordinance, the City is a delegated review agent of the state for purposes of reviewing and approving sediment and erosion control plans. Due to recent development concerns and excessive erosion problems, staff feels it is appropriate to review this ordinance.

Regarding the floodplain ordinance, the City is delegated by FEMA to administer the National Flood Insurance Program. We administer this program through the floodplain ordinance. Given our recent experience with flooding, this ordinance needs to be reviewed to ensure that it is meeting the city's current needs.

The process of revising these ordinances will include a public Stakeholders process. Staff proposes to bring the contract to Council in November or December 2005 for approval.

BOARDS AND COMMISSIONS:

At the request of the Downtown Commission, it was the consensus of City Council to allow the Commission more time within which to bring a recommendation to Council for their vacancy.

COUNCIL MEETING SCHEDULE

It was the consensus of City Council to cancel the November 29, 2005, City Council community meeting.

CLOSED SESSION

At 9:07 p.m., Councilman Dunn moved to go into closed session for the following reason: to consult with attorneys employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, City of Asheville Board of Adjustment, and Reid Thompson. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 10:20 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – October 25, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding (left meeting at 8:52 p.m.); Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Enka High School Air Force Junior ROTC Color Guard led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF UNC-ASHEVILLE CHANCELLOR ANN PONDER

On behalf of City Council, Mayor Worley recognized UNC-Asheville's Chancellor Ann Ponder and welcomed her to Asheville.

B. PROCLAMATION PROCLAIMING OCTOBER 30-NOVEMBER 6, 2005, AS "ASHEVILLE STUDENT COMMISSION ON RACIAL EQUALITY (ASCORE) EDUCATION WEEK"

Mayor Worley read the proclamation proclaiming October 30-November 6, 2005, as "Asheville Student Commission on Racial Equality (ASCORE) Education Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Chambers, founding member of ASCORE, and Ms. Deborah Miles, Executive Director of the Center for Diversity Education, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

Councilwoman Bellamy removed Consent Agenda Item "E" from the Consent Agenda for an individual discussion.

A. APPROVAL OF THE MINUTES OF THE SPECIAL WORKSESSION HELD ON OCTOBER 12, 2005, REGULAR MEETING HELD ON OCTOBER 12, 2005, AND THE WORKSESSION HELD ON OCTOBER 18, 2005

B. RESOLUTION NO. 05-196 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON CIRCLE STREET IN THE EAST END COMMUNITY TO BRANDON KNOLLS LLC

Summary: The consideration of a resolution authorizing the Mayor to convey land on Circle Street to Brandon Knolls, LLC, in the amount of $1,400.

On October 12, 2005, City Council authorized advertising for upset bids pursuant to a bid from Brandon Knolls, LLC, for land on Circle Street in the amount of $1,400. The advertisement was published on October 14, 2005, and no upset bids were received.

The land on Circle Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from N.C. Dept. of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a trapezoidal shaped lot comprising 0.03 acre±. From street grade it slopes down substantially to the rear property line and is covered with non-significant trees, vines and brush. It is zoned RM 8, but the size, shape and topography render the lot unsuitable as a home site. The tax value is $1,400. The bid from Brandon Knolls LLC, owner of an adjacent parcel is in the amount of $1,400. Brandon Knolls, LLC, proposes to assemble enough property to construct a small affordable home for sale.

The proposed construction is consistent with the Strategic Plan policies of increasing the supply of affordable housing and encouraging infill development.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A non-buildable lot will be assembled with adjoining land to provide an affordable home site.
5. The sale of this lot to Brandon Knolls will facilitate infill development.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey land on Circle Street to Brandon Knolls, LLC, in the amount of $1,400.

RESOLUTION BOOK NO. 29 – PAGE 245

C. RESOLUTION NO. 05-197 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON HAZZARD STREET IN THE EAST END COMMUNITY TO BRANDON KNOLLS LLC

Summary: The consideration of a resolution authorizing the Mayor to convey land on Hazzard Street to Brandon Knolls, LLC, in the amount of $7,000.

On October 12, 2005, City Council authorized advertising for upset bids pursuant to a bid from Brandon Knolls, LLC, for land on Hazzard Street in the amount of $7,000. The advertisement was published on October 14, 2005, and no upset bids were received.

The land on Hazzard Street was one of ten (10) parcels conveyed to the City by the State in 1983, after the construction of South Charlotte Street, as part of a municipal agreement providing for conveyance of residues to the City. A slightly irregular, rectangular shaped lot comprising 0.07 acre±, it is generally level with street grade and mostly covered with grass. It is zoned RM 8, but the size renders the lot unsuitable as a home site. The tax value is $7,000. The bid from Brandon Knolls LLC, owner of property in the vicinity is in the amount of $7,000. Brandon Knolls LLC proposes to assemble enough property to develop the lot consistent with the zoning.

The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A sub-standard lot will be assembled with adjoining land to provide a developable site.
5. The sale of this lot to Brandon Knolls will facilitate infill development.

Planning staff recommends adoption of the resolution authorizing the Mayor to convey land on Hazzard Street to Brandon Knolls, LLC, in the amount of $7,000.

RESOLUTION BOOK NO. 29 – PAGE 246

D. RESOLUTION NO. 05-198 - RESOLUTION APPROVING THE ASSIGNMENT OF LEASE FOR USE OF MCCORMICK FIELD FROM ASHEVILLE TOURISTS BASEBALL CLUB INC. TO PALACE BASEBALL LLC

Summary: The consideration of a resolution approving the assignment of lease for the use of McCormick Field to Palace Baseball, L.L.C for the continued operation of minor league baseball for the community.

On July 1, 2005, the City entered into a lease with Asheville Tourist Baseball Club, Inc., for the use of McCormick Field to operate a minor league baseball program. Prior to this lease agreement on June 28, 2005, the Asheville Tourist Baseball Club, Inc entered into an asset purchase agreement with Palace Baseball, L.L.C. Palace Baseball, L.L.C., is part of Palace Sports and Entertainment which also owns the Detroit Pistons of the National Basketball League and the Tampa Bay Lightning of the National Hockey League. The Parks and Recreation Department has been and will continue to work with Palace Baseball, L.L.C., to make McCormick Field a major part of the community. Both parties are interested in making improvements to the facility and incorporating a number of ideas that will make the venue a year-round facility to be enjoyed by the region.

Pros

- Palace Baseball, L.L.C., is committed to keeping minor league baseball in Asheville.
- Palace Baseball, L.L.C., is interested in making improvements to the facility in conjunction with the City of Asheville.
- The facility has the potential of becoming a year round facility.
- Current staff will be retained which will allow for continuity in the transition.

Cons

- Asheville Tourist Baseball, Inc. was an excellent owner and well liked by the community. New ownership will have to establish the same respect from the community.

This action will meet one of the objectives established by the Strategic Plan regarding the termination of the water agreement and operations of facilities formerly operated by Buncombe County.

The Parks and Recreation Department recommends City Council approve the assignment of the lease for the use of McCormick Field from the Asheville Tourists Baseball Club, Inc., to Palace Baseball, L.L.C.

E. **RESOLUTION RENAMING THE SHILOH RECREATION COMPLEX FOR LINWOOD CRUMP**

This item was removed from the Consent Agenda for an individual discussion.

F. **ORDINANCE NO. 3291 - ORDINANCE TO APPROPRIATE REVENUE AND BUDGET EXPENDITURES ASSOCIATED WITH FOUR ANNEXATION AREAS**

Summary: The consideration of a budget amendment, in the amount of $318,044, to appropriate revenue and budget expenditures associated with the Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road annexation areas

In June 2005, City Council approved the Fiscal Year 2005-06 Operating Budget. Also, in June 2005, City Council approved the annexation of six areas (Ridgefield, Airport Road, Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road) into the City. Under state law, property owners are allowed sixty days to file legal challenges to any annexation. As a result, staff was unable to determine if there would be legal challenges until well after the Fiscal Year 2005-06 Operating Budget was adopted; and therefore did not include any revenues or expenses from this annexation in the Adopted Budget.

The period for filing legal challenges to the annexations has now passed, and the City has received legal challenges on two of the six annexation areas that Council approved in June - Ridgefield and Airport Road. As a result, these two areas will not be coming into the City as scheduled. As for the remaining four areas, Two Town Square and Town Square East became part of the City on September 30th; and Ascot Pointe and Long Shoals Road will become part of the City on December 31st. Staff expects these four areas to generate $318,044 in property tax and other revenue in Fiscal Year 2005-06. The cost of providing services to these areas in Fiscal Year 2005-06 will be $250,773. The City will realize a net gain of $67,271, which will be placed into the manager's contingency account. If these funds are not used during the year, this money can go to partially offset the $110,000 reduction in fund balance that is currently projected for Fiscal Year 2005-06. A detailed list of the Fiscal Year 2005-06 revenues and expenditures associated with these four areas is available.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road annexation areas.

ORDINANCE BOOK NO. 22 – PAGE 281

G. **RESOLUTION NO. 05-200 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE THE ASHEVILLE CITY COUNCIL SWEARING-IN CEREMONY ON TUESDAY, DECEMBER 6, 2005, AT 5:00 P.M. IN THE COUNCIL CHAMBER, LOCATED ON THE SECOND FLOOR OF THE CITY HALL BUILDING; AND CANCELING THE NOVEMBER 29, 2005, COMMUNITY MEETING**

RESOLUTION BOOK NO. 29 - PAGE 249

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 05-199 - RESOLUTION RENAMING THE SHILOH RECREATION COMPLEX FOR LINWOOD CRUMP

Summary: The consideration of a resolution renaming the Shiloh Recreation Complex for Linwood Crump.

At its September 2005 meeting, the Parks and Recreation Board unanimously voted to rename the Shiloh Recreation Complex after Linwood Crump who recently passed away. The Board approved naming the facility the Linwood Crump/Shiloh Recreation Complex. Linwood was instrumental in making the Shiloh Complex the focal point for the community. He dedicated much of his life to the children who frequented the center and park. He worked many long and hard hours in the concession operation, donating his time so all of the profits could go back to the center and the programs he loved so dearly. Know affectionately as the "Mayor of Shiloh", Linwood made sure that the Shiloh community received its fair share of resources and attention by the City. This recommendation is also supported by the Shiloh Advisory Board. The staff plans to hold a formal ceremony in the future and recognize the family for this honor with a new sign placed at the entrance of the facility.

Pros

- This effort is supported by the Parks and Recreation Board as well as the Shiloh community.
- This effort will be a great tribute to the leader of the Shiloh community.

Cons

- None

City staff recommends that City Council approve the renaming of the Shiloh Complex as the Linwood Crump/Shiloh Recreation Complex.

After expressing her appreciation of the work of Mr. Crump, Councilwoman Bellamy moved for the adoption of Resolution No. 05-199. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 248

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 75 LONG SHOALS ROAD

ORDINANCE NO. 3292 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 75 LONG SHOALS ROAD

Mayor Worley opened the public hearing at 5:12 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include 75 Long Shoals Road. This public hearing was advertised on October 14, 2005.

Robert Hayes, owner of 75 Long Shoals LLC, has petitioned the City for the annexation of one lot owned by the LLC and located at 75 Long Shoals Road (PIN No. 9644.07-79-1146)

containing approximately 4.5 acres. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lot currently contains a single-family home. The current assessed valuation for this property, according to the Buncombe County tax records, is $266,900. This parcel is in the Long Shoals Road annexation area that will become part of the City of Asheville on December 31, 2005, however, in order to proceed with plan approvals, the owner has requested earlier voluntary annexation.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation.

The petitioner has requested that the annexation become effective on the date of the adoption of the ordinance, if City Council decides to proceed with this request.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and approve future plans for this parcel as it is developed.
- Assists the developer of the property in achieving his desired development plan and schedule.

Cons:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mr. Brad Freeman spoke in support of the annexation.

Mayor Worley closed the public hearing at 5:18 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3292. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 284

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR BILTMORE POINT, LOCATED ON FAIRVIEW ROAD, FOR A PROPOSED 136-UNIT MULTI-FAMILY DEVELOPMENT

ORDINANCE NO. 3293 - ORDINANCE TO GRANT A CONDITIONAL USE PERMIT FOR BILTMORE POINT, LOCATED ON FAIRVIEW ROAD, FOR A PROPOSED 136-UNIT MULTI-FAMILY DEVELOPMENT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that this is a quasi-judicial site specific act and at this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:19 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for Biltmore Point, located on Fairview Road, for a proposed 136-unit multi-family development.

The applicants, Charles Radford and Bruce Goforth, have requested a site plan review for a Level III residential townhome development to allow for the new construction of 136 affordable units, public road, secondary emergency access, and other related amenities. The project site is located within City limits just above the northwest corner of Fairview Road and Stoner Road, directly adjacent to the Slosman property from which the 13 acres under consideration will be subdivided. The subject property is surrounded on three sides by industrial or commercial warehousing/storage land uses. The fourth side borders a mix of commercial storage, single family residential, and vacant Commercial Industrial zoned property.

The site, as it currently exists, is undeveloped and heavily wooded with moderate to steep slopes (over 15%) (Attachment to City Exhibit 3 – Aerial Map). The 13 acre site has frontage on two city maintained roads; principal access will be located off of Fairview Road while a gated emergency access road is required off of Stoner Road per the City of Asheville Ordinance and State Fire Code requirements. In addition, a new loop road built to City of Asheville standards will be constructed to provide access to the individual townhome units (Attachment to City Exhibit 3 – Master Plan).

This project was previously reviewed under a Conditional Use Rezoning (CUZ) application that was approved in May 2004. Without project work being initiated, the approved Master Plan and Conditional Use Permit expired after one year; however, the RM-16 zoning remains in place for two years after approval. The applicant is now prepared to initiate site-work and wishes to re-file an almost identical site plan from what had originally been approved. In the intervening 15 months a number of other, unrelated, applications have come forward where a variety of issues and concerns have been discussed and explored including: compatibility with adjacent properties; open space; excessive and tall retaining walls; excessive clearing, grading, and mature vegetation removal. In light of these recent events, staff has re-examined this request and has qualified the earlier position of support with additional information and detail.

At their September 19, 2005, meeting, the Technical Review Committee (TRC) reviewed the Level 3 site plan and Conditional Use Permit request and recommended approval stipulating

that the applicant meet the conditions outlined in the report, along with the following conditions added by the City Traffic Engineer:

1. Remove condition #4 in the TRC staff report
2. A traffic study will be needed to determine the need for a left turn lane on Fairview Road. If the turn lane is required it will be the responsibility of the developer to provide this improvement.
3. Provide a right-of-way for the emergency access road.

At their October 4, 2005, meeting the Planning & Zoning Commission reviewed the proposed site plan and recommended approval with the following conditions:

1. The project is to meet all outstanding TRC conditions
2. The conditions of affordability be worked out between City staff and the applicant and reviewed by the City Attorney's office for legal sufficiency.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety. In the event that federal or City funds are used to support the affordable housing component, an Environmental Review Record (ERR) would have to be completed. Of particular concern to staff is the close proximity of residential units to substantial noise producers and the potential for environmental injustice as a result of excessive noise. There are active Norfolk Southern railroad lines in proximity to the project area (north and south) with one of the two lines running along the northern property boundary and within 100 feet of a number of proposed units. In addition, residents already living in the area have reported noise as the result of steam release from the industrial activity on the Slosman property (once a week for 30-45 minutes). This project is proposed to be constructed with private funds and would not require an ERR. The Planning & Zoning Commission did not require noise abatement measures as a condition of this project however; staff continues to have concern over this issue and would like to note that this project could be conditioned to require review and mitigation measures comparable to those normally required for a publicly funded project.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The majority of the project area has an average natural slope of over 15% which is not unusual for Asheville. A revised grading plan shows a significant amount of clearing and grading that would be required for a project of this size and layout. As a result of the revised grading plan, additional grading and retaining wall information has been supplied

showing removal of 80,000 cubic yards of material from the site and a need for over 2500 linear feet of retaining wall. Approximately 1000 linear feet will be over 20' tall, 500 linear feet will be between 8-19', with the balance of the walls being under 8' tall. During the Planning & Zoning Commission meeting, the landscape architect for the project indicated that extent of retaining walls shown could be reduced considerably if excess dirt from the site could be removed (230,000 additional cubic yards removed could reduce the height of the walls by 50%). Despite the potential reduction in retaining walls, staff remains concerned over the extent of the clearing, grading, & retaining wall particularly given concerns raised by the Commission and City Council regarding projects like Campus Crest. Furthermore, as a result of the extensive grading, very little usable open space is provided. 50% of the land area meeting the open space requirement has slopes over 30% and cannot be used actively. The remaining requirement is met with the installation of one basketball court and a small lawn area (to be shared by all 136 units) where the majority is graded to be over 15% (Attachment to City Exhibit 3 – Grading Plan).

Landscape buffers, a small amount of tree preservation along Stoner Road, and some terracing are proposed and will provide some minor mitigation. The extent of clearing, grading, and retaining walls could be further mitigated by reducing the number of units and/or by massing the units in an alternative layout.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   There is a significant amount of literature that describes how "affordable" housing does not negatively impact adjacent property values. Developments of this size in the City do require a homeowner's association that manages the common open space and typically has minimum site standards that control the deterioration that can contribute to a decrease in property values. These will be individually owned units that, historically, inspire care and upkeep. In addition, the higher density development could serve as a buffer/transition area to the existing single family residences that could be impacted by the more intense uses permitted in the CI zoning district.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The surrounding properties are primarily light manufacturing and warehousing/storage uses with significant work traffic. The proposed development will be residential but through its density and activity, will not be out of character/harmony or scale with these uses. Along the majority of the eastern side of the property are small, modest single family homes on small lots (some lots are vacant) located on the opposite side of the right-of-way for Stoner Road. These homes are similar in size and are expected to be harmonious with the proposed development. The only area of concern is a smaller portion of the eastern boundary where there are two moderately sized single family homes on comparatively larger lots. These homes are larger and less typical of the development in the area and are separated from the proposed development by a vacant lot and a 30' Type C buffer required where adjacent to the subject property. It is expected that these lots will not be significantly impacted by the proposed development.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The Asheville City Development Plan 2025(ACDP 2025), through its "Land Use and Transportation" goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the *ACDP 2025* and the City's *Sustainable Economic Development Strategic Plan* describe the connection and need for affordable housing to support economic development. Lastly, the *City of Asheville Strategic Operating Plan* describes a number of goals encouraging an increase in the supply of affordable housing through policy/program changes and developer incentives.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

This proposed development is within close proximity to transportation facilities with the Route 12 bus line running regularly down Fairview Road. In addition, there are some infrastructure improvement plans in place for new sidewalk, road resurfacing, and stormwater control that will improve access along this corridor along with improvements that will be part of the proposed development (additional sidewalk, bus shelter, etc.). The project area is also located in clear and close proximity to other major road facilities and interstate connections, service centers, and easily accessed employment centers. Technical review has not revealed any problems for future utility service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed project will include the construction of a new road to provide clear and safe access to the individual units while a second entrance will be provided to help facilitate traffic movement in the event of an emergency. Lastly, preliminary review by the City's Traffic Engineer does not reveal any significant concern over traffic loads generated by a development of this size; however, he is requiring a traffic impact analysis for verification and to determine whether a left turn lane into the development would be required on Fairview Road.

Pros

- Clearly supports City goals to provide affordable housing in appropriately located areas.
- Provides an opportunity for infill residential development on underdeveloped property.

Cons

- High density residential development that will contribute to the traffic load of Fairview Road and Stoner Road.
- A number of proposed units are located within close proximity to a noise sources (Norfolk Southern Railroad & manufacturing business) without noise abatement measures proposed.
- Proposed residential development is located adjacent to commercial industrial zoning whose current land uses could change to a heavier impact over time.
- Will require significant amounts of clearing, grading, and retaining walls to accommodate the proposed density and layout.

Staff feels that the proposed development has many positive aspects and does meet the minimum technical and conditional standards required of a Level III project and Conditional Use Permit. However, staff also recognizes areas of potential improvement and recommends that the Commission utilize the experience gained over the last 15 months in dealing with such projects

as Campus Crest and in directing staff regarding development on steep sites, to carefully consider whether the conditional use permit should be conditioned to mitigate any potential concerns.

Mr. Bob Grasso, land planner, explained some of the differences of the earlier plan compared to this plan, some being, but are not limited to: number of units reduced from 138 to 136, moved units around to accommodate better access to common areas, and improved the emergency gated access in the rear. He further explained the project and how they have worked to minimize the impact to surrounding neighbors. He felt this affordable housing project was needed for the community and urged Council for their support.

Mr. George Morosani said that he owns the property on the other side of the railroad tracks and has agreed to take 80,000 cubic yards of dirt off this developer's property to fill in on his property. He supported this proposed plan.

After rebuttal, Mayor Worley closed the public hearing at 5:37 p.m.

In response to Vice-Mayor Mumpower's concern about traffic, Traffic Engineer Anthony Butzek said that the Traffic Impact Analysis had not been performed yet so at this point we don't have a specific idea of what traffic will be like. There may be some design modifications required at the intersection, such as the addition of a turn lane, but other than that one intersection, he believed that the roadway system will handle the additional traffic without any problem. Regarding the access, the City always tries to ensure multiple points of access to a community. In this case, there was concern from neighbors on Stoner Road and for that reason the rear access was modified to be an emergency access. He said that we are not stepping around our normal criteria on this emergency access only. Again, he would prefer to have multiple access points, but one access would work.

There was a brief discussion about the noise from the railroad (City Exhibit 4 – Sketch regarding number of feet from train to proposed units). Ms. Tuch explained that it is possible to require additional measures to help mitigate that noise.

Councilman Newman questioned the buffering around the project. Ms. Tuch responded that the only condition we have as far as tree preservation is in the area along Stoner Road. Staff is not recommending a similar buffer on Fairview Road because it appears to be impossible to achieve given this particular layout.

In response to Vice-Mayor Mumpower, Ms. Tuch said that the two-bedroom unit would be $120,000 and a three-bedroom unit would be $135,000.

In response to Vice-Mayor Mumpower, Ms. Tuch said that in the previous application Council dedicated $50,000 of Housing Trust Fund money to help relieve the burden of development costs from the developer for improvements to Fairview Road, if necessary. Again, that was part of the earlier application, which has expired. Ms. Tuch also noted that the emergency access road does have a 30-foot right-of-way associated with it, so in the event that traffic becomes an issue, that right-of-way can be opened to public standards.

There was a brief discussion of open space, with Ms. Tuch stating that it does meet the minimum technical requirements. She could not see any creative ideas to help with open space with the proposed layout.

Upon request of Councilman Newman, Mr. Grasso explained their erosion control plan (City Exhibit 5).

Planning & Development Director Scott Shuford explained that staff tries to make sure that there is adequate open space for suburban-type projects. He said that Planning staff will be bringing forward for Council consideration an ordinance to strengthen our open space requirements.

Mr. Shuford also asked for City Council to clarify, should Council decide to move forward with this project, whether (1) Council is still interested in allocating any funds for infrastructure improvements; and (2) also with the possibility of opening up the emergency access road, that at least we leave open the possibility for requiring that to be converted to a full access at some point in the future, otherwise what will happen is we will determine a need to open that roadway up and be precluded from doing that by the fact that it is shown as an emergency access only on the site plan.

In response to Councilman Newman regarding the affordability aspect, City Attorney Oast said that to the extent they have gotten some incentives from the Metropolitan Sewerage District (MSD) with regard to the provision of some infrastructure based on the affordable housing component, that is one condition that they will have to continue to fulfill under the MSD criteria. In the conditional use process, the best way that we have of controlling affordability is allowing the project to be designed so that the units will be affordable. Based on their representation we can put a condition in that the units be marketed within certain ranges because beyond the point of initial sale it is difficult to guarantee that the units remain affordable.

Mr. Doug Hill, partner in the development, responded to various questions from Council. He said that he did not have any problem with the condition that the units be marketed within certain ranges. The only things that would concern them would be conditions that would raise the cost per unit of the project. He said there were some things they can do to reduce the noise on a unit basis like additional insulation in the walls. He explained the open space in the center is a different grade and also felt that once the homeowners association gets established they may wish to develop the basketball court space into something else.

Councilman Davis moved to adopt Ordinance No. 3293, granting a conditional use permit for Biltmore Point, located on Fairview Road, subject to the following conditions: (1) All outstanding TRC conditions are met; (2) The conditions of affordability be worked out between City staff and the applicant and reviewed by the City Attorney's office for legal sufficiency; (3) Work with City staff to address the buffer along Fairview Road in lieu of an undisturbed area; (4) A traffic study be performed to determine the need for a left turn lane on Fairview Road. If the turn lane is required it will be the responsibility of the developer to provide this improvement; (5) Provide a right-of-way for the emergency access road to be converted into a full access in the future if the Traffic Impact Analysis shows a need; and (6) The sidewalk on Stoner Road be waived. This motion was seconded by Councilwoman Jones.

Councilman Newman was concerned about what happens if after the buildout, the developer can't market the units in the affordability range. City Attorney Oast said that the City can (1) modify the conditional use permit; (2) issue fines and get some kind of financial payback as a result of violating the conditional use permit; or (3) revoke their conditional use permit.

In response to Councilwoman Bellamy, Mr. Shuford said that the applicants will not perform the Traffic Impact Analysis until further along in the project, however, City staff will update Council once we know what the Traffic Impact Analysis shows.

Vice-Mayor Mumpower explained why he would not be able to support the project because he felt Council is bending their rules for this project.

Upon inquiry of Councilman Dunn, Mr. Butzek said that from a technical standpoint, it would be a positive to the development to have two access points. In this case staff felt that if the Traffic Impact Analysis showed traffic could be accommodated from one access, with an emergency access with the option of opening it up in the future, then one access would suffice.

The motion made by Councilman Davis and seconded by Councilwoman Jones carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 286

C. PUBLIC HEARING TO CONSIDER REZONING NINE PROPERTIES ON COUNTRY GARDEN LANE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/MANUFACTURED HOUSING OVERLAY

ORDINANCE NO. 3294 - ORDINANCE TO REZONE NINE PROPERTIES ON COUNTRY GARDEN LANE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/MANUFACTURED HOUSING OVERLAY

Mayor Worley opened the public hearing at 6:41 p.m.

Development Services Director Joe Heard said that this is the consideration of an ordinance to rezone 9 properties on Country Garden Lane from RM-8 Residential Multi-Family Medium Density District to RM-8 Residential Multi-Family Medium Density District/Manufactured Housing (MH) Overlay. This public hearing was advertised on October 14 and 21, 2005.

Mr. Heard said that of the nine lots within the subject area, six of the parcels presently contain manufactured homes and another parcel contains a modular home. The residences appear to be newer models and kept in good condition. In fact, at least three of the manufactured homes are set on permanent foundations similar to a modular home. The proposed Manufactured Housing Overlay zone is requested to allow the remaining parcels to be developed in a manner similar to the rest of the neighborhood. Several adjoining residential neighborhoods to the west already have a manufactured home overly and contain a mixture of mobile, manufactured, and stick-built homes.

Pros

- Several, larger residential neighborhoods abutting the subject area already have MH Overlay zoning.
- Placement of the MH Overlay District would bring many existing uses into conformity and allow for compatible future infill development.
- With many existing manufactured and mobile homes in the surrounding area, adding the MH Overlay District would allow more affordable housing development in an appropriate area.

Cons

- Having the MH Overlay zoning would potentially discourage more substantial investment in this area of the community.

City staff recommends approval of the proposed Manufactured Home Overlay District.

Ms. Clarissa Cornette, resident on Country Garden Lane, spoke in support of this rezoning request.

Mayor Worley closed the public hearing at 6:47 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3294. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 292

At 6:48 p.m., Mayor Worley announced a short recess.

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON MARDELL CIRCLE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED CHILDCARE CENTER

Ms. Patsy Brison, attorney representing the applicant, said that her client has spent some time reviewing the Planning & Zoning Commission report and the City's staff report, in addition to spending a lot of time talking with the neighborhood, and they feel it might be helpful to remand this issue back to the Planning & Zoning Commission. Therefore, she asked Council to consider a motion to remand this matter back to the Planning & Zoning Commission in order for them to address some of the issues raised by the neighborhood and possibly adjust the project.

City Attorney Oast said that a valid protest petition has been received. If this matter is remanded back to the Planning & Zoning Commission, a new protest petition would have to be filed.

Vice-Mayor Mumpower moved to remand this issue back to the Planning & Zoning Commission. This motion was seconded by Councilman Newman.

The following individuals spoke in favor of continuing the hearing at this meeting and against remanding this matter back to the Planning & Zoning Commission for various reasons, some being, but are not limited to: applicant also requested postponement at the Planning & Zoning public hearing; postponement is an attempt to wear down residents opposed to rezoning; difficult to keep community organized; applicant has already met with community and no effort has been made to look at their point of view; nothing will change at the Planning and Zoning Commission because there is nothing to negotiate; and neighborhood has been inconvenienced by attending this meeting and now a postponement has been requested:

Mr. Jeff Mackey, resident on Bryant Street
Ms. Sharon Martin, resident on Mardell Circle
Mr. Rick Sculthorp
Ms. Evelyn Baker, area property owner
Mr. Ted Baker
Mr. Andy Askew, resident on Bryant Street
Ms. Gwendolyn Barton, area property owner
A resident on Mardell Circle
Ms. Laurie Newman, resident on Bryant Street

A resident who lives on Burton Street felt that this matter should be remanded back to the Planning & Zoning Commission. She said that she has a petition containing 250 names of people who are in support of the rezoning. She felt that child care is important to the community and

postponing the matter will give the applicant an opportunity to look into the traffic issue and present correct information to Council.

Vice-Mayor Mumpower said that Council does recognize and understand the inconvenience for the neighborhood, but when you talk about development, it is not a seamless process. He agreed that this dialogue should have occurred before it came to Council, but for Council to make a reasonable effort and allow the applicant to address the problems is the responsible thing to do.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Newman carried unanimously.

E. PUBLIC HEARING TO CONSIDER REZONING SEVERAL PROPERTIES ALONG THE WESTERN END OF SARDIS ROAD, LOCATED ON SARDIS ROAD AND SAND HILL ROAD, FROM COMMUNITY BUSINESS II DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3295 - ORDINANCE TO REZONE SEVERAL PROPERTIES ALONG THE WESTERN END OF SARDIS ROAD, LOCATED ON SARDIS ROAD AND SAND HILL ROAD, FROM COMMUNITY BUSINESS II DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 7:44 p.m.

Development Services Director Joe Heard said that this is the consideration of an ordinance to rezone several properties along the western end of Sardis Road, located on Sardis Road and Sand Hill Road, from Community Business II District to Commercial Industrial District. This public hearing was advertised on October 14 and 21, 2005.

Mr. Heard said that on May 10, 2005, Asheville City Council evaluated a petition submitted by property owners along Sardis Road and authorized Planning & Development staff to conduct a zoning study of the area. He then reviewed the zoning study. He said that staff evaluated several potential alternatives for zoning and has proposed a mixture of Commercial Industrial (CI) and Community Business II (CB-II) zoning that accommodates a variety of needs in the area.

Pros

- This proposal seems to strike a balance between the provision for larger, more regional retail and services uses and community-scaled shopping and services to serve the surrounding neighborhoods.
- The CB-II district would provide an adequate space for development of a shopping area to serve the surrounding community.
- Development of the CB-II zoned area would be at a smaller, community scale with greater pedestrian orientation.
- Placement of the CI zoning would bring the existing uses into conformity and allow for the compatible future infill development.

Cons

- Developed uses within the remaining CB-II area, including the gas station/convenience store and car wash, would be allowed uses, but are developed in a nonconforming manner (parking in front of building, etc.).
- The CI zoning designation allows intensive business and industrial development. Light manufacturing, warehousing and wholesale uses are all permitted. The presence of residential uses in adjoining areas could lead to conflicts with these higher intensity uses.

Per the zoning study, staff recommends maintaining the existing CB-II zoning for four parcels located at the intersection of Sardis and Sand Hill Roads and rezoning the remaining parcels in the study area to the CI district for the following reasons:

- Given the previous trends of commercial and industrial development in the study area before zoning was introduced in 2001, CI zoning would be consistent with the recent development of the area along Sardis Road.
- CI zoning along this stretch of Sardis Road would bring many nonconforming uses in the study area into conformity while providing for compatible infill development in the future.
- The Sardis Road and Sand Hill intersection is in a stronger location for CB-II zoning because of heavier traffic in this area, as well as residential development in relatively close proximity to the intersection. Zoning for CB-II on both sides of the intersection would encourage the development of a community-oriented shopping/service area in the future.

Mr. Paul Smith spoke in support of this rezoning request.

Mr. Mike Fryar questioned why three of the properties were not zoned Commercial Business II District.

Mayor Worley closed the public hearing at 7:56 p.m.

There was considerable discussion about the requirements and application of the Commercial Business II District in this rezoning request as well as for the entire City.

Councilman Davis felt the area was rural and will have the suburban feel for many years to come. Therefore, he felt the entire study area should be zoned Community Industrial District.

Councilwoman Jones stated that Council asked our staff to study this area and their recommendation is for four lots to remain Community Business II District. In addition, the Planning & Zoning Commission has unanimously agreed. She then moved to support staff's recommendation to rezone 20 parcels along the western end of Sardis Road to Commercial Industrial District and retain the existing Commercial Business II District for 4 parcels. This motion was seconded by Councilman Newman and failed on a 3-4 vote, with Mayor Worley, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

There was a discussion about land planning in the extraterritorial jurisdiction area.

Councilman Davis moved to approve rezoning the 24 parcels along the western end of Sardis Road to Commercial Industrial District. This motion was seconded by Councilman Dunn and carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

As a result of Council's discussion, City Manager Jackson said that it would be appropriate for a Planning & Development worksession to revisit the 2025 vision, annexation, goals and objectives, development patterns and standards, and where Council wants to apply these zoning designations. These topics also lend themselves well to developing the alternatives, seeking some public input on the vision and then the development patterns and land use regulations Council wants to put in place. We may talk about a more significant process than just a worksession presentation, but will lay something out for Council in term of what kind of report and presentation to Council and perhaps even some dialogue involving not only the community but also the Planning & Zoning Commission. We will review some of the process ideas after the first of the year.

Councilman Newman said that if the City is going to do land use planning, then Council needs to hear and understand from our Planning & Zoning Commission and Planning staff about how growth and development is occurring around the City and what different choices would accomplish.

ORDINANCE BOOK NO. 22 – PAGE 295

F. PUBLIC HEARING TO AMEND SPECIFIC DEADLINE REQUIREMENTS FOR REZONING APPLICATIONS AND ZONING STUDY PETITIONS

ORDINANCE NO. 3296 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO AMEND SPECIFIC DEADLINE REQUIREMENTS FOR REZONING APPLICATIONS AND ZONING STUDY PETITIONS

Mayor Worley opened the public hearing at 8:34 p.m.

Mr. Joe Heard, Development Services Director, said that this is the consideration of this amendment to the Unified Development Ordinance (UDO) for the purpose of amending specific deadline requirements for rezoning applications and zoning study petitions. This public hearing was advertised on October 14 and 21, 2005.

Presently, the UDO outlines a deadline of 9:00 a.m. on the first Monday of the month for the submittal of rezoning applications and zoning study petitions. This day/time conflicts with the application deadline for all other types of applications (conditional use permits, Level II/III projects, etc.). This amendment is proposed by staff to set a consistent deadline for the types of larger scale applications heard by the Technical Review Committee, Planning & Zoning Commission, and/or City Council.

Pro –

- The amendment would make application deadlines consistent for all larger development applications.

Con –

- Moves the currently stated deadline 5.5 working hours earlier.

The Planning and Zoning Commission recommended approval of these code amendments on September 7, 2005, by a unanimous vote of 6-0.

City staff recommends City Council adopt the ordinance to amend specific deadline requirements for rezoning applications and zoning study petitions.

Mayor Worley closed the public hearing at 8:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3296. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 298

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-201- RESOLUTION ACCEPTING THE DEED OF GIFT FOR THE COLONEL ROBERT K. MORGAN MEMORIAL PUBLIC ART ENTITLED "ASHEVILLE DEPARTURE"

Mr. David Mitchell, Cultural Arts Supervisor, said that this is the consideration of a resolution accepting an unrestricted gift to the Public Art Collection of the City of Asheville.

On August 23, 2005, the Public Art Board unanimously approved the donation of artwork for the Colonel Robert Knight Morgan Memorial entitled "Asheville Departure." The value of the artwork is $200,000 and will be located between City Hall and the Buncombe County Courthouse, which is the actual location of the Asheville Departure of Colonel Morgan and the Memphis Belle. This is a Deed of Gift to the City of Asheville from the Neal Hanks Sr. Community Foundation, Beverly Hanks & Associates and other community contributors.

As per the requirements of the Public Art Master Plan, a "Public Input Meeting" was held on October 3, 2005, to ascertain feedback from the community. The artwork was received with overwhelming approval and support from the community. The Public Art Board, collaborating artists and the architects from the Pack Square Conservancy, will work together to insure the artwork will be integrated into the design of the new City-County Plaza Pack Square Park.

PROS:

- Commemorates a decorated American war hero who is a native of Asheville
- Recognizes the exceptional talents and legendary status of Colonel Morgan as the pilot of the Memphis Belle
- Educates the community and visitors about the famous and unbelievable flight between City Hall and the County Courthouse
- Enhances the Public Art Collection by including a memorial of this local modern American war hero
- Encourages involvement of local businesses and corporations in the city's public art program and its process

CONS:

- Integrating the design of the Colonel Robert Knight Morgan Memorial in the overall design of the new Pack Square Park
- Cost of the memorial projected to be over $200,000

This action is in keeping with the City of Asheville Strategic Plan by contributing to the (1) "Livability" of Asheville by recounting an uplifting experience in the life of the City of Asheville; (2) "Sense of Place" of Asheville and the need to educate citizens and visitors of its significant history and contributions of local citizens through the arts; (3) "Vibrancy" of Asheville's art scene and its commitment to the development and enhancement of the public art collection; (4) "Participation" of Asheville citizens in the pubic art process as programmatic and financial contributors; and (5) "Heritage & Art" through the significant historical account of that famous flight in Asheville and the need to celebrate and memorialize a local hero.

City staff recommends City Council approve the unrestricted gift of the Colonel Robert K. Morgan Memorial "Asheville Departure" to the Public Art Collection of the City of Asheville.

Ms. Dana Irwin, member of the Public Art Board, explained how she designed the memorial. The symbolic columns are representative of two municipal buildings. The plan (B-17) will be angled at 60 degrees between the two columns, with wind powered propellers. There will be an information plaque/artwork suspended between two columns. Metal propellers inlayed in ground level base structure with cement roundabout viewing area. The dimensions will be (1) 20 feet high (10 feet wide and 8 feet deep); (2) columns will be pink/grey granite; (3) plane will be cast aluminum; (4) plaque will be bronze; and (5) base will be concrete with inlayed metal propellers.

Mr. Steven Duncan, Chair of the Neal Hanks Sr. Community Foundation, discussed how the funding focus will be private and nature of the gift.

In response to Councilman Dunn, Mr. Mitchell said that a significant contribution of marble for the Memphis Belle and the Col. Robert K. Morgan Memorial will come from the Asheville Regional Airport.

Councilwoman Jones would support allocating funds from the Public Art Board allocation for this project, given the historical nature of the Memorial and its location.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-201. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 256

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced current vacancies on the Alcoholic Beverage Control Board and the Citizens-Police Advisory Committee.

Vice-Mayor Mumpower thanked Housing Authority staff, volunteers and residents for their work at Altamont Apartments for fixing and cleaning their game room.

The following claims were received by the City of Asheville during the period of October 7-20, 2005: Loren Hord II (Transit Services), Loraine Wright (Transit Services), Chris Eby (Police), Peter Pardee (Transit Services), Hertz Rental (Parks & Recreation), Sherif Bytyqi (Sanitation), Phil Stubblefield (Sanitation), Dana Alexander (Transit Services), Kimbra Waters (Transit Services), Avail Med Prop (Water), and BellSouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to City Council about the need for a quality management system.

Mr. Mike Fryar spoke about the finances of the construction at Pack Square, annexation, and affordable housing.

At this time, 8:52, Mayor Worley left the meeting and did not return.

Mr. Joe Minicozzi and Mr. Reid Thompson spoke about the problems they are encountering on Maxwell Street from Greenlife Grocery and their alleged violations. City Attorney Oast advised City Council that they are in litigation on this matter, and provided Council with a general response regarding the loading docks. He then said that he has sent a letter to Ms. Patsy Brison, attorney for Greenlife Grocery, today and a recommendation in the letter was that a group be formed where an on-going dialogue of these kinds of issues could take place. He offered to assist in that process as much as the City can.

VIII. ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 9:14 p.m.

Magdalene Burleson
CITY CLERK

Charles R. Hadley
MAYOR

Wednesday – November 9, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding (left meeting at 7:56 p.m.); Vice-Mayor R. Carl Mumpower (left meeting at 7:52 p.m.); Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Owen High School ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

At the request of City Manager Jackson and upon consensus of Council, a matter regarding taxicabs and an update about the stormwater services program was added to the "Other Business" section.

I. PROCLAMATIONS:

A. NATURE CENTER ACCREDITATION

Mayor Worley recognized the Nature Center's accreditation from the American Zoo and Aquarium Association. Manager of the Nature Center Pat Lance was pleased to accept the Accreditation Award.

B. NORTH CAROLINA AMATEUR SOFTBALL ASSOCIATION HALL OF FAME

Mayor Worley recognized Charlie Bullman's recent induction into the North Carolina Amateur Softball Association Hall of Fame. Mayor Worley said that Mr. Bullman is a longtime volunteer and former Recreation Board member.

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda Items "B", "C", "E" and "F" be removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 25, 2005

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC STATE RURAL ECONOMIC DEVELOPMENT CENTER FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

This item was removed from the Consent Agenda for an individual discussion.

C. BUDGET AMENDMENT FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

This item was removed from the Consent Agenda for an individual discussion.

D. RESOLUTION NO. 05-203 - RESOLUTION ACCEPTING A PORTION OF BLACK OAK DRIVE AND WEST BLACK OAK DRIVE FOR PUBLIC MAINTENANCE

Summary: The consideration of a resolution to accept a portion of Black Oak Drive and West Black Oak Drive in North Asheville for public maintenance.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Black Oak Drive and West Black Oak Drive are located in an established subdivision called "The Forest." The developer constructed the streets as private streets. The neighborhood has worked with the City to have these streets maintained by the City. The neighborhood association has recently contracted to have the streets repaired. The Forest is an established neighborhood. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards. This portion of Black Oak Drive has an average paved width of 19.3 feet and a length of 0.28 miles. West Black Oak Drive has an average paved width of 18.6 feet and a length of 0.08 miles.

Following City Council's approval of this resolution, this portion of Black Oak Drive and all of West Oak Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept this portion of Black Oak Drive and West Black Oak Drive for public maintenance.

RESOLUTION BOOK NO. 29 – PAGE 252

E. RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $42,000,000 WATER SYSTEM REFUNDING REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

This item was removed from the Consent Agenda for an individual discussion.

F. RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REFUNDING REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS AND SETTING THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE SOLD

This item was removed from the Consent Agenda for an individual discussion.

G. RESOLUTION NO. 05-206 - RESOLUTION FIXING A DATE OF PUBLIC HEARING FOR THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on November 22, 2005, for property located off of Patton Mountain Road.

William J. Kimpton, President, on behalf of Ranch 19 Corp., has petitioned the City of Asheville for the annexation of portions of two lots owned by the corporation and located at Patton Mountain Road just off of the intersection of Patton Mountain with Griffing Boulevard. The PIN numbers of the lots involved are 9740.16-93-6462 and 9740.16-83-8119. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N.C. Gen. Stat. sec. 160A-31.

Pursuant to N.C. Gen. Stat. sec. 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next steps in this process are for City Council to fix the date for the public hearing on this matter. It is suggested that the annexation be effective one week following the date of adoption of the ordinance if City Council decides to proceed with this request.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and approve future plans for this parcel as it is developed.
- Assists the developer of the property in achieving his desired development plan under one jurisdictional review.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the resolution setting the date for a public hearing on the annexation petition.

RESOLUTION BOOK NO. 29 – PAGE 260

H. ORDINANCE NO. 3298 - BUDGET AMENDMENT FOR REIMBURSEMENT FROM A DEMOLITION LIEN PLACED ON 56 BURTON STREET

Summary: The consideration of a budget amendment, in the amount of $9,565, for reimbursement from a demolition lien placed on 56 Burton Place.

The City of Asheville Building Safety Department, Housing Code Division, followed the City and State process for demolition of the structure located at 56 Burton Place, PIN No. 9638.10-45-4228, due to the unsafe and dilapidated condition. The Demolition Ordinance No. 2174 was adopted on January 24, 1995. The City of Asheville removed asbestos from the structure as required prior to demolition. The demolition was performed from March 6-13, 1995, by the City of Asheville Public Works Department. The Demolition Lien was filed on March 13,

1995, in Deed Book 1840 at Page 410. The budget amendment will provide some funding for additional demolitions.

Pros:
- Reimburse City for work conducted over ten years prior.
- Establishes some funding for future demolitions.

Con: None noted.

This action complies with the Strategic Operating Plan in that Asheville City Council has directed staff to work diligently to provide sufficient, safe, and affordable housing for Asheville residents. All neighborhoods should provide a safe and nurturing environment within which to raise a family. The section of the Strategic Operating Plan on Partnerships to Improve Critical Services & Infrastructure directs staff to work for providing the quality of life within the mountain region: Goal #3 – Diversified and broadened revenue sources – Develop alternate revenue sources that are available to address local needs; Objective B – Reduce reliance on property tax as a revenue source by incrementally adjusting and/or establishing new fess and charges based on City Council policy;

City staff recommends City Council approve the budget amendment to receive the reimbursement for the demolition lien and provide funding for additional demolitions.

ORDINANCE BOOK NO. 22 – PAGE 301

I. **ORDINANCE NO. 3299 - ORDINANCE AMENDING THE STREET NAME AND ADDRESS REQUIREMENTS**

Summary: The consideration of an amendment to the Street Name and Address Requirements to allow the Emergency Address Coordinator to approve street names that meet the requirements within the ordinance.

Council approved the additional position of Emergency Address Coordinator in the Fire and Rescue Department within the Fiscal Year budget 2004-2005. This position was requested in cooperation with seven other City departments to facilitate address assignments for the Permit Center. The changes proposed for Chapter 16, Streets, Sidewalks and other Public Places, Article VI Street Name and Address Requirements, in the Code of Ordinances for the City of Asheville would reflect this position as responsible for naming and addressing public and private streets within the City of Asheville. The position will coordinate names with Buncombe County to prevent duplication and increase public response effectiveness. The change will allow the Emergency Address Coordinator to approve street names that meet the requirements within the Ordinance. Existing street names that have a proposal to change the name will continue to be placed on Council's agenda. The proposed changes will facilitate faster approval of street names and response times to the applicant.

Pros:
- Faster approval times for new street names.
- Will reflect actual title of position responsible for street naming and addressing

Con:
- Council will not be involved with the naming of new streets within the City of Asheville.

This action complies with the Strategic Operating Plan in that the Asheville City Council has directed staff to work diligently to promote efficiency in city regulations while offering

incentives and practical planning to achieve these goals through the City's Strategic Operating Plan section on Economic Development: Goal #2 – An efficient and economical permitting process; Objective A – Improve the plan review process by enhancing effectiveness and customer service; Task 3 – Re-engineer staff for departments collaborating on plan review.

City staff recommends City Council approve the amendment to the Code of Ordinances for the City of Asheville to allow the Emergency Address Coordinator to approve street names that meet the requirements within the ordinance.

ORDINANCE BOOK NO. 22 – PAGE 303

J. RESOLUTION NO. 05-207 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED ON WEST CHESTNUT STREET FOR A PORTION OF REAL PROPERTY LOCATED ON MAGNOLIA AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located on West Chestnut Street for a portion of real property located on Magnolia Avenue.

The City and Allen & Susan Roderick (Rodericks) have negotiated an exchange of a portion of City owned real property on West Chestnut Street for a portion of Rodericks property at 8 Magnolia Avenue that will allow an improved course for the Reed Creek Greenway Trail.

The proposed location of the Reed Creek Greenway Trail is just west of Broadway and borders Reed Creek for most of its length. Between West Chestnut Street and Magnolia Avenue there is a "pinch point" that is created by the proximity of the Roderick property to Reed Creek forcing the trail closer to the top of the creek bank where the topography poses a challenge for construction. The proposed exchange of property will allow the trail to follow a less constrictive path.

The City's property (PIN 9649.14-23-5411) is on the north side of West Chestnut Street about 100' west of its intersection with Broadway, zoned Neighborhood Corridor District (NCD) and comprising 0.24 acre±. The portion to be exchanged is a 0.05 acre± parcel at the rear of the City's lot that adjoins Rodericks' property. This part of the property due to its configuration is not particularly useful to the greenway design.

The property owned by Rodericks (PIN 9649.13-23-4418) at 8 Magnolia Avenue is on the south side of the street about 100' west of its intersection with Broadway. It comprises 0.24 acre± and is zoned NCD. The portion to be exchanged is a 0.05 acre± parcel located at the rear of the property adjoining the City's property.

The value of each parcel was determined by reviewing the tax assessment for the whole property and extrapolating a value for the cut out portion based on the per acre value of the whole. Both whole lots are 0.024 acre± and have an assessed tax value for land in the amount of $64,000. That reflects a per acre value of about $267,000. Both cut out parcels are 0.05 acre± which calculates to about $13,350.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
- It is consistent with the greenway master plan.

- It will provide a better less constrictive path for the greenway trail.
- It is an efficient use of resources both public and private, because the City will own property more functional to the greenway and un-needed property will return to private ownership.

There are no negative aspects to this proposal.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development and Parks & Recreation staff recommend adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located on West Chestnut Street for a portion of real property located on Magnolia Avenue.

RESOLUTION BOOK NO. 29 - PAGE 265

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC STATE RURAL ECONOMIC DEVELOPMENT CENTER FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

Summary: The consideration of a (1) resolution authorizing the City Manager to enter into an agreement with the N.C. State Rural Economic Development Center, for a grant to implement prioritized components of the Redevelopment Plan for the Biltmore Village area, East Swannanoa River area and the French Broad River area, and the accompanying budget amendment, in the amount of $700,000.

With City Council approval in July, 2005, the City of Asheville Planning and Development Department requested and received $40,000 from the North Carolina State Rural Economic Development Center to prepare redevelopment plans for the three areas. In response to last fall's flooding, the General Assembly provided grant funding, through the Center, for preparation of redevelopment plans for communities that suffered flood damage, and also provided funding for the implementation of these plans. The City was successful in obtaining additional grant funds in the amount of $700,000 for future implementation of redevelopment plans. These implementation measures include: loan program for floodproofing historically significant properties in Biltmore Village; purchase of vacant properties in the floodway; traffic circulation and streetscaping improvements in Biltmore Village; and consulting assistance with project development financing.

Pros:

- Allows us to pursue the redevelopment plan for each of these areas.
- Provides a funding source for plan implementation.

Cons: None noted.

City staff recommends City Council adopt the resolution authorizing the City to enter into the redevelopment planning grant agreement with the Rural Economic Development Center, and to also approve the budget amendment, in the amount of $700,000.

RESOLUTION BOOK NO. 20 – PAGE 251

ORDINANCE NO. 3297 - BUDGET AMENDMENT FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

Summary: See above item.

ORDINANCE BOOK NO. 22 – PAGE 299

RESOLUTION NO. 05-204 - RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $42,000,000 WATER SYSTEM REFUNDING REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

Summary: The consideration of (1) Bond Order authorizing the Issuance of Not to Exceed $42,000,000 Water System Refunding Revenue Bonds of the City of Asheville, North Carolina; and (2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville, North Carolina Water System Refunding Revenue Bonds; providing for the sale of the bonds and setting the terms and conditions upon which the bonds are sold.

City Council has previously adopted a resolution directing that actions be initiated to enable the issues of Water System Refunding Revenue Bonds:

The Bond Order provides the following:

- In order to raise the money required to refund the Refunded Bonds, the 2005 bonds are authorized by City Council and shall be issued pursuant to North Carolina General Statues, Section 159-80;
- The principal amount of the 2005 bonds shall not exceed $42,000,000;
- The 2005 bonds shall be paid solely from the revenues from the operation of the water system; NOT from the general funds, credit or taxing powers of the City;
- The proceeds from the sale of the 2005 Bonds shall be deposited in accordance with the Series Indenture; and
- The Bond order shall be effective upon adoption.

The resolution for the sale of bonds provides the following:

- Approves the issuance of 2005 refunding bonds in a principal amount not to exceed $42,000,000;
- Approves, confirms and incorporates by reference the provisions of the General Indenture and Series Indenture;

- Stipulate that the bonds shall be special obligations of the City and shall not be payable from the general funds of the City;
- Authorizes and directs the Mayor, City Manager, City Clerk and Chief Financial Officer to execute and deliver the Series Indenture and do all things necessary to issuance of the bonds and to carry out and comply with the Series Indenture;
- Approves the form and content of the Purchase Contract and stipulates that the bonds will be sold to the underwriters pursuant to the terms of the Purchase Contract; and
- Authorizes and approves the form and content of the Preliminary Official Statement and Official Statement (to be dated on or about November 1, 2005) and their use by the underwriters in the sale of the bonds.

Pro:

- Expected total debt service savings based on current market conditions is $3.4 million. Actual savings level will be determined on the date the bonds are sold which is scheduled for November 15th.

Con: None noted.

City staff recommends City Council adopt (1) Bond Order authorizing the Issuance of Not to Exceed $42,000,000 Water System Refunding Revenue Bonds of the City of Asheville, North Carolina; and (2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville, North Carolina Water System Refunding Revenue Bonds; providing for the sale of the bonds and setting the terms and conditions upon which the bonds are sold.

RESOLUTION BOOK NO. 29 - PAGE 254

RESOLUTION NO. 05-205- RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REFUNDING REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS AND SETTING THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE SOLD

Summary: See above item.

RESOLUTION BOOK NO. 29 – PAGE 256

After City staff responded to questions from Councilwoman Bellamy, she moved for the adoption of Resolution Nos. 05-202, 05-204, and 05-205 and Ordinance No. 3297. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO ZONE 75 LONG SHOALS ROAD TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3300 - ORDINANCE TO ZONE 75 LONG SHOALS ROAD TO COMMUNITY BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 5:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone 75 Long Shoals Road to Community Business II District. This public hearing was advertised on October 28 and November 4, 2005.

Ms. Cogburn said that this initial zoning, as it is taking place in an area that is transitioning due to the widening of Long Shoals Road, supports the land use strategy found in the City's 2025 Plan of identifying appropriate areas for the location of commercial uses. According to the plan, these areas should be adequately served by public services and be easy to access from the interstate highway system.

The City of Asheville recently completed the voluntary annexation of property located at 75 Long Shoals Road. This property is currently in the Limestone Township jurisdiction of Buncombe County and is zoned R-2. The property currently contains one single-family home. The initial zoning process for this property is following the voluntary annexation approved on October 25, 2005, by the Asheville City Council. While this property is in the area of the Long Shoals Road annexation that will become effective on January 1, 2006, the property owner requested the voluntary annexation and zoning so that they may begin development of this property. The owner has requested CBII zoning for this property that is in keeping with the initial zoning studies for the larger annexation area.

Pros

- Supports the 2025 plan goal of identifying appropriate areas for the location of commercial uses.
- Zones properties recently taken into the City of Asheville in consideration of the surrounding zoning and land use.

Cons

- Could be considered by some to be expanding strip commercial development along Long Shoals Road.

At its November 2, 2005, meeting, the Planning & Zoning Commission unanimously recommended zoning the property Community Business II District. Planning staff concurs.

Mayor Worley closed the public hearing at 5:19 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3300. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 306

B. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

Mayor Worley said that this public hearing was originally scheduled for August 23, 2005, however, the applicant had requested the hearing be continued until September 13. 2005, in order to have a full Council present for the hearing. That request was granted.

On September 13, 2005, Mr. Albert Sneed requested that this public hearing be continued until September 27, 2005, in order to have a full Council present for the hearing. That request was granted.

On September 27, 2005, Mr. Craig Justus, attorney representing the developers, requested that this public hearing be continued until November 9, 2005, in order to have an opportunity to meet with the attorney who has just been retained by the Kenilworth Neighborhood Association, Planning staff and representatives of the neighborhood to work toward a compromise. That request was granted.

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Patsy Brison, attorney representing Kenilworth Residents Association, presented City Council with letters dated September 27, 2005, and November 4, 2005, regarding procedural and legal issues; and copies of deeds. In summary, Ms. Brison explained how it is her opinion that the original protest petition is still valid and urged City Council to make that determination as well. Ms. Brison also explained why the provisions of the Mountain Ridge Protection Act should apply to this particular project because there is a protected mountain ridge located within this project. An argument has been made that this protected mountain ridge is not shown on an old, outdated map in the City of Asheville's records. However, it is her opinion that any exclusions from that map of those portions of the ridges which are protected are in error. The text of the City's Code controls. She urged Council to make a determination that this is included within a Protected Mountain Ridge, so the project is prohibited. If Council does not make that determination, she urged Council to instruct City staff to correct all maps to make sure that all the protected mountain ridges within our jurisdiction are clearly shown on every document. Regarding height variances, Ms. Brison said that City Council has established the Board of Adjustment to consider and act upon variances to the City Code, and therefore, variances cannot be considered by City Council. Finally, she explained that the application is invalid because the names on the application are not the owners as shown on the deed.

City Attorney Oast explained his opinion that as to the plan, as revised, the protest petition is not valid.

In response to Councilwoman Bellamy, City Attorney Oast said that if Council remanded this matter back to the Technical Review Committee (TRC), or the Planning & Zoning Commission then a new City Council public hearing date would be established, thus triggering another opportunity for a new protest petition.

City Attorney Oast then responded to the Mountain Ridge Protection Act issue. It was his opinion that the written provisions of the Code shall control over maps and illustrations contained in the Unified Development Ordinance (UDO). He didn't think that means that it controls over maps that are not contained in the UDO. The Mountain Ridge Protection ordinance refers specifically to a map that is not contained in the UDO, but it is referenced in the UDO. That map has been in the Planning Department unchanged since the early 1980's and it does not show this ridge as a protected mountain ridge. Council can direct staff to review the map, but he felt this developer is entitled to rely on the map that is of record.

Councilman Davis recalled that this particular mountain was mentioned in connection with a separate mountain project being considered in 2001-02. He recalled that the Planning Department made a determination that the mapping was correct.

There was considerable discussion about the map of the Mountain Ridge Protection Act and the definition of the adjacent valley floor.

Mr. Craig Justus, attorney representing the developer, said that the law says there are maps available for developers to come in and do due diligence and those maps indicate that this ridge is not part of the protected ridges. He then explained why he felt the protest petition was invalid. Regarding the height variance issue, he said that it was the staff's interpretation that they could look to City Council for a variance. Finally, as to the application being invalid because the ownership changed, he said that this process has gone on for a long time and there was a need to lock in on the property. He urged Council to move ahead with the merits of this project.

Because Councilwoman Bellamy felt that the project has changed significantly, she moved to remand this matter back to the Planning & Zoning Commission for review. This motion was seconded by Councilwoman Jones and failed on a 2-5 vote, with Councilwoman Bellamy and Councilwoman Jones voting "yes," and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis, Councilman Dunn and Councilman Newman voting "no."

Vice-Mayor Mumpower felt that all parties have the law on their side in that the neighbors had the right to file a protest petition and the developer also has the right to revise the boundaries of the project to invalidate the protest petition.

There was considerable discussion regarding the access road and whether or not it needed to be included as part of the project in order to calculate the validity of the protest petition. Ms. Tuch said that staff feels that if that access is removed the plan would not meet the technical standards. City Attorney Oast said that if Council feels the access road is required for the project, then Council would have to turn down the project as presented (because the developer has revised their application to have the PUD overlay only apply to the area with what used to be the Kenilworth Road access being a stub-out).

Mr. Justus urged Council to hear the merits of the project and, if appropriate, condition approval of the project subject to improvements being made off-site.

At 6:29 p.m., Mayor Worley announced a short recess.

City Attorney Oast explained his interpretation of the PUD ordinance and why it was his opinion that Council is supposed to be considering a Master Plan that has been reviewed by the TRC and this one hasn't been. He felt it was up to Council on whether they want to remand this back to the TRC for review or proceed with the hearing. However, he feels that without going through the TRC, there may be a potential legal problem having Council's action invalidated.

Vice-Mayor Mumpower moved to remand this issue back to the Technical Review Committee. This motion was seconded by Councilwoman Bellamy.

Mr. Joe Heard, Director of Development Services, said that, from his understanding of the changes proposed in the Master Plan recently received, it does contain not only the truncating the entrance road discussed, but also within this Plan are a reduction in the improvements to Reservoir Road, as well as changes to the location of the buildings on the site. Certainly together or any one of those by itself could be classified as a substantial change to the Plan. In our discussions with the City's Traffic Engineer, those changes would involve different comments from him had these changes been proposed before the TRC. Staff does feel that these are substantial changes and felt it would be appropriate for the TRC to review.

The motion made by Vice-Mayor Mumpower and seconded by Councilwoman Bellamy to remand this issue back to the Technical Review Committee carried on a 5-2 vote, with Mayor Worley and Councilman Davis voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Update on Stormwater Services Program

City Engineer Cathy Ball briefly reviewed with Council the stormwater services program which beginning in December all property owners with developed land in Asheville's city limits will receive a stormwater utility bill. It was the consensus of Council to have a more detailed update at their November 15, 2005, worksession.

Taxicabs

At the request of City Manager Jackson, Vice-Mayor Mumpower moved to continue the taxicab increase discussion from the November 22, 2005, meeting until the January 10, 2006, to give staff the opportunity to research this issue further. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Claims

The following claims were received by the City of Asheville during the period of October 21-November 3, 2005: Thomas R. Penland (Water), Janet Goode (Parks & Recreation), Enterprise Rent-A-Car (Planning), Ida Myres (Water), Jennifer Sims (Transit Services), Sharon Smith (Water), Gail Hipshire (Streets) and James M. Pressley (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower thanked the Seabees for completing the fence at the basketball court at Klondyke Apartments. He also expressed appreciation to those involved in building a bench at Altamont Apartments.

Councilman Davis briefed Council on the Civic Center Task Force's first meeting.

At this time (7:52 p.m.), Vice-Mayor Mumpower left the meeting.

Mr. Gene Hampton spoke about the impossibility of operating successfully without a quality management program.

At this time (7:56 p.m.), Mayor Worley turned the meeting over to Councilwoman Bellamy and left the meeting

Mr. James Judd, Coalition of Asheville Neighborhoods board member, urged Council's continuance attention to the Greenlife Grocery issue and the alleged injustice done to the residents of Maxwell Street. In addition, he voiced several enforcement problems related to this matter.

VIII. ADJOURNMENT:

Councilwoman Bellamy adjourned the meeting at 8:06 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 15, 2005 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilwoman Diana Hollis Jones; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn and Councilman Brownie W. Newman

CONSENT AGENDA:

Interim Shelter to Hurricane Katrina Evacuees

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina; the costs of which will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of $100,000.

The Asheville Chapter of the Red Cross has dealt with requests for assistance from over 500 individuals or families who have evacuated to our area as a result of Hurricanes Katrina and Rita. Of these, 332 had registered with FEMA by October 18 giving temporary addresses within Buncombe County – the fourth highest total for counties in North Carolina.

Housing is the #1 need reported by these evacuees and, to date, approximately 300 families have been provided with temporary shelter in hotels/motels, in conference centers such as Ridgecrest, and in apartments offered by private individuals. An estimated one-third of these have already moved back home to the Gulf States and a handful have moved into more permanent housing here. Over the next few weeks, as Red Cross payment for hotel accommodation runs out we expect that the remainder will either move back home, or seek more permanent housing in our area.

Staff has been in close contact with the non-profit agencies assisting these families – the Red Cross, Asheville-Buncombe Community Christian Ministry (ABCCM), the Affordable Housing Coalition (AHC), and the Housing Authority of the City of Asheville (HACA). A number of faith-based groups and individuals have donated temporary accommodation to ABCCM, and the Red Cross receives reimbursement directly from FEMA for the cost of hotel/motel accommodation for up to 60 days, but otherwise our local non-profits have used their own resources for intake, advice, and housing placements. They will not be able to support the cost of longer-term housing assistance without severely diminishing the assistance they provide to local residents.

We have contacted FEMA and NCEM to find out what federal assistance is available for local efforts and how to structure those efforts in a way that is consistent with FEMA rules for reimbursement. On October 17, we received detailed guidance from NCEM on FEMA's Interim Shelter Assistance program and on October 28 submitted the Interim Shelter Plan, created after consultation with the agencies listed above and with Buncombe County staff.

Through this plan, the City will be reimbursed for the cost of providing housing (not rent assistance) to evacuees for up to 12 months. The City will contract with ABCCM and AHC who will identify those in need of housing, lease suitable units, and place families in those units. We are also seeking retrospective reimbursement of housing expenses already incurred by non-profit providers but at this point we are uncertain whether or not that will be allowed.

It has not been possible to obtain a reliable estimate of the number of people who will remain in our area and seek assistance through the Interim Shelter Program nor for how long

they will need it. Other types of FEMA and HUD assistance are available, though not to everyone. We are initially requesting budget authority for $100,000, which is sufficient to rent about 35 apartments for three months.

Every effort will be made to ensure that all expenses incurred by our non-profit partners are eligible for reimbursement by FEMA through NCEM. However, it is possible that our partners may, in good faith, incur expenses that FEMA will deem ineligible. We recommend that in such cases, after all other avenues have been explored, staff should have the discretion to use the City's Housing Trust Fund as a contingency fund to reimburse such good-faith expenses. It is extremely unlikely that such costs would exceed $5,000.

Advantages:

- Provides up to 12 months of housing for people displaced by Katrina
- Prevents homelessness
- Should be 100% reimbursed by FEMA
- Ensures that local non-profits can maintain services to local residents as well as helping Katrina evacuees.

Disadvantages:

- Scale of need is still uncertain – budget is only a rough estimate
- A small probability exists that some expenses may not be reimbursed, requiring a source of contingency funding (Housing Trust Fund recommended).

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina, which costs will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of $100,000.

Community Development Director Charlotte Caplan updated Council on the families in Buncombe County displaced by Hurricane Katrina. Throughout her update, she responded to various concerns raised by Vice-Mayor Mumpower regarding affordable housing.

Councilwoman Bellamy requested an update in 6-8 months regarding the families we have assisted.

NC DOT Municipal Agreement for Bike Plan

Summary: The consideration of a resolution approving a municipal agreement with the North Carolina Department of Transportation (NCDOT) to receive $24,000 in grant money to develop a bicycle plan for the City of Asheville.

In 2004 the City Council approved a grant application to the NCDOT for $24,000 to develop a bicycle plan in Fiscal Year Fiscal Year 2005-06. This grant was awarded in May of 2005. The plan requires $16,000 in local matching funds. The matching funds are already budgeted in the Fiscal Year 2005-06 operating budget. In addition, the Blue Ridge Bicycle Club has agreed to contribute $1,000 toward the local match.

The bicycle plan will be developed beginning in early 2006. City staff will oversee the project, which will be carried out by a consultant.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update and the 2025 City Development Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

Consideration:

- Executing this municipal agreement is one of the required formal steps to follow-through on the 2004 commitment to pursue this grant and develop a bicycle plan for the City of Asheville in Fiscal Year 2005-06.

City staff recommends City Council approve the resolution approving a municipal agreement with the N.C. Dept. of Transportation to receive $24,000 in grant money to develop a bicycle plan for the City of Asheville.

Housing Trust Fund Allocation – Vanderbilt Apartments

Summary: The consideration of a resolution approving a $150,000 Housing Trust Fund loan for the preservation of affordable rental housing at Vanderbilt Apartments.

National Church Residences, Inc. (NCR) has requested a Housing Trust Fund (HTF) Loan in the amount of $150,000 as partial financing for its proposed acquisition and rehabilitation of the Vanderbilt Apartments. NCR has recently completed a similar project at the Battery Park Apartments.

NCR will acquire the property from the current non-profit owner, for $1 plus assumption of outstanding loan obligations, and, using Low Income Housing Tax Credits and other financing, will extensively renovate the building, the interior of which has been essentially unchanged for 30 years. In the process they will convert many of the hard-to-lease efficiency units into 1-bedroom units, reducing the number of units from 141 to 123.

In April, Council awarded $250,000 in HOME funds to this project. Since then, estimated costs have increased from $10,000,000 to $11,000,000. Most of this has been offset by increased tax credit revenues. The remaining gap will be filled by deferring more of the developer fee and by this HTF loan. All other financing is now in place, and NCR plans to start work early in 2006.

The application was evaluated by a panel of staff and outside experts and scored well against the HTF criteria. The Housing and Community Development Committee reviewed the

application on October 31, 2005, and has recommended awarding an HTF loan of $150,000 at 2% interest amortized over a 30 year term.

Advantages:

- Long-term preservation of 123 units of affordable housing for the elderly and disabled
- Keeps affordable housing downtown
- Brings a significant tax-exempt property back on to the tax-rolls with estimated annual tax revenue of $80,000

Disadvantages: None

Staff recommends City Council approve a $150,000 Housing Trust Fund loan to National Church Residences.

As a result of concerns raised by Councilman Davis, there was discussion regarding the structural integrity of the Vanderbilt Apartments. Councilwoman Jones, Chair of the Housing & Community Development Committee, spoke in support of this loan. Community Development Director Charlotte Caplan responded to various questions raised and summarized by saying that she would contact NCR to make sure they have done their due diligence in researching the structural integrity of the building.

Clerk to Advertise License Agreement with Mountain Area Information Network

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with Mountain Area Information Network (MAIN) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

MAIN has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "U S Cellular Tower" which is the tower to the east with several large dish antennas attached. U S Cellular is the primary tenant on that tower and any antenna installations by others are subject to their approval. U S Cellular is agreeable to the installation by MAIN subject to a favorable tower analysis. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation. MAIN will pay for and provide a tower analysis. The proposed License Agreement will enable MAIN to operate three (3) antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. MAIN will pay a License Fee of $7,200 ($200 per antenna per month) the first year with a 4% increase annually thereafter.

The request by MAIN has been reviewed by staff and the proposed equipment compared to existing installations to determine comparability. Currently we have three somewhat similar installations that are producing as follows:

Arch Communications	1 antenna	@ $350 per month
Cingular Communication	4 antennas	@ $287.50 per antenna per month
Morris Communications	3 antennas	@ $276.25 per antenna per month

The license fee proposed for MAIN is somewhat below market rate consistent with the rate approved for the Housing Authority of the City of Asheville by Resolution No. 05-92. Both MAIN and the Housing Authority provide public benefit services to lower income persons that are compatible with governmental function and/or sponsorship. A discounted rate for a non-profit providing such services as well as public safety and emergency response agencies seems reasonable and appropriate

Staff recommends that Council review discounted antenna license fees annually during consideration of appropriations to outside agencies.

Relationship to Broadband Initiative: Antenna rental requests are relatively simple transactions and will not materially affect any potential municipal broadband strategy. Specifically cellular and 900Mhz antenna rentals will not create interference with likely technologies to be used for broadband.

The following benefits will be realized from approval of this item:

- The City will receive revenue that it does not currently receive.
- Antenna space that is currently vacant will be utilized.
- MAIN will have improved capacity to provide low cost high speed wireless internet service to City residents.

Planning & Development and Information Technology staff recommend City Council adopt the resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with MAIN for an antenna at 36 Reservoir Road.

Traffic Enforcement Equipment Grant

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of $252,380,

The Police Department and the City of Asheville have the opportunity to be considered for a grant from the North Carolina Governors Highway Safety Program (GHSP) for equipment to outfit a dedicated traffic unit. The total amount of the grant is $252,380, which includes $183,690 in grant funds from GHSP and a required City match of $68,690.

This grant will allow the City to fully outfit a dedicated traffic unit of five officers for traffic enforcement, accident reduction, community traffic education, and overall improved public safety. The grant includes fully equipped police vehicles and special traffic investigation and enforcement equipment. The equipment, training and technology provided in this grant will enhance the police department's ability to conduct traffic crash reconstruction. This is an equipment only grant with no personnel cost.

This grant opportunity came about after the adoption of the 2005/06 budget, so the City match of $68,690 was not budgeted. However, funds have been identified for the local match. The Police Department has been able to save $42,675 in the school crossing guard program following a review and redesign of the program. The remaining $26,015 needed for the City match will be taken from the Manager's contingency funds. This will leave $158,469 in the Manager's contingency account for other needs that may arise during the remainder of the fiscal year.

Pros

- The Police Department obtains much needed traffic enforcement equipment that will improve its ability to address traffic related issues throughout the City.
- The City does not have to bear the full cost of initially purchasing the equipment.

Cons

- The City is required to use $26,015 in contingency funds.
- The City will have the bear the full cost of replacing the equipment in future budgets.

This grant opportunity meets Council's focus area of *Partnerships to Improve Critical Services & Infrastructures* under Goal 2: Diversified and broadened revenue sources – Develop alternate revenue sources that are available to address local needs.

City staff requests City Council adopt a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of $252,380.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

STATUS REPORT ON BUNCOMBE COUNTY SCHOOLS

Mr. Cliff Dodson, Superintendent of Buncombe County Schools, provided City Council with a status report on Buncombe County schools and the performance of the students. He reviewed some assets of the schools, being: (1) S.A.T. scores; (2) 89.2% of students, grades 3-8 score at or above grade level in Reading; (3) 91.4% of students, grades 3-8 at or above grade level in Math; (4) clear expectations; (5) early college/middle college; (6) middle school initiative; and (7) afternoon college. Challenges include (1) the largest minority population in the Buncombe County Public Schools is now Hispanic students – not African-American; (2) per pupil expenditure ranking; and (3) non-English speaking students.

Throughout the presentation, Mr. Dodson responded to various questions from Council.

On behalf of City Council, Mayor Worley thanked Mr. Dodson for his hard work with limited resources.

GREENLIFE PRESENTATION

At this time, 4:15 p.m., Mayor Worley turned the meeting over to Vice-Mayor Mumpower and left the room.

Mr. John Swann, co-owner of Greenlife Grocery on Merrimon Avenue, briefed Council on the controversial issues regarding the effect that his store has had on his neighborhood. He cited incidents of the harassment and behavior by Mr. Reid Thompson on his employees, deliver drivers and contractors. Last summer, Greenlife agreed to enter mediation with Mr. Thompson, however, Mr. Thompson refused that offer. Mr. Swann outlined the many actions taken (and thousands of dollars spent) to address Mr. Thompson's concerns, some being, but are not limited to: noise created when dumpsters were emptied; noise made by their refrigeration compressors; and the difficult issue of trucks on Maxwell Street. He said they are willing to consider any reasonable solution to any issue that is brought to their attention. They are in full compliance with all applicable City ordinances and would like nothing more than be able to continue to offer valuable products and services to our neighborhood and the City of Asheville.

After Mr. Swann responded to questions/comments from Council, he said that he is still agreeable to mediation.

At 4:55 p.m., Vice-Mayor Mumpower announced a short recess.

At 5:10 p.m., Mayor Worley returned to the meeting.

WATER RESOURCES CAPITAL IMPROVEMENT PROGRAM/FEE STUDY

Water Resources Director David Hanks said that this is the consideration of a dedicated funding source for water system improvements based upon meter size and be implemented effective January 1, 2006.

The engineering firm of Brown & Caldwell, along with City staff has taken a comprehensive look at all aspects of the water system operations, including water treatment plants, distribution system, leak detection, meter accuracy, financial, administration and the water capital improvement program and department fees. A capital improvement fee was requested through the Regional Water Authority, Buncombe County and the City of Asheville previously with the County turning down the request.

Brown & Caldwell was contracted to study the water treatment requirements to meet current and future EPA standards for turbidity in the water. The study also included looking at the asset management of the water system to help determine replacement and refurbishment cost, including distribution lines, pump stations, valves, meters, replacement and refurbishment program, capital improvement program including fees. A replacement model was created to determine annual funding requirements needed to make necessary improvements to the water infrastructure. The consultant has determined a dedicated capital improvement fee is required to fund the necessary improvements of the water system. This fee will be based upon meter size with small residential type meters having a monthly charge of $3.50 up to a ten inch meter monthly charge of $1,430.00. Water Resources staff has been and will continue to work with system customers who may be able to decrease the size of their meters based upon consumption and fire flow requirements to minimize the economic impact on the customers.

Staff recommends approval of a dedicated funding source for water system improvements per the consultant's recommendation based upon meter size and be implemented effective January 1, 2006.

Mr. Richard Stahr, consultant with Brown and Caldwell Engineering, reviewed with Council the current water system overview along with the goals related to water infrastructure sustainability. He benchmarked Asheville vs. other utilities. He pointed out that staff reductions over 10 years have resulted in a lean organization. There has been a 30% reduction in the number of positions since Fiscal Year 1992-93.

He explained that the goals of the Asset Management Program is to minimize life cycle costs while meeting customer needs. Benefits of the Asset Management Program include (1) establishes funding requirements for refurbishment and replacement; (2) prioritizes capital investments; (3) increases dependability of water delivery; (4) focusing resources in the "right" places using asset criticality; and (5) uses improved system knowledge and analytical tools to meet customer services expectations at the lowest life-cycle cost.

He explained that the water plant optimization identifies large capital savings – (1) plant upgrade was expected to cost $12 Million; (2) pilot study showed smart operational changes would save capital dollars; and (3) scaled back upgrade focused on minor improvements and refurbishment needs saving $6 to $7 Million.

He said that the focus needs to be on main replacement rather than leak repair. He said that $5 to $6 Million in upgrades are needed – North Fork upgrade needed to meet regulations; and Bee Tree upgrade needed for long-term operation following 6-year closure. He outlined how the asset management principles were used to develop prioritized a repair & replacement capital improvement program, but more refinement is needed. The current budget for capital projects does not fund needed improvements. The average rate increase over the past 13 years is less than the inflation rate. The current funding shortfall could have been avoided with an annual 4.1% rate increase.

He shared the results of a customer telephone survey and focus group meeting surrounding the issue of whether our rate payers would support an increase to fund sustainable infrastructure.

Some consequences of inaction would be (1) increased line breakages resulting in higher water loss and increased response costs; (2) inability to support economic development (3) deteriorating customer service; and (4) possible violation of bond covenant.

Water rate challenges include residential customer base is growing but demand remains flat; adequate funding is needed for sustainability; current declining block structure should be evaluated; and outdated development fee may not reflect current value of facilities needed to serve new customers.

He reviewed with Council the capital improvement fee structure that will be based upon meter size with small residential type meters having a monthly charge of $3.50 up to a ten-inch meter monthly charge of $1,430.

In summary, the Capital Improvement Program recommendations are to (1) implement the Capital Improvement Program to address the backlog of urgent infrastructure needs; (2) adopt the Capital Improvement Program fee effective January 1, 2006, to address the critical refurbishment and replacement needs; and (3) use revenue bond financing to accelerate the recovery from historical underinvestment (Funding Plan is under development.)

In summary, the rate structure recommendations are to (1) conduct stakeholder input process for an updated development fee and migrating toward a Uniform Rate Structure; and (2) complete the rate structure analysis on a timeline that ties to the budget process.

After a brief discussion, City Manager Jackson said that there are other timing considerations other than those of the legal process. The entire fee structure should be looked at as part of the budget process, including the capital surcharge as well. With regard to the recommendation of the January 1 implementation date, he felt there needs to be a reasonable timeframe allotted for public education and awareness.

Councilwoman Bellamy felt Council should look at the comprehensive capital improvement plan, not just the rate structure. She suggested an analysis of how much the Metropolitan Sewerage District puts into their capital improvement plan and how they fund that.

Councilwoman Bellamy suggested this presentation be broadcast on our Government Channel to let the public know of our needs and the possibility of a rate increase.

It was the consensus of Council to have a short presentation at the Council meeting next week at which time Council will review a communications plan and a timeline for consideration of the water system capital improvement plan and fee structure.

RECOGNIZE STAKEHOLDERS & RECEIVE COMMUNITY RECOMMENDATIONS FOR RESERVOIR OPERATIONS AND DOWNSTREAM IMPACTS

City Engineer Cathy Ball and Water Resources Director David Hanks said that this is the consideration of a resolution authorizing the Mayor to enter into a contract with Schnabel Engineering for updating reservoir operations and emergency action plans; and approval of a budget amendment, in the amount of $692,835, to provide funding for this project.

An engineering consultant conducts an inspection of the North Fork and Bee Tree Dams annually to ensure the safety of the dams. The latest dam inspection report completed in June 2005, recommended updating the reservoir operations and emergency action plans for the City's dams. The City has an action plan that provides guidance for operating the radial gates during flood conditions, but it was developed in 1996 and is outdated. It is critical that the City update this and other reservoir operations and maintenance procedures in order to ensure the integrity of the dams and to proactively respond to future flood events.

The Water Resources and City Engineering Departments along with community stakeholders developed request for proposals (RFP) for professional services to update the Operation and Maintenance Plans, Emergency Action Plans, Flood Inundation Maps, Flood Operation Plan for North Fork and Bee Tree Reservoirs, including computer models for operation of the flood gates and down stream mitigation to limit the impact of operating the North Fork gates during extreme weather events. A group of City staff and community stakeholders reviewed the submitted proposals and have selected the engineering firm of Schnabel Engineering South P. C. to perform these tasks.

The RFP included six (6) tasks and one optional item:

- Task 1 – Operation and Maintenance Plan – update ten year old plan
- Task 2 – Emergency Action Plan – update ten year old plan
- Task 3 – Flood Inundation Maps – create maps of Swannanoa River basin, including feeder streams
- Task 4 – Flood Operations Plan – operations to include minimizing down stream effects of operating the flood gates, including computer models
- Task 5 – Training – hands on training for using computer models
- Task 6 Executive summary/public involvement/meetings – summary of non security sensitive aspects of plans and public involvement of how plans will be used and implemented
- Optional item – Low Flow Protocol – impacts down stream of low flows – staff recommends including this item in contract

The total cost of this project has been negotiated at a cost not to exceed $692,835. The annual dam inspection report recommending this project was not received until June 2005, so funding was not included in the Fiscal Year 2005-06 budget. The current Fiscal Year 2005-06 budget does not have sufficient funding available to fund a project of this magnitude. Staff is, therefore, recommending funding this very important project from cash reserves.

Project Cost Breakdown:

Task 1 – Operation and Maintenance Plan	$23,920.00
Task 2 – Emergency Action Plan	$51,710.00
Task 3 – Flood Inundation Maps	$151,715.00
Task 4 – Flood Operations Plan	$271,650.00
Task 5 – Training	$17,080.00
Task 6 – Executive Summary/Public Involvement/Meetings	$36,205.00

Optional Item – Low Flow Protocol	$18,365.00
Project Administration	$59,205.00
Sub-Total:	$629,850.00
10% Contingency	$62,985.00
Total Not to Exceed:	$692,835.00

Pro:

- Plans are over ten years old and need to be updated. Impact of flood gate operations needs to be determined more accurately to help minimize down stream flooding.

Con:

- Cost is a factor. Cost is not to exceed $692,835, which will have to come from cash reserves. Cash and investments were reported to be $13,675,503 Million at the close of Fiscal Year 2004-05. Funding this project will reduce reserves to $12,982,668; however, this is still sufficient to meet current bond covenant obligations, to provide at least 3 months of O&M expenses, and to maintain needed reserves for emergencies. This level of reserves is also consistent with consultant recommendations for target reserves.

Staff recommends City Council approve the request for the Mayor to enter into a contract with Schnabel Engineering for updating water reservoir plans and maps as well as approve a budget amendment to provide funding for this project.

City Engineer Cathy Ball said that the following are 10 year old plans – Operation and maintenance of reservoirs and dams; emergency action plans; flood inundation maps; and operations of flood gates at North Fork.

She said that the Water Resources and Engineering Department looked at old plans which required updating. The stakeholders involvement was solicited to create Request for Proposals (RFP) for professional services to update existing plans and also create flood inundation maps and a flood control management plan to minimize downstream flooding from operation of the flood gates at North Fork. The stakeholders group included Biltmore Village representatives, Town of Black Mountain, Buncombe County Emergency Management, RiverLink, local professional engineer and City staff, including Water Resources, Engineering, Planning, and City Administration.

The stakeholders group went over the draft RFP to ensure all concerns of group were covered in the proposal. The draft the RFP went through three changes before final version was acceptable to group and the final version was sent out to over 25 local, regional and national engineering firms. The stakeholders group selected Mr. Jim Augins and Mr. Michael Miller to represent the group in the selection process; and (5) selection committee also consisted of City staff from Water Resources and Engineering Departments.

Water Resources Director David Hanks outlined the following RFPs: Task I – Update Operations and Maintenance Plan for North Fork and Bee Tree; Task 2 – Update Emergency Action Plan for North Fork and Bee Tree; Task 3 – Flood Inundation Map and Impact of Dams on Downstream Customers; Task 4 – Flood Operation Plan and Manual; Task 5 – Training for using analysis tools, maps and models; Task 6 – Executive Summary/Public Involvement – summary written that can be given to general public; and Low Flow Protocol – Impact of dam operations downstream during low flow conditions.

Mr. Hanks then reviewed with Council the selection process: (1) three firms submitted proposals; (2) selection committee was given copies of the proposals and asked to upgrade each on a number system of questions – based upon criteria in the RFP; (3) each committee member graded the three proposals and then met as a group to discuss; (4) committee agreed that one proposal did not meet the required standards requested in the RFP; (5) the other two firms were highly qualified and scoring by all committees members was very close; (6) the committee decided to bring both firms in for face-to-face interviews; (7) selection committee graded each firm on its presentation and answers to questions by each member of the committee; (8) the committee selected Schnabel Engineering South as the best firm for conducting these studies and plans for operations of the dams at North Fork and Bee Tree; (9) staff met with representatives from the engineering firm to establish cost and time schedule for each task; (10) cost is not to exceed $692,835; and (11) estimated completion for the entire project is October 2006 with modeling requirements by July 2006.

City staff recommends that Council approve (1) the request for the Mayor to enter into a contract with Schnabel Engineering South in the amount of $692,835 for reservoir and dam operation plans; and (2) the budget amendment to reallocate funds from the Water Fund equity account to cover the cost of this project.

In response to Vice-Mayor Mumpower, City Engineer Ball said that last year there was some criticism because we had a plan that said don't open the gates until you have 6 inches of rain in a 24-hour period. The plan done in 1995 only looked at the integrity of the dam. It did not concern itself at all with any flooding downstream. At that time we had no idea that if we opened up the gates prior to flooding what the impact of the full stream length would be. Last year Mr. Hanks had a good solution to have his employees stand at some of the pinch points watching for flooding to occur, but we need to have better technology to operate that system better. What we are getting with the mapping and the modeling component is an up-to-date program that will tell us all the way up to the reservoir what the impacts of opening the gates will do.

In response to Councilwoman Bellamy, Ms. Ball said that there are trying to coordinate the different analyses taking place trying to make sure that the data can be used in each of the different programs to avoid duplication of efforts.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

STORMWATER UTILITY PROGRAM

City Engineer Cathy Ball said that the purpose of this report is to update City Council on the status of the Stormwater Utility Program.

In December 2004 City Council adopted an ordinance establishing a Stormwater Utility. As part of the Fiscal Year Budget process, City Council approved a rate of $2.34 per month per Equivalent Residential Unit (ERU). One ERU is equal to 2,442 square feet of impervious surface. The budget for the program is $2,000,000. This program includes money for maintaining the current program, implementing the unfounded federal mandate, increasing the capital improvement program and developing stormwater master plans.

Since July 2005 staff has been working to educate rate payers about the purpose of the fee. Our efforts have included direct mailings with an additional mailing to the top 20 rate payers, community meetings, public meetings and individual meetings.

The first stormwater utility bills are scheduled for mailing on December 1, 2005. The stormwater utility bill is separate from the water and sewer bill because it is sent only to property owners and not to tenants.

Ms. Ball then addressed specific questions associated with the stormwater utility as well as billing, crediting, tiering and the appeal process.

Ms. Ball outlined the Stormwater Program Goals: (1) plan for, improve and operate the stormwater system in an efficient and effective manner; (2) adopt development policies and standards that prevent flooding, preserve streams and channels, and minimize water pollution without arresting new or infill development; (3) develop detailed watershed plans that promote orderly growth; (4) fully comply with federal and state regulatory requirements; (5) inform the public about stormwater issues and involve them in stormwater initiatives; and (6) implement utility fees to meet these needs in a fair and equitable manner.

She gave a brief history (1) 1999 Federal mandate passed as an amendment to the Clean Water Act – NPDES Stormwater Regulations – Phase II; (2) requires the local governments our size develop a stormwater program to improve water quality; (3) unfunded mandate; (4) in June of 2004, the Stormwater Advisory Committee (SAC) began meeting to discuss program and funding options; (5) in December of 2004, the SAC made a recommendation to City Council to adopt a Stormwater Utility as a means of funding the stormwater program. City Council acted on this recommendation by adopting a stormwater utility enterprise fund; and (6) in June of 2005, City Council adopted a fee structure of $2.34 per Equivalent Residential Units (ERU'S) = 2,442 square feet of Impervious surface.

The stormwater utility (1) is a utility that charges a fee based on the amount of impervious surface on the property; (2) fee is based on impervious area which directly relates to the quality of water as a result of stormwater runoff; and (3) enabling legislation allows Asheville as well as other local governments in North Carolina to charge this fee.

This is a fee because it's based on impervious surface not value of the property. The fee is charged to both taxable and non-taxable properties. Stormwater runoff is the water that flows off roofs, driveways, parking lots, streets, and other hard surfaces during rain storms. Rather than being absorbed into the ground, it pours into ditches, culverts, catch basins, and storm sewers. It does not receive any treatment before eventually entering the community's streams and lakes.

She explained that the definition of the impervious surface is any surface that does not readily absorb water and impedes the natural infiltration of water into the soil. Common examples include roofs, driveways, parking areas, sidewalks, patios, decks, tennis courts, concrete or asphalt streets, crushed stone and gravel surfaces.

Two hundred and fifty homes were sampled in the City of Asheville and the median square feet of impervious surface for these homes was 2,442. The City determined that the Stormwater Program needed to be funded at an amount of $2,000,000. Based on this information, it was determined that $2.34/month per ERU was the appropriate charge to generate these funds.

The fee for all residential rate payers is $2.34/per month. Commercial, industrial, multi-family and institutional will pay $2.34 per ERU. One ERU equals 2,442 square feet of impervious surface.

Residential rate payers will be billed once a year in the amount of $28.08. The first bill will be sent in January. Commercial, industrial, multi-family and institutional rate payers will be

billed twice a year – in December and June. The fees are for the Fiscal Year 2006 (July 1, 2005 – June 30, 2006).

The estimated $2,000,000 in revenue will be spent on the budget, which was approved by Council in June 2005: stormwater maintenance/capital - $1,020,000; plan review/inspection code enforcement - $100,000; compliance with federal mandate - $530,000; stormwater master planning - $200,000; and administration - $150,000.

Regarding public involvement, (1) direct notices were sent to more than 3,000 non-profit and commercial entities (workshop series hosted in September and October); (2) met with community groups like Council of Independent Business Owners and Coalition of Asheville Neighborhoods in September and October; (3) 19,000 direct notices sent to residential customers this month; (4) paid print advertisements placed in the Citizen-Times, Mountain Xpress and Asheville Daily Planet; (5) media coverage on WLOS, News Radio WWNC and the Western Carolina Business Journal (working with other outlets for coverage this month).

Ms. Ball then reviewed with Council some questions they may hear concerning the fee, some being, but are not limited to: why isn't this bill just added to the water and sewer bill; can we delay the program; why do all single family homes pay the same regardless of their size; why do you have to exceed the requirements of the ordinance to get a credit; and how are you billing private streets.

Ms. Ball responded to a comment from Councilman Davis regarding a group of stakeholders to interface with the public and possibly meet annually to review the program; and a concern about the credit system.

Vice-Mayor Mumpower asked the City Attorney to research what constitutional authority the government has to place this unfunded mandate on cities.

At 6:45 p.m., Mayor Worley announced a short recess.

UDO AMENDMENT REVIEWS

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on November 22, 2005. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Changes Required by Acts of the State Legislature

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of bringing City codes into compliance with recently adopted amendments to State planning statutes.

On September 22, 2005, the General Assembly of North Carolina passed two pieces of legislation amending planning and development procedures: Session Law 2005-418 entitled *An Act to Clarify and Make Technical Changes to City and County Planning Statutes*; and Session Law 2005-426 entitled *An Act to Modernize and Simplify City and County Planning and Land-Use Management Statutes*. In general, this legislation was adopted to codify certain legal issues, update the types of development tools available to local governments, and clarify many procedural aspects of the development process. Specifically, the legislation requires the City of Asheville to amend the UDO in order to address the following issues:

- Conditions applied to approval by the Board of Adjustment must be related to the circumstances that give rise to the need for the variance.
- The Planning & Zoning Commission must provide a written recommendation to the City Council addressing a proposed amendment's consistency with adopted plans.
- In adopting any amendment, the City Council must adopt a statement describing whether its action is reasonable and consistent with adopted plans.
- Any condition placed on a project undergoing conditional zoning must be mutually agreed to by the City Council and the petitioner.
- Many standards for protest petitions are amended and clarified. Changes of significance include vacant or excused seats on Council shall not be calculated when figuring a supermajority, a minimum of 5% of a buffer 100 feet surrounding the property is necessary for a valid protest, and a person can withdraw his/her name from a petition at any time prior to the vote.

Pro –

- The proposed amendments would bring the UDO into compliance with State planning statutes, making the UDO more consistent with other adopted laws and more legally defensible.

Con –

- The proposed requirements place additional burdens on applicable boards, commissions, and City Council to justify decisions based on reasonableness and consistency with adopted plans.

The Planning and Zoning Commission recommended approval of these code amendments on November 2, 2005, by a unanimous vote of 6-0. In order to bring the UDO into compliance with State planning statutes, staff recommends approval of the proposed ordinance amendment as well.

City Attorney Oast responded to questions from Councilwoman Jones.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

DRUG COMMISSION BEST ENFORCEMENT PRACTICES

Vice-Mayor Mumpower briefed Council on the activities of the Asheville-Buncombe Drug Commission. He explained the following three initiatives, with more to follow, that are being initiated. One, a 12-month poster services; Two, a new award program; and Three, a best practices 2-day seminar on hard drug interdiction for the southeast in April, 2006. He asked for Council's support in name only via co-sponsorship.

Councilman Davis moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilman Davis moved to be a co-sponsor of the best practices 2-day seminar on hard drug interdiction for the southeast. This motion was seconded by Councilwoman Bellamy and carried unanimously.

BUS STOP INITIATIVE

Vice-Mayor Mumpower said that this program is a joint effort by Councilman Davis, Councilman Dunn and himself. The Asheville's "Top a Stop" Program is a community initiative to help improve our City's bus service by bringing folks in out of the rain.

The "Top A Stop" Program is (1) a community partnership to provide more widely available shelters for bus stops; (2) It requires limited government manpower or expense; and (3) It is a program to help neighbors help neighbors and people help people.

The "Top A Stop" Program is being proposed because (1) People are standing in the rain; (2) Mobility is one of the most important ways to help people step up and forward; (3) The more user friendly our bus system is, the more riders it will attract; and (4) It's about working together.

The Program works by taking a simple, affordable and attractive bus stop cover design; arranging for materials to be provided at cost; and finding partners who will fund and/or build the shelters as a community service.

Jennings Builders Supply (and others) will help with at cost materials. Western Carolina Rescue Ministries, Seabees, Neighborhood Associations, Civic Clubs, and others with a wish to help. We will pursue grants and other forms of non-governmental support. The City can chose to participate with material support once we are able to successfully activate the program.

The next step is to (1) secure Council support; (2) Complete our initial design & permit work; (3) Work with Transit Director and meet with the Transit Board; and (4) Finalize our plan, complete an initial pilot shelter.

Vice-Mayor Mumpower said that we would like to get started immediately. We have the money, the people, and a plan for an initial pilot shelter. He then showed a picture of what the design will look like.

He feels the program will work because (1) The design is simple and doable as a weekend project; (2) The costs are low ~ a neighborhood or civic club can afford to do it; (3) maintenance is limited; (4) The shelters are attractive and appealing; and (5) Because there is a real need.

In response to Councilwoman Bellamy, Transit Services Director Bruce Black said that the benches received by a N.C. Dept. of Transportation grant can be incorporated very easily with this program.

Councilwoman Jones hoped that the posting of bus schedules can also be incorporated into the timing of the new benches.

Councilman Davis moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilman Davis moved to endorse the "Top A Stop" Program. This motion was seconded by Councilwoman Bellamy and carried unanimously.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to reappoint Thomas Bell and appoint Charles R. Worley to the Alcoholic Beverage Control Board.

It was the consensus of City Council to arrange interviews for Ed Taylor and Beverly Jeter for a vacancy on the Citizens-Police Advisory Committee.

It was the consensus of City Council to postpone filling the vacancy on the Downtown Commission until the applications for the end-of-the-year vacancies are received.

It was the consensus of City Council to postpone filling the vacancies on the Economic Development Advisory Committee until the Committee can make recommendations to City Council in January, 2006.

CLOSED SESSION

At 7:33 p.m., Councilwoman Bellamy moved to go into closed session for the following reason: To consult with attorneys employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Carolina Power & Light Co.; and Reid Thompson. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Davis and carried unanimously.

At 8:00 p.m., Mayor Worley was excused from the meeting due to a conflict of interest – he did not return. At 8:20 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 8:20 p.m.

Magdalen Bowlerson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 22, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Mumpower led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 05-208 - RESOLUTION OF SUPPORT FOR THE NATIONAL GUARD AND RESERVE

Mayor Worley read and presented the resolution which supports the City of Asheville employees who are in the National Guard and Reserve to Mr. David Burnette, representing the Department of Defense, the Under Secretary for Reserve Affairs, and the NC Committee for Employer Support of the Guard and Reserve. Mr. Burnette presented the City of Asheville with a plaque that salutes the employers who go above and beyond the call of duty.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-208. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 - PAGE 266

II. CONSENT AGENDA:

At the request of Vice-Mayor Mumpower, Consent Agenda "B" was pulled from the Consent Agenda for an individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2005, AND THE WORKSESSION HELD ON NOVEMBER 15, 2005

B. RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE GRANT FUNDS TO DEVELOP A BIKE PLAN

This item was pulled from the Consent Agenda for an individual discussion.

C. RESOLUTION NO. 05-210 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN FOR VANDERBILT APARTMENTS

Summary: The consideration of a resolution approving a $150,000 Housing Trust Fund loan for the preservation of affordable rental housing at Vanderbilt Apartments.

National Church Residences, Inc. (NCR) has requested a Housing Trust Fund (HTF) Loan in the amount of $150,000 as partial financing for its proposed acquisition and rehabilitation of the Vanderbilt Apartments. NCR has recently completed a similar project at the Battery Park Apartments.

NCR will acquire the property from the current non-profit owner, for $1 plus assumption of outstanding loan obligations, and, using Low Income Housing Tax Credits and other financing, will extensively renovate the building, the interior of which has been essentially unchanged for 30 years. In the process they will convert many of the hard-to-lease efficiency units into 1-bedroom units, reducing the number of units from 141 to 123.

In April, Council awarded $250,000 in HOME funds to this project. Since then, estimated costs have increased from $10,000,000 to $11,000,000. Most of this has been offset by increased tax credit revenues. The remaining gap will be filled by deferring more of the developer fee and by this HTF loan. All other financing is now in place, and NCR plans to start work early in 2006.

The application was evaluated by a panel of staff and outside experts and scored well against the HTF criteria. The Housing and Community Development Committee reviewed the application on October 31, 2005, and has recommended awarding an HTF loan of $150,000 at 2% interest amortized over a 30 year term.

Advantages:

- Long-term preservation of 123 units of affordable housing for the elderly and disabled
- Keeps affordable housing downtown
- Brings a significant tax-exempt property back on to the tax-rolls with estimated annual tax revenue of $80,000

Disadvantages: None

Staff recommends City Council approve a $150,000 Housing Trust Fund loan to National Church Residences.

RESOLUTION BOOK NO. 29 – PAGE 268

D. RESOLUTION NO. 05-211 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of $252,380,

The Police Department and the City of Asheville have the opportunity to be considered for a grant from the North Carolina Governors Highway Safety Program (GHSP) for equipment to outfit a dedicated traffic unit. The total amount of the grant is $252,380, which includes $183,690 in grant funds from GHSP and a required City match of $68,690.

This grant will allow the City to fully outfit a dedicated traffic unit of five officers for traffic enforcement, accident reduction, community traffic education, and overall improved public safety.

The grant includes fully equipped police vehicles and special traffic investigation and enforcement equipment. The equipment, training and technology provided in this grant will enhance the police department's ability to conduct traffic crash reconstruction. This is an equipment only grant with no personnel cost.

This grant opportunity came about after the adoption of the 2005/06 budget, so the City match of $68,690 was not budgeted. However, funds have been identified for the local match. The Police Department has been able to save $42,675 in the school crossing guard program following a review and redesign of the program. The remaining $26,015 needed for the City match will be taken from the Manager's contingency funds. This will leave $158,469 in the Manager's contingency account for other needs that may arise during the remainder of the fiscal year.

Pros

- The Police Department obtains much needed traffic enforcement equipment that will improve its ability to address traffic related issues throughout the City.
- The City does not have to bear the full cost of initially purchasing the equipment.

Cons

- The City is required to use $26,015 in contingency funds.
- The City will have the bear the full cost of replacing the equipment in future budgets.

This grant opportunity meets Council's focus area of *Partnerships to Improve Critical Services & Infrastructures* under Goal 2: Diversified and broadened revenue sources – Develop alternate revenue sources that are available to address local needs.

City staff requests City Council adopt a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of $252,380,

RESOLUTION BOOK NO. 29 – PAGE 269

E. ORDINANCE NO. 3301 - BUDGET AMENDMENT FOR GRANT FUNDS FROM THE N.C. GOVERNOR'S HIGHWAY PROGRAM TO PURCHASE TRAFFIC ENFORCEMENT EQUIPMENT

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 22 – PAGE 308

F. RESOLUTION NO. 05-212 - RESOLUTION TO RE-DESIGNATE THE ASHEVILLE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone as proposed.

The State of North Carolina has designated certain census tracts and census block groups in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas. The City of Asheville has been a participating member in this program since its inception in 1999.

The current State Development Zone for Asheville will expire on December 31, 2005. Application for re-designation is due and, if approved, will take effect January 1, 2006, for a period of two years.

Staff has revisited the Asheville State Development boundaries and supporting data. Pursuant to the state-mandated guidelines, staff has been able to identify two new, previously undesignated areas for inclusion. The Development Zone area will now include Census Tract 4, Block Group 1 (North Asheville area along Merrimon Ave, north of WT Weaver Blvd) and Census Tract 21.02, Block Group 2 (South Asheville area east of Sweeten Creek Rd). The total zone must have a minimum of 20% population below the poverty level.

Re-designating the Development Zone would provide multiple opportunities to promote the City of Asheville's Strategic Operating Plan goals. The program is designed to stimulate new job creation and employment training, and encourage business expansion and small business development.

Advantages: Continued incentives for investment in economically distressed areas. The inclusion of significant commercial/industrial zoned areas of Asheville.

Disadvantages: None.

Staff recommends City Council adopt the resolution defining the State Development Zone to be effective January 1, 2006, through January 1, 2008.

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G. RESOLUTION NO. 05-213 - RESOLUTION AUTHORIZING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED ON WEST CHESTNUT STREET FOR A PORTION OF REAL PROPERTY LOCATED ON MAGNOLIA AVENUE

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of real property located on West Chestnut Street in exchange for a portion of real property located on Magnolia Avenue.

The City and Allen & Susan Roderick (Rodericks) have negotiated an exchange of a portion of City owned real property on West Chestnut Street for a portion of Rodericks property at 8 Magnolia Avenue that will allow an improved course for the Reed Creek Greenway Trail.

The proposed location of the Reed Creek Greenway Trail is just west of Broadway and borders Reed Creek for most of its length. Between West Chestnut Street and Magnolia Avenue there is a "pinch point" that is created by the proximity of the Roderick property to Reed Creek forcing the trail closer to the top of the creek bank where the topography poses a challenge for construction. The proposed exchange of property will allow the trail to follow a less constrictive path.

The City's property (PIN No. 9649.14-23-5411) is on the north side of West Chestnut Street about 100' west of its intersection with Broadway, zoned Neighborhood Corridor District (NCD) and comprising 0.24 acre±. The portion to be exchanged is a 0.05 acre± parcel at the rear of the City's lot that adjoins Rodericks' property. This part of the property due to its configuration is not particularly useful to the greenway design.

The property owned by Rodericks (PIN 9649.13-23-4418) at 8 Magnolia Avenue is on the south side of the street about 100' west of its intersection with Broadway. It comprises 0.24 acre±

and is zoned NCD. The portion to be exchanged is a 0.05 acre± parcel located at the rear of the property adjoining the City's property.

The value of each parcel was determined by reviewing the tax assessment for the whole property and extrapolating a value for the cut out portion based on the per acre value of the whole. Both whole lots are 0.024 acre± and have an assessed tax value for land in the amount of $64,000. That reflects a per acre value of about $267,000. Both cut out parcels are 0.05 acre± which calculates to about $13,350.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
- It is consistent with the greenway master plan.
- It will provide a better less constrictive path for the greenway trail.
- It is an efficient use of resources both public and private, because the City will own property more functional to the greenway and un-needed property will return to private ownership.

There are no negative aspects to this proposal.

Approval of the resolution will authorize the exchange of the properties pursuant to the provisions of N. C. G. S. 160A-271.

Planning & Development and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey a portion of real property located on West Chestnut Street in exchange for a portion of real property located on Magnolia Avenue.

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H. RESOLUTION NO. 05-214 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON BENT TREE ROAD

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Bent Tree Road.

A bid has been received from Sheryl H. Williams in the amount of $16,000 for the purchase of land on Bent Tree Road.

The land on Bent Tree Road was acquired by the City from Sunset Mountain Company, Inc. in 1954. It is an irregular shaped lot comprising 1.2 acre±. It is very steep and wooded and runs in a long and narrow north/south direction between and parallel to Bent Tree Road and Old Toll Road. It is zoned RS2, but the slope and shape render the lot unsuitable as a home site. The deed of conveyance to the City also restricts the property prohibiting any building or structure of any kind. The bid from Sheryl H. Williams, owner of property across the street, is in the amount of $16,000. Williams has provided an appraisal prepared by Mark Morris SRA dated September 29, 2005, estimating the market value of the property at $16,000. Williams proposes to acquire the property to maintain the lot consistent with the residential character of the neighborhood. She is aware of the deed restrictions and does not plan any construction.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.

Planning & Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 29 - PAGE 272

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-209 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE GRANT FUNDS TO DEVELOP A BIKE PLAN

Summary: The consideration of a resolution approving a municipal agreement with the North Carolina Department of Transportation (NCDOT) to receive $24,000 in grant money to develop a bicycle plan for the City of Asheville.

In 2004 the City Council approved a grant application to the NCDOT for $24,000 to develop a bicycle plan in Fiscal Year Fiscal Year 2005-06. This grant was awarded in May of 2005. The plan requires $16,000 in local matching funds. The matching funds are already budgeted in the Fiscal Year 2005-06 operating budget. In addition, the Blue Ridge Bicycle Club has agreed to contribute $1,000 toward the local match.

The bicycle plan will be developed beginning in early 2006. City staff will oversee the project, which will be carried out by a consultant.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update and the 2025 City Development Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

Consideration:

- Executing this municipal agreement is one of the required formal steps to follow-through on the 2004 commitment to pursue this grant and develop a bicycle plan for the City of Asheville in Fiscal Year 2005-06.

City staff recommends City Council approve the resolution approving a municipal agreement with the N.C. Dept. of Transportation to receive $24,000 in grant money to develop a bicycle plan for the City of Asheville.

Vice-Mayor Mumpower felt that the City is already making an active effort for bike paths where they lend themselves and wondered if this was the best way to spend $40,000 when he did not feel this grant would have a meaningful impact on the reality

Councilwoman moved for the adoption of Resolution No. 05-210. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 267

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT

Vice-Mayor Mumpower moved to reschedule this public hearing to a later date. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

ORDINANCE NO. 3302 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

Mayor Worley opened the public hearing at 5:16 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include portions of two lots located off of Patton Mountain Road. This public hearing was advertised on November 11, 2005.

William J. Kimpton, President, on behalf of Ranch 19 Corp., has petitioned the City of Asheville for the annexation of portions of two lots owned by the corporation and located at Patton Mountain Road just off of the intersection of Patton Mountain with Griffing Boulevard. The PIN Nos. of the lots involved are 9740.16-93-6462 and 9740.16-83-8119. These areas are contiguous to the existing corporate limits and qualify for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

These areas are part of a larger tract of land that has been reviewed and approved (with conditions) for the creation of a seventeen (17) lot subdivision to be known as Grove Park Cove. The entire tract is approximately 30 acres in size (with a current assessed valuation of $369,100.00). The portions to be annexed are 3.51 acres in size.

Pursuant to N. C. Gen. Stat. sec. 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation.

If City Council decides to proceed with this request, it is proposed that the annexation become effective on November 30, 2005.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and approve future plans for this parcel as it is developed.
- Assists the developer of the property in achieving his desired development plan under one jurisdictional review.

Cons:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mayor Worley closed the public hearing at 5:18 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3302. This motion was seconded by Councilwoman Jones and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTIES ALONG COLUMBINE ROAD AND HEATHBROOK CIRCLE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3303 - ORDINANCE TO ZONE PROPERTIES ALONG COLUMBINE ROAD AND HEATHBROOK CIRCLE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:19 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to zone properties along Columbine Road and Heathbrook Circle to RS-8 Residential Single-Family High Density District. This public hearing was advertised on November 11 and 18, 2005.

The City of Asheville has recently annexed properties located in Biltmore Park, the most recent annexation becoming effective on September 30th of this year. The purpose of this initial zoning is to zone these odd properties that had not been taken into the City's extraterritorial jurisdiction because they were under Buncombe County's planning jurisdiction. The proposed zoning is RS8 – the zoning of the surrounding properties. Biltmore Farms, Inc. has been contacted concerning this proposal and is supportive of the recommendation.

The City's Technical Review Committee evaluated this initial zoning and voted unanimously in favor of supporting the recommended zoning classification.

Pros

- Zones properties recently taken into the City of Asheville in consideration of the surrounding zoning and land use.

Cons

None.

The Plannning and Zoning Commission of the City of Asheville, at its meeting on November 2, 2005, unanimously recommended approval of this initial zoning to the Asheville City Council. The Planning and Development Staff and the City's Technical Review Committee also recommend this initial zoning.

Mayor Worley closed the public hearing at 5:20 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3303. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 312

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON MERRIMON AND FENNER AVENUES FROM COMMUNITY BUSINESS I TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING WITH A BANK DRIVE-THROUGH

ORDINANCE NO. 3304 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON MERRIMON AND FENNER AVENUES FROM COMMUNITY BUSINESS I TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING WITH A BANK DRIVE-THROUGH

Mayor Worley opened the public hearing at 5:21 p.m.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone property located on Merrimon Avenue and Fenner Avenue from Community Business I District to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through. This public hearing was advertised on November 11 and 18, 2005.

Mr. Shuford said that Neighborhood Corridor District (NCD) zoning requires corner properties to address the corner by placing the building within the maximum setback areas at the corner. In this case, the corner street – Fenner – is a wholly residential street that intersects Merrimon Avenue at a sharp angle and is much higher in elevation than Merrimon along most of its length. Access to Fenner from the subject property is precluded by code. Because of these circumstances, staff has classified this property not as a corner lot but as a mid-block lot for the purpose of applying the building placement and setback requirements of the NCD district.

The 2025 Plan classifies Merrimon Avenue as an Urban/Neighborhood Corridor: "The Urban/Neighborhood Corridor connects neighborhoods with each other, with employment centers, with institutional uses, and with major thoroughfares. Mixed-use structures, typically 2 to 4 stories in height, contain retail, office, and residential uses that serve and are complemented by adjacent neighborhoods. Sidewalks, streetscape and building design acknowledge and provide a safe environment for the significant pedestrian users of the urban/neighborhood corridor. " The proposed development is consistent with this type of development when conditioned as recommended by the Planning & Zoning Commission and City staff.

A variance request to permit a bank drive-through was denied by the Board of Adjustment on April 25, 2005. The Planning and Zoning Commission directed staff to investigate a revised zoning pattern for Merrimon Avenue on May 4, 2005.

The proposed development redevelops an existing nonconforming fast-food restaurant development/drive-through with a multistory bank/retail/office building. The proposed drive-through would serve a bank and would have limitations placed on the hours of operation.

A policy issue for this development involves the drive-through. Drive-through uses are not allowed in CB-I zoning and staff opposed a prior variance request to allow a drive-through on this site. Drive-through uses were specifically avoided in the 1997 Unified Development Ordinance (UDO) rezoning of much of Merrimon Avenue and later-hour drive-throughs associated with pharmacies on Merrimon Avenue have not been approved. Staff feels that a rezoning approach is the best way to gauge current policy direction on this matter.

In the subject case, the proposed drive-through would serve a bank as opposed to the current fast food restaurant drive-through that is grandfathered. This allows strict limits to be place on the hours of operation of the drive-through. The applicant has agreed to provide 24-hour ATM service on the street side of the development that will be accessible only to pedestrians.

The design of the proposed development is fully compliant with and helps implement the 2025 Plan. It is consistent with desirable new and older development on Merrimon Avenue in terms of scale, including building height and orientation. The applicant has added features recommended by the neighborhood, including distinguishing driveway location through special pavement treatments where they cross the sidewalk, the construction of a missing sidewalk segment between Fenner and Larchmont, and crosswalk and pedestrian-signal installation at Merrimon and Larchmont. The existing buffer will remain. The applicant has also agreed to rezone a separate tract to the rear of the site from CB-II to RS-8 at the neighborhood's request

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO and must take the seven standards for approval of conditional use permits into account when considering conditional zoning requests. Staff review indicates that all standards are met as proposed in the site plan and the recommended conditions of approval.

1. That the proposed use or development of the land will not materially endanger the public health or safety. *The development is designed to meet City standards for access and site design; it poses no danger to public health or safety.*

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant. *The proposed development will convert a non-conforming developed site into one meeting City landscaping and buffering standards. Existing on-site vegetation will remain largely intact and be supplemented with additional plantings.*

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property. *City standard buffering will be provided. The site is considerably lower in elevation than the neighboring residential development and this topography change provides a natural buffer. The proposed development is a significant upgrade from the prior land use in terms of on-site activity, noise, and hours of operation. Property values should not be negatively impacted by this development.*

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. *The proposed development is consistent with the recommended development pattern for the corridor according to the 2025 Plan. The building location is topographically separated from residential areas, site lighting and buffering standards will address visual and audible impacts.*

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City. *The proposed development is consistent with the recommended development pattern for the corridor according to the 2025 Plan.*

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. *The proposed development is a mixed use, infill redevelopment that makes appropriate use of infrastructure serving the site.*

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. *The City Traffic Engineer has approved the site access and traffic study. The proposed access will meet current City access standards.*

Pros

- Redevelops a nonconforming site to a fully-conforming one.
- Complies with and helps implement the 2025 Plan.
- Appropriately utilizes existing infrastructure and contains many pedestrian features.

Cons

- Would "legitimize" a drive-through use on this site.

The Planning and Zoning Commission recommended that Council approve the proposed conditonal zoning proposal subject to the following conditions. Staff also recommends approval subject to the same conditions: (1) All TRC conditions shall be met; (2) The teller-assisted drive-through operation shall be limited to the hours between 7:00 a.m. to 6:00 p.m. Monday through Saturday; (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain-gardens with slopes and depths so as to not require protective fencing; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall be utilized for interior landscaping; and (10) The southernmost driveway shall be designed to be right-out only.

Mr. Shuford presented City Council with a list of conditions from the Grace Neighborhood Association. He said that Ms. Billie Buie, representing the Grace Neighborhood Association, met

with Mr. Greg Edney, the developer, and they have agreed on the conditions. However, one item still in question is the sidewalk specification of a ten-foot width. The Association would prefer a two-foot buffer-planting space between the sidewalk and Merrimon Avenue. It was his understanding that Mr. Edney is in agreement with that, however, he needed to clear it through the City's Traffic Engineer. The Association feels that an 8-foot width on most of Merrimon will be sufficient, especially if a buffer is used between the sidewalk and the street. They hoped City Council would include the following conditions in the ordinance: (1) A copy of the final conditions set by City Council will be attached to or recorded on all site plans used for inspection purposes by City staff. This is to insure that inspectors are aware, on site, of all conditions that need to be met. Representatives of Grace Neighborhood Association will review those conditions if they feel the conditions aren't being met; (2) The sidewalk between Fenner and Larchmont that the developer has agreed to build will be completed by the time a CO is granted for the proposed development. The retaining wall behind said sidewalk will be faced with stone or brick or pavers of equal quality. No cinderblock.; (3) The façade of the proposed buildings will be faced with stone, brick, stucco or materials of equal quality to those listed; (4) Real windows will be built into both floors of the proposed building; (5) The South "exit only" curb cut will be a right-turn only exit and will have signage to that effect; (6) Both proposed curb cuts will include paving material different from that of the driveway where the sidewalk crosses it (for pedestrian safety); (7) Hours of operation for the drive-through on the site will be limited to regular banking hours; (8) Rain gardens as shown on the site plan will remain as rain gardens and not just retention basins. Shade trees will be part of the islands used for rain gardens to help shade paved areas; (9) Shade trees that will reach a mature height of greater than 30-feet will be used in the parking lot to shade paved areas; (10) On-site lighting will be low level and directed away from adjacent residential properties; (11) Speaker systems used at the drive-through area will remain at low levels; and (12) signage for the site will follow the requirements of the existing CB-I zoning if it is more restrictive than the proposed NCD/conditional use. Mr. Shuford said that many of the conditions are covered in the staff's recommendation; however, for some conditions he presented alternates or revised conditions.

Ms. Patsy Brison, attorney representing the developer, spoke in support of the conditional zoning, noting how the developer has met with the neighborhood and has made many revisions at the suggestion of the neighborhood.

There was considerable discussion of the hours of operation of the drive-through, in that the staff recommendation was limited between 7:00 a.m. to 6:00 p.m. Monday through Saturday; the neighborhood and developer agreed to 8:30 a.m. to 6:00 p.m. Monday through Friday; and some members of Council were apprehensive about restricting the bank's drive-through hours when the banking business is evolving.

Mr. Shuford responded to Council's concerns associated with some of the neighborhood conditions.

Mr. W. Louis Bissette, attorney representing the property owners who signed the valid protest petition, urged Council to either deny the conditional zoning, or remand it back to the Planning & Zoning Commission for significant changes to the site plan. The proposed structure would block the visibility of the small shopping center just to the south of it. He felt that the proposed zoning is more permissive than the current zoning, allowing the larger building and drive-through. In addition, he felt the exit drive is too close to the existing entrance and will cause more traffic congestion in that area. They have talked to the developer and he said that moving the building 5 feet to the north is the best he could do regarding overshadowing the smaller shopping center.

Mr. Mike Lewis, resident on Gracelyn Road, stated this is the third request for a drive-through since 1995 for a drive-through and wondered why we have a Unified Development

Ordinance if it is not being enforced. He asked Council to consider an interim conditional zoning regulation for the entire Merrimon Avenue corridor until a comprehensive and coordinated plan can be developed.

Ms. Billie Bule reviewed with Council some of the conditions requested. She agreed with Mr. Lewis that there be an interim conditional zoning regulation for the entire Merrimon Avenue corridor until a comprehensive and coordinated plan can be developed. She said that Mr. Edney and his development team have done a really good job meeting with and continuing dialogue with the surrounding neighbors. She hoped that the process the neighborhood and developer have gone through for this development proposal can be a model for future development along Merrimon Avenue.

Mr. Walter Plaue suggested that the entrance to the parking lot be on Fenner Avenue instead of Merrimon Avenue with a traffic light to alleviate traffic congestion on Merrimon Avenue. Mr. Shuford responded why this is not a good option.

Ms. Sarah Rightmyer, area resident, spoke in support of the development in that it does raise the bar for good development along Merrimon Avenue.

At 6:20 p.m., Mayor Worley closed the public hearing.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: can the building be moved back 5 feet; will there be a visibility problem for people exiting onto Merrimon Avenue; is the development compatible with the neighborhood; and is there any solution for the visibility of the one-story building that is at a much lower level than the surrounding property.

Mr. Shuford said that they are planning to do some surveys of people who own property along Merrimon Avenue, as well as in the general vicinity and neighborhoods; to find out how they use Merrimon Avenue; what their visions are for Merrimon Avenue; and what type of development that has occurred along Merrimon Avenue that they like and what type they don't like. That information will be used to help put together a draft corridor zoning plan to comply with the direction that the Planning & Zoning Commission has given and that Council has affirmed.

City Attorney Oast explained to City Council on conditional zonings that the seven conditional use standards need only be considered, not agreed to.

Councilman Davis felt that as we see more development with the new urban design, that we need to educate the public that this is a pedestrian friendly concept.

Councilman Newman moved for the adoption of Ordinance No. 3304, conditionally rezoning property on Merrimon and Fenner Avenues from Community Business I to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through, subject to the following conditions: (1) All TRC conditions shall be met; (2) The teller-assisted drive-through operation shall be limited to the hours of 8:30 a.m. to 6:00 p.m. Monday through Friday (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain gardens with slopes and depths so as to not require protective fencing; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall

be utilized for interior landscaping; (10) The southernmost driveway shall be designed to be right-out only; (11) The sidewalk between Fenner and Larchmont that the developer has agreed to build will be completed by the time a CO is granted for the proposed development. The retaining wall behind said sidewalk will be faced with stone or brick or pavers of equal quality. No cinderblock.; and (12) We remain flexible in the two-foot buffer-planting space between the sidewalk on Merrimon Avenue. This motion was seconded by Councilwoman Jones.

After further discussion about the conditions, and at 7:02 p.m., it was the consensus of Council to take a short recess to allow Mr. Shuford, the developer and Ms. Buie (as the neighborhood representative) to meet and see if an agreement can be reached regarding the conditions.

At 7:25 p.m., Mr. Shuford presented City Council the a set of conditions that were agreeable to the City, the developer and the neighborhood.

Therefore, Councilman Newman and Councilwoman Jones were agreeable to revising their motion to approve Ordinance No. 3304, conditionally rezoning property on Merrimon and Fenner Avenues from Community Business I to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through, subject to the following conditions: (1) All TRC conditions shall be met; (2) The bank teller-assisted drive-through operation shall be limited to the hours between 8:30 AM to 6:00 PM Monday through Friday; (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain gardens with slopes and depths so as to not require protective fencing. Rain garden plantings shall include shade trees adaptive to rain garden conditions; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments via stamped concrete) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building. Any associated retaining walls will be faced with stone, brick or pavers of equal quality; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall be utilized for interior landscaping; (10) The southernmost driveway shall be designed to be right-out only, including directional signage; (11) Building façades shall be faced with stone, brick, stucco, or materials of equal quality to those listed; real windows shall be used on both floors of the proposed building; and (12) Sidewalk design shall include features that provide a clear transition from the pedestrian to the vehicular realm. The revised motion by Councilwoman Newman and Councilwoman Jones carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 314

E. PUBLIC HEARING TO CONSIDER THE REZONING OF VACANT PROPERTY ON MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3305 - ORDINANCE TO REZONE VACANT PROPERTY ON MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 7:34 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone a vacant lot on Merrimon Avenue from Community Business I District to RS-

8 Residential Single-Family High Density District. This public hearing was advertised on November 11 and 18, 2005.

The adjoining Burger King site is proposed for Neighborhood Corridor District/Conditional Zoning development as a mixed use development.

The *Asheville City Development Plan 2025* encourages compatible zoning. The proposal would rezone a parcel that is physically separated from the commercially-zoned property by topography to the same zoning as the more similarly-situated neighboring properties.

The owner, Northwest Properties, is pursuing this rezoning as a concession to the neighborhood for their support of his NCD CZ zoning of the Burger King site. Staff finds that the proposed rezoning is substantially more compatible than the existing zoning.

- The Community Business-I zoning district is established to provide areas for medium density business and service uses which may serve as a workplace for residents and should be sensitive to a significant pedestrian population. These business areas should be located primarily on streets that serve multiple residential neighborhoods.

- The RS-8 zoning district is designed to establish and promote a suitable and high-density single-family district where public infrastructure is sufficient to support such development.

Pros

- Recognizes the property's physical orientation to surrounding development.

Cons – None noted.

The Planning and Zoning Commission recommended approval of this rezoning request. Staff also recommends approval of this rezoning request.

Ms. Patsy Brison, attorney representing the developer, spoke in support of the rezoning, noting that this rezoning was at the neighborhood's request.

Mayor Worley closed the public hearing at 7:37 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3305. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 316

F. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CONFORM WITH REQUIREMENTS OF STATE LAWS 2005-418 AND 2005-426 ADOPTED SEPTEMBER 22, 2005, CLARIFYING AND MAKING TECHNICAL CHANGES TO THE STATUTES REGARDING PLANNING AND LAND USE MANAGEMENT (INCLUDING THE ENABLING LEGISLATION FOR PLANNING AND REGULATION FO DEVELOPMENT, ART. 19 OF CHAPTER 160A OF THE N.C. GEN. STATUTES)

ORDINANCE NO. 3306 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CONFORM WITH REQUIREMENTS OF STATE LAWS 2005-418 AND 2005-426 ADOPTED SEPTEMBER 22, 2005, CLARIFYING AND MAKING TECHNICAL CHANGES TO THE STATUTES REGARDING PLANNING AND LAND USE MANAGEMENT (INCLUDING THE ENABLING LEGISLATION FOR PLANNING AND REGULATION FO DEVELOPMENT, ART. 19 OF CHAPTER 160A OF THE N.C. GEN. STATUTES)

Mayor Worley opened the public hearing at 7:38 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of bringing City codes into compliance with recently adopted amendments to State planning statutes. This public hearing was advertised on November 11 and 18, 2005.

On September 22, 2005, the General Assembly of North Carolina passed two pieces of legislation amending planning and development procedures: Session Law 2005-418 entitled *An Act to Clarify and Make Technical Changes to City and County Planning Statutes*; and Session Law 2005-426 entitled *An Act to Modernize and Simplify City and County Planning and Land-Use Management Statutes*. In general, this legislation was adopted to codify certain legal issues, update the types of development tools available to local governments, and clarify many procedural aspects of the development process. Specifically, the legislation requires the City of Asheville to amend the UDO in order to address the following issues:

- Conditions applied to approval by the Board of Adjustment must be related to the circumstances that give rise to the need for the variance.
- The Planning & Zoning Commission must provide a written recommendation to the City Council addressing a proposed amendment's consistency with adopted plans.
- In adopting any amendment, the City Council must adopt a statement describing whether its action is reasonable and consistent with adopted plans.
- Any condition placed on a project undergoing conditional zoning must be mutually agreed to by the City Council and the petitioner.
- Many standards for protest petitions are amended and clarified. Changes of significance include vacant or excused seats on Council shall not be calculated when figuring a supermajority, a minimum of 5% of a buffer 100 feet surrounding the property is necessary for a valid protest, and a person can withdraw his/her name from a petition at any time prior to the vote.

Pro –

- The proposed amendments would bring the UDO into compliance with State planning statutes, making the UDO more consistent with other adopted laws and more legally defensible.

Con –

- The proposed requirements place additional burdens on applicable boards, commissions, and City Council to justify decisions based on reasonableness and consistency with adopted plans.

The Planning and Zoning Commission recommended approval of these code amendments on November 2, 2005, by a unanimous vote of 6-0. In order to bring the UDO into compliance with State planning statutes, staff recommends approval of the proposed ordinance amendment as well.

Mayor Worley closed the public hearing at 7:42 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3306. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 318

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ANNUAL AUDIT REPORT

Chief Financial Officer Ben Durant said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2005.

City Council retained an independent audit firm, Martin Starnes & Associates, CPA's, P.A. of Hickory, N.C., to perform an audit of the City of Asheville for the Fiscal Tear ended June 30, 2005, as required by N. C. Gen. Stat. sec. 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City, is not modified by reservations or restrictions.)

Ms. Marcie Spivey, of Martin Starnes & Associates, gave Council a brief presentation of their findings. She explained the role of the auditor, those being (1) to obtain reasonable assurance that basic financial statements are free of material misstatement; (2) to examine evidence supporting the amounts and disclosures in the financial statements; and (3) to assess accounting principles used and overall financial statement presentation. She said they have issued an unqualified opinion on the financial statements of the City. They have noted no matters involving the internal control over financial reporting and its operation that they consider to be material weaknesses. They disclosed no instances of non-compliance or other matters that are required to be reported under Governmental Auditing Standards. Regarding the management letter, (1) they noted certain areas where the City can further enhance its internal control and reported them in a management letter; (2) a management letter normally covers items too immaterial to be included in the report on internal control and compliance; and (3) the items in the current year management letter have been addressed and additional procedures have been put in place. She then reviewed the Fund Balance Summary.

In response to Councilwoman Jones, Mr. Durant said that he would provide Council with details on the approximately $8 Million increase in the total expenditures and transfers to other funds.

B. MOTION TO ACCEPT THE BROWN & CALDWELL WATER SYSTEM IMPROVEMENT REPORT AND DIRECT STAFF TO REPORT BACK TO COUNCIL WITH A PLAN FOR PUBLIC INVOLVEMENT AND RECOMMENDATIONS FOR A TIMEFRAME FOR IMPLEMENTATION FOR BOTH THE CAPITAL IMPROVEMENT FEE AND THE RATE RESTRUCTURING

Mr. Richard Stahr, consultant with Brown and Caldwell Engineering, reviewed with Council the current water system overview along with the goals related to water infrastructure

sustainability. He benchmarked Asheville vs. other utilities. He pointed out that staff reductions over 10 years have resulted in a lean organization. There has been a 30% reduction in the number of positions since Fiscal Year 1992-93.

He explained that the goals of the Asset Management Program is to minimize life cycle costs while meeting customer needs. Benefits of the Asset Management Program include (1) establishes funding requirements for refurbishment and replacement; (2) prioritizes capital investments; (3) increases dependability of water delivery; (4) focusing resources in the "right" places using asset criticality; and (5) uses improved system knowledge and analytical tools to meet customer services expectations at the lowest life-cycle cost.

He explained that the water plant optimization identifies large capital savings – (1) plant upgrade was expected to cost $12 Million; (2) pilot study showed smart operational changes would save capital dollars; and (3) scaled back upgrade focused on minor improvements and refurbishment needs saving $6 to $7 Million.

He said that the focus needs to be on main replacement rather than leak repair. He said that $5 to $6 Million in upgrades are needed – North Fork upgrade needed to meet regulations; and Bee Tree upgrade needed for long-term operation following 6-year closure. He outlined how the asset management principles were used to develop prioritized a repair & replacement capital improvement program, but more refinement is needed. The current budget for capital projects does not fund needed improvements. The average rate increase over the past 13 years is less than the inflation rate. The current funding shortfall could have been avoided with an annual 4.1% rate increase.

He explained the cost distribution of priority capital projects – (1) management, operations and maintenance projects at $5,750,000; (2) mandatory N.C. Dept. of Transportation projects at $9,305,000; and (3) Repair and Restoration Projects are $32,034,000. The total 7-year capital improvement program is $57.09 million.

He shared the results of a customer telephone survey and focus group meeting surrounding the issue of whether our rate payers would support an increase to fund sustainable infrastructure.

Some consequences of inaction would be (1) Safe Drinking Water Act compliance risks; (2) increased line breakages resulting in higher water loss and increased response costs; (3) inability to support economic development (4) deteriorating customer service; and (5) possible violation of bond covenant.

Water rate challenges include residential customer base is growing but demand remains flat; adequate funding is needed for sustainability; current declining block structure should be evaluated; and outdated development fee may not reflect current value of facilities needed to serve new customers.

He reviewed with Council the capital improvement fee structure that will be based upon meter size with small residential type meters having a monthly charge of $3.50 up to a ten-inch meter monthly charge of $1,430. He used a graph to explain the N.C. water rates trending away from declining block structures.

In summary, the Capital Improvement Program recommendations are to (1) implement the Capital Improvement Program to address the backlog of urgent infrastructure needs; (2) adopt the Capital Improvement Program fee effective January 1, 2006, to address the critical refurbishment and replacement needs; and (3) use revenue bond financing to accelerate the recovery from historical underinvestment (Funding Plan is under development.)

In summary, the rate structure recommendations are to (1) conduct stakeholder input process for an updated development fee and migrating toward a Uniform Rate Structure; and (2) complete the rate structure analysis on a timeline that ties to the budget process.

Mr. Stahl then presented Council with the following implementation timeline: (1) January 1, 2006 – CIP fee effective; (2) January 1, 2006, through, July 1, 2006 – stakeholder input/education process for uniform rate and debt financing plan development; and (3) July , 2006, rate restructuring effective.

He then reviewed with Council the following capital program timeline: (1) November 22, 2005 – Council approves the CIP fee; (2) December 13, 2005 – CMMS Award; (3) January 1, 2006 – CIP fee effective; (4) January 2, 2006 – Water Plant bidding; (5) April, 2006 – Water Plant award; and (6) July 1, 2006 – CIP implementation and rate restructuring effective.

Upon inquiry of Councilman Newman, Mr. Stahl explained the difference of a uniform rate and a flat rate.

Mr. Fred English spoke against the fee in that the City of Asheville citizens already pay the highest rates in North Carolina.

In response to Vice-Mayor Mumpower, City Attorney explained that by the end of calendar year 2006 we should have the Sullivan Acts II and III resolved. Vice-Mayor Mumpower said that he was hesitant in moving forward until the larger picture is resolved.

Councilwoman Jones moved to accept the Brown and Caldwell Funding Needs for Sustainability Report and direct the City Manager to begin scheduling these recommendations into the budget for Fiscal Year 2006-07, specifically not implementing the Capital Improvement Fee to be effective January 1, 2006, because the community needs to be educated similar to the stormwater user fee communication plan. This motion was seconded by Councilman Newman.

Councilman Newman felt it was important to look at the overall rate structure and make those kinds of decisions concurrently with decisions of the Capital Improvement Plan.

Mayor Worley was concerned with the delay of the Capital Improvement Fee, especially since this Council has voted in favor of it in the past, but it had not been implemented due to Buncombe County turning it down when there was a Regional Water Authority. He did feel that January 1, 2006, was a little quick, but he could support a motion that says Council will move forward with the public input portion of the rate fee as quickly as possible. He agreed that we need to look at the rate structure as well.

Councilwoman Bellamy suggested City Council receive the report and give staff adequate time to look at all the nuances as we move forward. Council hasn't even discussed the implementation as she would like to phase the fee in a little at a time. She agreed we need to give staff time to look at this and as it moves forward staff can come back with recommendations on how we are going to implement the recommendations presented tonight, as opposed to beginning the Capital Improvement Fee January 1, 2006.

Councilman Dunn felt the community is well aware that the water system needs to be repaired and would support a few months of public education. Even though no one wants to see their water rates increase, he would support the Capital Improvement Fee be implemented as soon as possible.

Councilman Newman felt there are other ways to talk about reforming our water rate structure. For example, going to a uniform rate structure would be a much less painful rate

structure for residential customers. Some communities are looking at deeply discounting that first amount of water that families need for their most basic necessities to make sure that all customers can afford that amount of water they need to survive with. That could be an important part of looking at a rate structure that would serve our community well into the future.

Mayor Worley moved to amend the main motion to delete directing the City Manager to begin scheduling these recommendations into the budget for Fiscal Year 2006-07, and insert the direction for staff to come back to Council with a plan for public involvement and recommendations for a timeframe for implementation for both the Capital Improvement Fee and the rate restructuring. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

The amended main motion to accept the Brown and Caldwell Funding Needs for Sustainability Report and direct staff to come back to Council with a plan for public involvement and recommendations for a timeframe for implementation for both the Capital Improvement Fee and the rate restructuring carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

City Manager Jackson said that we will develop the impact of uniform rates on all customer classes and provide that to Council after the first of the year. We will also review the projects and what this capital money will be used for in some detail that will benefit this Council as well as the community. That will facilitate the kind of discussion Council will want to have after the first of year and then we can move at a pace that the Council is comfortable with – it doesn't have to wait until the budget process. He thinks Council will find that the end of June will come pretty quickly if you do a proper level of analysis and review with the community. Staff will move as quickly as this Council wants to move.

C. RESOLUTION NO. 05-215 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH SCHNABEL ENGINEERING SOUTH P.C., FOR UPDATING WATER RESERVOIR PLANS AND MAPS

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the Mayor to enter into a contract with Schnabel Engineering for updating reservoir operations and emergency action plans; and approval of a budget amendment, in the amount of $692,835, to provide funding for this project.

She said that the following are 10 year old plans – Operation and maintenance of reservoirs and dams; emergency action plans; flood inundation maps; and operations of flood gates at North Fork.

She said that the Water Resources and Engineering Department looked at old plans which required updating. The stakeholders involvement was solicited to create Request for Proposals (RFP) for professional services to update existing plans and also create flood inundation maps and a flood control management plan to minimize downstream flooding from operation of the flood gates at North Fork. The stakeholders group included Biltmore Village representatives, Town of Black Mountain, Buncombe County Emergency Management, RiverLink, local professional engineer and City staff, including Water Resources, Engineering, Planning, and City Administration.

The stakeholders group went over the draft RFP to ensure all concerns of group were covered in the proposal. The draft the RFP went through three changes before final version was acceptable to group and the final version was sent out to over 25 local, regional and national engineering firms. The stakeholders group selected Mr. Jim Augins and Mr. Michael Miller to

represent the group in the selection process; and (5) selection committee also consisted of City staff from Water Resources and Engineering Departments.

Ms. Ball briefly outlined the RFP and the selection process: (1) three firms submitted proposals; (2) selection committee was given copies of the proposals and asked to upgrade each on a number system of questions – based upon criteria in the RFP; (3) each committee member graded the three proposals and then met as a group to discuss; (4) committee agreed that one proposal did not meet the required standards requested in the RFP; (5) the other two firms were highly qualified and scoring by all committees members was very close; (6) the committee decided to bring both firms in for face-to-face interviews; (7) selection committee graded each firm on its presentation and answers to questions by each member of the committee, (8) the committee selected Schnabel Engineering South as the best firm for conducting these studies and plans for operations of the dams at North Fork and Bee Tree; (9) staff met with representatives from the engineering firm to establish cost and time schedule for each task; (10) cost is not to exceed $692,835; and (11) estimated completion for the entire project is October 2006 with modeling requirements by July 2006.

City staff recommends that Council approve (1) the request for the Mayor to enter into a contract with Schnabel Engineering South in the amount of $692,835 for reservoir and dam operation plans; and (2) the budget amendment to reallocate funds from the Water Fund equity account to cover the cost of this project.

Upon inquiry of Vice-Mayor Mumpower, Water Resources Director David Hanks felt that this action will be positive long-term.

Councilwoman Jones was pleased the City was being proactive in this matter and glad about how inclusive the process was for stakeholders.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-215. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 273

D. ORDINANCE NO. 3307 - BUDGET AMENDMENT TO UPDATE WATER RESERVOIR PLANS AND MAPS

Summary: See New Business Item "C" above.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3307. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 321

E. RESOLUTION NO. 05-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH LOCAL NON-PROFIT AGENCIES TO PROVIDE HOUSING FOR FAMILIES DISPLACED BY HURRICANE KATRINA

Ms. Charlotte Caplan, Community Development Director said that this is the consideration of (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina; the costs of

which will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of $100,000.

The Asheville Chapter of the Red Cross has dealt with requests for assistance from over 500 individuals or families who have evacuated to our area as a result of Hurricanes Katrina and Rita. Of these, 332 had registered with FEMA by October 18 giving temporary addresses within Buncombe County – the fourth highest total for counties in North Carolina.

Housing is the #1 need reported by these evacuees and, to date, approximately 300 families have been provided with temporary shelter in hotels/motels, in conference centers such as Ridgecrest, and in apartments offered by private individuals. An estimated one-third of these have already moved back home to the Gulf States and a handful have moved into more permanent housing here. Over the next few weeks, as Red Cross payment for hotel accommodation runs out we expect that the remainder will either move back home, or seek more permanent housing in our area.

Staff has been in close contact with the non-profit agencies assisting these families – the Red Cross, Asheville-Buncombe Community Christian Ministry (ABCCM), the Affordable Housing Coalition (AHC), and the Housing Authority of the City of Asheville (HACA). A number of faith-based groups and individuals have donated temporary accommodation to ABCCM, and the Red Cross receives reimbursement directly from FEMA for the cost of hotel/motel accommodation for up to 60 days, but otherwise our local non-profits have used their own resources for intake, advice, and housing placements. They will not be able to support the cost of longer-term housing assistance without severely diminishing the assistance they provide to local residents.

We have contacted FEMA and NCEM to find out what federal assistance is available for local efforts and how to structure those efforts in a way that is consistent with FEMA rules for reimbursement. On October 17, we received detailed guidance from NCEM on FEMA's Interim Shelter Assistance program and on October 28 submitted the Interim Shelter Plan, created after consultation with the agencies listed above and with Buncombe County staff.

Through this plan, the City will be reimbursed for the cost of providing housing (not rent assistance) to evacuees for up to 12 months. The City will contract with ABCCM and AHC who will identify those in need of housing, lease suitable units, and place families in those units. We are also seeking retrospective reimbursement of housing expenses already incurred by non-profit providers but at this point we are uncertain whether or not that will be allowed.

It has not been possible to obtain a reliable estimate of the number of people who will remain in our area and seek assistance through the Interim Shelter Program nor for how long they will need it. Other types of FEMA and HUD assistance are available, though not to everyone. We are initially requesting budget authority for $100,000, which is sufficient to rent about 35 apartments for three months.

Every effort will be made to ensure that all expenses incurred by our non-profit partners are eligible for reimbursement by FEMA through NCEM. However, it is possible that our partners may, in good faith, incur expenses that FEMA will deem ineligible. We recommend that in such cases, after all other avenues have been explored, staff should have the discretion to use the City's Housing Trust Fund as a contingency fund to reimburse such good-faith expenses. It is extremely unlikely that such costs would exceed $5,000.

Advantages:

- Provides up to 12 months of housing for people displaced by Katrina
- Prevents homelessness

- Should be 100% reimbursed by FEMA
- Ensures that local non-profits can maintain services to local residents as well as helping Katrina evacuees.

Disadvantages:

- Scale of need is still uncertain – budget is only a rough estimate
- A small probability exists that some expenses may not be reimbursed, requiring a source of contingency funding (Housing Trust Fund recommended).

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina, which costs will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of $100,000.

Ms. Caplan noted that at November 15, 2005, worksession when this item was being discussed, FEMA issued a press release drastically changing the rules for the interim housing program. FEMA will now provide assistance for only three months, and only for leases entered into before December 1, 2005.

FEMA will continue to provide direct individual assistance to evacuees who are responsible for finding and paying for their own housing. However, there are some evacuees who have already used their initial rent assistance to pay excessive housing costs or for other urgent needs such as food, gas, or clothing for their families. There may be others who for one reason or another do not qualify for FEMA's direct assistance. These families are at risk of becoming homeless just as the coldest winter weather sets in.

In order to avert this risk and utilize FEMA resources through the Interim Shelter Assistance Plan to the greatest extent possible by November 30, she issued a press release urging all Katrina evacuees who are still in short term housing to contact the Affordable Housing Coalition immediately.

At this time, we are aware of 14 families who have been placed in short-term accommodation by the Red Cross or ABCCM, but we are also starting to receive calls from other people who made their own short-term arrangements but now need longer term help. We hope to be able to assist as many as 30 families before the November 30 deadline.

We have been assured by NCEM officials that the plan we submitted is acceptable and that, provided we adhere to FEMA program guidelines, the cost of providing housing to evacuees for three months will be reimbursed in full.

If we do not access this program, it is likely that the same families will eventually seek help either from the Affordable Housing Coalition or from homeless shelters, using funds earmarked for local needs thereby reducing the capacity of these agencies to serve local residents with critical housing needs.

Vice-Mayor Mumpower was concerned that we are not certain FEMA will reimburse the City and we have limited dollars. He doesn't think Asheville is an appropriate mecca for people seeking affordable housing, in that we are struggling to meet the needs of the people we have here. He understands that we are being accommodating to people that would like to be here, but that is not the same thing as wisely using our dollars.

Ms. Caplan responded to Councilman Newman about opportunities for displaced families to stay at Housing Authority facilities.

When Vice-Mayor Mumpower voiced concern about what would happen to the displaced families after 90 days, Ms. Caplan said that those receiving this transitional housing assistance must take responsibility for paying their own rent.

Vice-Mayor Mumpower was concerned that if after 90 days the displaced families don't have additional housing that the City will end up with accountability for something that the federal government has agreed is their accountability. Ms. Caplan said that she would strongly advise the ABCCM and Affordable Housing Coalition that the City of Asheville does not enter into any accountability for more than the first three months of rent.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 05-216. This motion was seconded by Councilwoman Jones.

Councilman Davis felt someone should have contacted the displaced families in our area to see what their future plans are.

Councilwoman Bellamy felt we should approve these actions and then deal with the issue of whether we get reimbursed or not with the proper individuals at FEMA. She suggested a resolution be sent to FEMA mandating that they reimburse the City for the appropriate funds.

After further discussion, Vice-Mayor Mumpower moved to call the previous question which motion carried unanimously.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 274

F. ORDINANCE NO. 3308 - BUDGET AMENDMENT FOR INTERIM SHELTER EXPENSES FOR FAMILIES DISPLACED BY HURRICANE KATRINA

Summary: See New Business Item "E" above.

Councilwoman Jones moved for the adoption of Ordinance No. 3308. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 22 – PAGE 323

G. RESOLUTION NO. 05-217 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR AN ANTENNA AT 36 RESERVOIR ROAD

Real Estate Manager Ed Vess said that this is the consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with Mountain Area Information Network (MAIN) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication

towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

MAIN has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "U S Cellular Tower" which is the tower to the east with several large dish antennas attached. U S Cellular is the primary tenant on that tower and any antenna installations by others are subject to their approval. U S Cellular is agreeable to the installation by MAIN subject to a favorable tower analysis. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation. MAIN will pay for and provide a tower analysis. The proposed License Agreement will enable MAIN to operate three (3) antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. MAIN will pay a License Fee of $7,200 ($200 per antenna per month) the first year with a 4% increase annually thereafter.

The request by MAIN has been reviewed by staff and the proposed equipment compared to existing installations to determine comparability. Currently we have three somewhat similar installations that are producing as follows:

Arch Communications	1 antenna	@ $350 per month
Cingular Communication	4 antennas	@ $287.50 per antenna per month
Morris Communications	3 antennas	@ $276.25 per antenna per month

The license fee proposed for MAIN is somewhat below market rate consistent with the rate approved for the Housing Authority of the City of Asheville by Resolution No. 05-92. Both MAIN and the Housing Authority provide public benefit services to lower income persons that are compatible with governmental function and/or sponsorship. A discounted rate for a non-profit providing such services as well as public safety and emergency response agencies seems reasonable and appropriate

Staff recommends that Council review discounted antenna license fees annually during consideration of appropriations to outside agencies.

Relationship to Broadband Initiative: Antenna rental requests are relatively simple transactions and will not materially affect any potential municipal broadband strategy. Specifically cellular and 900Mhz antenna rentals will not create interference with likely technologies to be used for broadband.

The following benefits will be realized from approval of this item:

- The City will receive revenue that it does not currently receive.
- Antenna space that is currently vacant will be utilized.
- MAIN will have improved capacity to provide low cost high speed wireless internet service to City residents.

Planning & Development and Information Technology staff recommend City Council adopt the resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with MAIN for an antenna at 36 Reservoir Road.

Councilman Dunn expressed concern that MAIN is being given a below market rate like the Housing Authority, noting that the Housing Authority puts all their money back into housing.

Councilman Newman spoke in support of MAIN stating that there is a compelling public interest function that they are performing that the other companies are not.

Vice-Mayor Mumpower said that he likes what MAIN is doing, but it is an obvious political entity.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 05-217. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 275

H. RESOLUTION NO. 05-218 - RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENTS WITH CP&L SETTLING LITIGATION REGARDING THE ANNEXATION OF THE LAKE JULIAN POWER PLANT, AND AMENDING THE 1994 AGREEMENT WITH CP&L REGARDING UTILITY FRANCHISE TAXES

City Attorney Oast said that this is the consideration of a resolution authorizing the execution of agreements with CP&L settling litigation regarding the annexation of the Lake Julian Power Plant, and amending the 1994 agreement with CP&L regarding utility franchise taxes.

In the 1940s, the State of North Carolina adopted a uniform method for assessing utility franchise taxes on certain regulated utilities, and making distribution of those revenues to N. C. municipalities. Prior to that time, utility franchise taxes varied from city to city, and Asheville, like many cities, had its own utility franchise tax. Under the State law, the local taxes were not entirely pre-empted, but there is language that provides that a local tax may not exceed the tax that was imposed as of January 1, 1947.

In the 1980s and early 1990s, the amount of utility franchise tax paid to the City by CP&L and Public Service Gas Company came into dispute, and the parties were headed toward litigation. In 1994, however, they reached an agreement whereby the amount paid by those utilities to the City was fixed. For CP&L, this amount was fixed at $659,418.16. Beginning in 1996, this amount is reduced by property taxes on CP&L's business property in the City. This agreement was enacted into law. The ratio of property / utility tax within this fixed amount varies from year to year. The property tax component – based on natural appreciation – is growing while the utility franchise tax component diminishes. When property tax liability equals or exceeds the fixed amount, CP&L pays the entire property tax, together with a utility franchise tax fixed at $12,153.22 annually (the 1947 level).

In 1989 and again in 2000, the City attempted to annex an unincorporated area on the south side of town which included the Lake Julian Power Plant. On both occasions, the City's annexation of this area was invalidated by the courts. On both occasions, the Lake Julian property has been difficult to "qualify" for annexation, due to its size and other characteristics.

Shortly after finalizing the 1994 agreement, the City and CP&L began discussions about the Lake Julian facility, including annexation and litigation issues. These discussions continued while the 2000 annexation attempt was being reviewed by the courts, and have continued since then. For its part, CP&L (now Progress Energy) uses few City services, is required by law to provide many such services (security, fire protection) itself, and its power generating activities are closely regulated by the federal and State governments. For these reasons, CP&L has resisted, and will continue to resist, annexation of the Lake Julian facility. The City recognizes this, but

also believes that Progress Energy benefits from the proximity of its Lake Julian facility to the City, that the location and availability of City services has value, and that the facility may therefore be fairly considered for annexation.

With this legal and historical background in mind, the City and Progress Energy, have developed a proposed agreement that will resolve these issues and terminate the litigation wherein the 2000 annexation was challenged, it will also foreclose future attempts to annex the Lake Julian facility, and the litigation likely to ensue, and the City will realize some revenue, based on the value of the facility.

Using a formula that incorporates Progress Energy's current City property tax liability, the amount of City property tax that would be due on the Lake Julian facility if it were annexed, and the utility franchise tax, Progress Energy would pay the City an amount that is more than they would pay if the Lake Julian facility were not annexed, but less than they would pay if it were. He reviewed with Council an illustration of how that amount would be computed for 2005, based on current valuation and tax rates. In consideration for an annual payment computed according to this formula, the City would not annex the Lake Julian facility, and the current litigation would be resolved.

The agreement contains provisions that cover what happens if the Lake Julian facility is ever "decommissioned" as a power plant, or if parts of it are ever sold off for other uses. The agreement ensures that Progress Energy will continue to pay its full property tax for all its property in the City (they could not legally do otherwise). The amount received by the City is subject to adjustment in every tax re-valuation year (beginning in 2006), and will increase if the value of the Lake Julian facility (which is fixed by the State) increases. If for some reason the value of the Lake Julian facility decreases, the payment received by the City in franchise fees and property taxes will never drop below the 2005 amount of $759,418.16, as established in the proposed agreement.

Because this agreement affects the City's legislative powers regarding annexation, and because it is an amendment of the 1994 agreement, it will need to be enacted into law by the N. C. General Assembly, as the 1994 agreement was. Under the proposed agreement, this must occur by November 1, 2008. Preliminary discussions with some members of the legislative delegation have been positive.

Considerations:

- Terminates an ongoing (and expensive) dispute about annexation
- Provides escalating revenue stream for the City, based on property values
- Payments will never drop below the 2005 level.
- City relinquishes its ability to annex Lake Julian
- Potential loss of increased tax revenue (including sales tax distribution)
- Precedent may be established
- City will not have to furnish urban services to the property
- Create potential for a "hole" in the City, but does not create a problem for service delivery to surrounding areas

If Council approves of the proposed agreement, adoption of the resolution is recommended.

Mr. Sipes, Regional Vice-President for Operations in Western North Carolina for Progress Energy, spoke in support of the agreement in that he feels it is a fair and equitable agreement for all concerned.

Councilwoman Bellamy voiced concern that we are binding future Councils and will need legislative approval to change it.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 05-218. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 276

I. RESOLUTION NO. 05-219 - RESOLUTION APPOINTING MEMBERS AND A CHAIR TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Councilman Newman moved to excuse Mayor Worley from participating in this matter. This motion was seconded by Vice-Mayor Mumpower and carried unanimously. At this time, Mayor Worley turned the meeting over to Vice-Mayor Mumpower and left the meeting

Vice-Mayor Mumpower said that the terms of Tom Bell and Duane Jarnecke, as members on the Alcoholic Beverage Control Board, expired on November 13, 2005.

At the City Council worksession on August 15, City Council instructed the City Clerk to prepare the proper paperwork to (1) reappoint Mr. Bell to serve an additional three year term, term to expire November 15, 2008; and (2) appoint Charles R. Worley to serve a three year term, term to begin December 7, 2005, and expire November 15, 2008. Both terms are until their successors have been appointed.

City Council also needs to appoint a Chair to the Board. Members are: Tom Bell, Barbara Field, Debora Holmes-Young, Ken Kaplan and Charles R. Worley.

Councilman Dunn expressed concern that the ABC Board is still in a reactive mode, not a proactive role. He felt that all current members on the Board should be held accountable and felt that if Council reappointed Mr. Bell, that the inactivity would continue. He supported Ken Kaplan for the Chairman position.

Vice-Mayor Mumpower thanked Councilman Dunn for bringing accountability to the ABC Board. As a result of that, one of the City's two new members became Chairman and they have appointed a new General Manager.

After Council spoke in support of their candidate for Chairman, Barbara Field received 1 vote, Ken Kaplan received 2 votes, and Charles Worley received 3 votes. Therefore, Charles R. Worley was appointed as Chairman of the ABC Board effective December 7, 2005, until his term expires on November 13, 2008, or until City Council appoints a replacement.

At this time, Mayor Worley returned to the meeting.

RESOLUTION BOOK NO. 29 – PAGE 289

J. RESOLUTION NO. 05-220 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Mumpower said that Mr. John Burchfield, representing the Central area, has resigned from the Citizens/Police Advisory Committee, thus leaving an unexpired term until June 30, 2008.

At Council's November 15 worksession, the City Clerk was instructed to arrange interviews for Ed Taylor and Beverly Jeter.

It was the consensus of Council to appoint Ed Taylor as the Central area representative to the Citizens-Police Advisory Committee to serve the unexpired term of Mr. Burchfield, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 - PAGE 290

VI. OTHER BUSINESS:

A. RESOLUTION NO. 05-221 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CIVIC CENTER LEASE AGREEMENT WITH THE AMERICAN INDOOR FOOTBALL LEAGUE

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to book AIFL indoor football at the Civic Center.

The Civic Center has held discussions with officials of the AIFL indoor football league for some time. The purpose was to book one of their teams into the venue. The overall financial results accruing to the facility was an important consideration.

The league and the staff at the Center have agreed on terms of a contract that staff believes will provide an equitable basis for both parties upon which to proceed. The basic rent will be $3,750 per game. Basic staffing will be provided as part of the rent. The team will be allowed to sell advertising within the arena. The Civic Center will share in a portion of these proceeds. There are only seven home games in a season. They have requested office space within the venue.

The games will be played during the spring portion of the year when other Civic Center events are less. Interference with other actual events or possible event bookings should be kept to a minimum. No major electrical requirements or other major expenses are foreseen as part of the building's responsibility as encountered with other sports teams. Any specific football equipment needs will be the responsibility of the AIFL. The results are expected to prove profitable for the venue and it provides another type of event for the citizens of Western North Carolina. There does not appear to be any serious negative factors that would affect the Civic Center by booking this event. The initial term of the contract is for one year. This will give both parties the opportunity to access the market for this activity.

The staff believes that booking the event will prove successful. Members of the AIFL have met with the Civic Center Commission at their November 21, 2005, meeting. The Commission was also were positive about indoor football at the Center and concur with staff's recommendation.

City staff recommends City Council authorize the City Manager to sign a contract to book indoor football at the Civic Center.

At the suggestion of Vice-Mayor Mumpower, Mayor Worley felt that a $5,000 deposit would be reasonable amount to cover any loss expenses, if any should occur.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 05-221. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 291

B. ORDINANCE NO. 3309 – BUDGET AMENDMENT FOR REIMBURSEMENT FROM THE ASHEVILLE CLAIMS CORPORATION'S RESERVES TO PAY CLAIMS

Ms. Betty Coulter, new City's Risk Manager, said that this is the consideration of a budget amendment, in the amount of $250,000, from the Asheville Claims Corporation's (ACC) reserves to pay for higher than anticipated immediate and future claims.

The Asheville Claims Corporation is an entity established in 1993 with the charge of managing a self-insurance program and claims administration for the City of Asheville. The Corporation provides claims administration services within the limits established by City Council. The responsibility of the Corporation for administering claims and paying judgments shall also be applicable to claims against officers and employees of the City in accordance with Resolution No. 79-253 entitled "Resolution Relating to Claims and Judgments Sought or Entered Against City Officers or Employees. Although there are numerous matters in which the City can assert Governmental Immunity, there are instances when the City becomes liable for damages. This year has seen an unusually high number of claims where the City's liability could not be seriously contested, and damages have been substantial.

A ten year claims history indicates an average annual claims expense of $150,000, with the highest claims expense of $344,336 occurring in 1999-2000. It is projected that in the current year, claims expenses will exceed our average annual claims amount, thus requiring an additional appropriation of $250,000 to be funded with ACC reserves.

Pro:

- Approval of this amendment will allow us to pay current claims and avoid potential litigation, which could prove to be more costly

Con:

- Reduction of ACC reserves

City staff recommends City Council amend the general insurance and liability budget to increase the claims line appropriation by $250,000.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3309. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 325

C. CLAIMS

The following claims were received by the City of Asheville during the period of November 4-17, 2005: Wesley B. Allen (Police), Ed Hardin (Sanitation), Mike Harrill (Sanitation),

Kathleen McGuire (Streets) and Robert E. Harris (Water). These claims have been referred to Asheville Claims Corporation for investigation.

D. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 11, 2005 GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 8, 2005

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 11, 2005. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 8, 2005.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilwoman Bellamy moved to direct the City Attorney to prepare a resolution to FEMA asking for them to reimburse the City of Asheville $100,000 after 90 days for the cost of providing housing (not rent assistance) to evacuees of Hurricane Katrina; and to receive a report from the City's Community Development Division on the accountability of the number of people the City of Asheville has helped. This motion was seconded by Councilman Davis and carried unanimously.

Mr. Peter Dawes questioned Council about where they draw the line on freedom of speech or profanity in and out of the Council Chamber.

At this time, Mayor Worley turned the meeting over to Vice-Mayor Mumpower and left the meeting. Mr. Reid Thompson spoke about the problems he has encountered with delivery trucks at Greenlife Grocery on Merrimon Avenue, in addition to the alleged violations of the Unified Development Ordinance regarding buffering.

At this time, Mayor Worley returned to the meeting. Mayor Worley thanked the citizens of Asheville for allowing him to serve as Mayor for the past four years. During his tenure, over a half billion dollars of economic development was added to the tax base; Asheville regained control of its water system, a move that will have a long lasting impact on the City's future; and Asheville saw substantial growth in its parks, greenways and recreation facilities, including the construction and dedication of the John B. Lewis Soccer Complex at Azalea Park. Again, he thanked City Council, staff and the citizens of Asheville for the opportunity to see Asheville prosper.

CLOSED SESSION

At 10:17 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed or retained by the City Council about matters in respect to which the attorney-client privilege must be preserved, including potential litigation. The statutory authorization is contained in N. C. Gen. Stat. sec. 160A-318.11 (a) (3). This motion was seconded by Councilman Dunn and carried unanimously.

At 10:35 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:35 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

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October 11, 2005

ABSTRACT OF VOTES
FOR
FEDERAL, STATE AND COUNTY OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 18th day of October, 2005

This day personally appeared before me, Tom F Byrd Chairman of the BUNCOMBE County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this the 18th day of October, 2005

(Seal)

My Commission (if any) Expires: 8/21/2010

Exhibit "A"

Election Date: [illegible]005 10/11/2005 MUNICIPAL PRIMARY

ASHEVILLE COUNCIL

Precinct	Dwight A. Butner	Robin Cape	Bryan Freeborn	Matthew Hebb	Jan Howard	(Continued..)
01.1	21	88	54	22	14	
02.1	36	365	252	19	16	
03.1	35	254	198	26	32	
04.1	49	161	95	34	31	
05.1	155	280	92	66	51	
06.1	60	95	39	49	24	
07.1	31	228	120	20	82	
08.1	111	116	81	23	28	
09.1	42	85	36	39	44	
10.1	14	65	72	7	16	
11.1	8	65	47	10	13	
12.1	24	139	141	20	12	
13.1	41	126	149	13	29	
14.1	27	149	121	37	20	
15.1	36	193	203	33	39	
16.1	36	143	158	55	39	
17.1	63	130	60	39	26	
18.1	125	98	24	75	42	
19.1	22	17	9	20	11	
20.1	20	71	26	18	26	
21.1	78	120	39	51	37	
22.1	63	123	37	30	27	
23.1	32	61	16	20	10	
24.1	28	28	28	29	20	
25.1	37	56	41	67	31	
26.1	33	64	82	16	21	
27.1	62	112	36	30	25	
28.1	50	194	124	34	19	
29.1	54	73	41	56	36	
43.1	0	0	0	0	0	
45.1	0	0	0	1	0	
54.1	4	3	0	2	1	
55.1	0	0	2	2	0	
56.1	8	8	8	3	7	
60.1	2	8	4	2	6	
62.1	0	0	0	0	2	
71.1	2	3	0	2	0	
ABSENTEE	128	420	179	84	96	
CURBSIDE	0	0	0	0	0	

ASHEVILLE COUNCIL

Precinct	Dwight A. Butner		Robin Cape		Bryan Freeborn		Matthew Hebb		Jan Howard		(Continued..)
PROVISIONAL	10		19		13		7		2		
TRANSFER	6		22		17		3		3		
Totals	1,553	6%	4,182	16%	2,644	10%	1,064	4%	938	4%	

ASHEVILLE COUNCIL (Continued)

Precinct	Holly Jones	Carl Mumpower	Chris Pelly	Selina D. Sullivan	Keith Thomson	Totals
01.1	150	59	33	98	51	590
02.1	424	80	124	136	81	1,533
03.1	303	93	77	76	83	1,177
04.1	252	126	144	24	122	1,038
05.1	359	301	168	45	196	1,713
06.1	133	130	123	28	55	736
07.1	246	95	155	40	77	1,094
08.1	255	130	78	127	57	1,006
09.1	149	142	88	49	56	730
10.1	169	77	32	130	42	624
11.1	104	39	13	74	32	405
12.1	159	72	72	27	51	717
13.1	144	117	72	52	44	787
14.1	173	121	51	80	40	819
15.1	231	136	98	43	68	1,080
16.1	186	160	91	35	61	964
17.1	171	117	95	17	78	796
18.1	160	216	102	26	89	957
19.1	35	68	15	10	13	220
20.1	77	52	65	24	38	417
21.1	199	183	257	53	69	1,086
22.1	186	147	102	19	105	839
23.1	87	104	143	11	30	514
24.1	55	93	36	18	35	370
25.1	113	160	135	25	43	708
26.1	87	93	47	13	28	484
27.1	157	102	73	16	95	708
28.1	245	112	103	36	111	1,028
29.1	147	189	70	21	54	741
43.1	0	0	0	0	0	0
45.1	0	0	0	0	0	1
54.1	7	5	5	0	1	28
55.1	0	7	4	0	0	15
56.1	17	24	6	9	5	95
60.1	11	6	7	2	4	52
62.1	4	5	6	1	7	25
71.1	4	4	2	0	0	17
ABSENTEE	517	316	323	84	240	2,387
CURBSIDE	0	0	0	0	0	0

ASHEVILLE COUNCIL (Continued)

Precinct	Holly Jones	Carl Mumpower	Chris Pelly	Selina D. Sullivan	Keith Thomson	Totals
PROVISIONAL	31	16	9	14	7	128
TRANSFER	20	5	7	7	5	95
Totals	5,767 22%	3,902 15%	3,031 11%	1,470 6%	2,173 8%	26,724

ASHEVILLE MAYOR

Precinct	Terry M. Bellamy	Bill Branyon	Joe Dunn	Charles R. Worley	Totals
01.1	162	20	18	20	220
02.1	427	49	24	48	548
03.1	276	45	48	44	413
04.1	143	24	101	109	377
05.1	190	40	240	157	627
06.1	69	24	112	60	265
07.1	240	28	66	51	385
08.1	252	12	74	31	369
09.1	109	15	106	39	269
10.1	201	7	17	16	241
11.1	129	11	8	10	158
12.1	136	34	58	28	256
13.1	127	27	104	25	283
14.1	166	11	75	45	297
15.1	185	26	107	68	386
16.1	128	27	160	37	352
17.1	105	26	83	72	286
18.1	88	6	177	87	358
19.1	19	0	49	15	83
20.1	68	17	41	24	150
21.1	144	26	169	61	400
22.1	102	14	115	80	311
23.1	45	8	95	44	192
24.1	23	7	78	31	139
25.1	66	21	126	50	263
26.1	55	10	67	43	175
27.1	89	18	85	65	257
28.1	180	35	74	80	369
29.1	66	9	149	56	280
43.1	0	0	0	0	0
45.1	0	0	1	0	1
54.1	6	0	3	1	10
55.1	0	0	7	0	7
56.1	9	2	19	5	35
60.1	6	2	7	4	19
62.1	5	0	3	2	10
71.1	0	0	3	4	7
ABSENTEE	359	65	253	183	860
CURBSIDE	0	0	0	0	0

ASHEVILLE MAYOR

Precinct	Terry M. Bellamy		Bill Branyon		Joe Dunn		Charles R. Worley		Totals
PROVISIONAL	23		7		10		6		46
TRANSFER	23		6		1		3		33
Totals	4,421	45%	679	7%	2,933	30%	1,704	18%	9,737

MUNICIPAL ELECTION

November 8, 2005

ABSTRACT OF VOTES
FOR
FEDERAL, STATE AND COUNTY OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 15th day of November, 2005

This day personally appeared before me, Jones Byrd, Chairman of the BUNCOMBE County Board of Elections, who, being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this the 15th day of November 2005

Notary Public
(Seal)

My Commission (if any) Expires: 8/10/2010

Exhibit "B" 399

ASHEVILLE MAYOR

Precinct	Terry M. Bellamy	Joe Dunn	Totals
01.1	329	64	393
02.1	845	68	913
03.1	600	116	716
04.1	372	248	620
05.1	484	588	1,072
06.1	250	264	514
07.1	447	159	606
08.1	539	220	759
09.1	323	343	666
0.1	350	36	386
1.1	272	15	287
2.1	300	156	456
3.1	308	235	543
4.1	403	246	649
5.1	388	309	697
6.1	327	362	689
7.1	302	235	537
8.1	270	672	942
9.1	43	152	195
0.1	137	97	234
1.1	403	411	814
2.1	231	263	494
3.1	139	240	379
4.1	125	333	458
5.1	226	361	587
6.1	153	191	344
7.1	255	239	494
8.1	456	177	633
9.1	213	402	615
0.1	0	0	0
1.1	0	0	0
2.1	0	0	0
3.1	0	0	0
4.1	0	0	0
5.1	0	0	0
6.1	0	0	0
7.1	0	0	0
8.1	0	0	0
9.1	0	0	0

SHEVILLE MAYOR

recinct	Terry M. Bellamy		Joe Dunn		Totals
0.1	0		0		0
1.1	0		0		0
2.1	0		0		0
3.1	2		5		7
4.1	14		24		38
5.1	2		3		5
6.1	0		0		0
7.1	0		0		0
8.1	0		0		0
9.1	0		0		0
0.1	0		0		0
1.1	0		0		0
2.1	0		0		0
3.1	0		0		0
4.1	18		38		56
5.1	4		13		17
6.1	46		60		106
7.1	0		0		0
8.1	0		0		0
9.1	0		0		0
0.1	34		34		68
1.1	0		0		0
2.1	18		18		36
3.1	0		0		0
4.1	0		0		0
5.1	0		0		0
6.1	0		0		0
7.1	0		0		0
8.1	0		0		0
81	0		0		0
9.1	0		0		0
0.1	0		0		0
1.1	11		15		26
BSENTEE	918		659		1,577
URBSIDE	0		0		0
ROVISIONAL	38		16		54
RANSFER	39		4		43
otals	10,634	57%	8,091	43%	18,725

401

ASHEVILLE CITY COUNCIL

Precinct	Robin Cape	Bryan Freeborn	Holly Jones	Carl Mumpower	Chris Pelly	(Continued..)
01.1	281	179	306	100	102	
02.1	712	511	774	158	214	
03.1	542	410	556	163	142	
04.1	348	225	432	250	210	
05.1	521	310	614	571	320	
06.1	233	142	300	269	257	
07.1	401	362	438	168	206	
08.1	396	305	541	311	260	
09.1	293	188	386	386	250	
10.1	237	167	302	138	84	
11.1	184	130	244	64	56	
12.1	294	295	305	157	106	
13.1	316	345	317	221	143	
14.1	369	344	401	284	118	
15.1	348	423	429	299	203	
16.1	356	362	408	342	188	
17.1	306	184	329	247	150	
18.1	290	153	434	660	416	
19.1	57	30	83	150	53	
20.1	120	85	139	100	102	
21.1	365	216	454	411	518	
22.1	246	128	300	247	182	
23.1	128	67	173	235	261	
24.1	135	166	208	329	157	
25.1	204	174	310	361	284	
26.1	151	192	187	175	114	
27.1	246	134	327	252	149	
28.1	434	327	454	181	164	
29.1	208	127	322	427	181	
30.1	0	0	0	0	0	
31.1	0	0	0	0	0	
32.1	0	0	0	0	0	
33.1	0	0	0	0	0	
34.1	0	0	0	0	0	
35.1	0	0	0	0	0	
36.1	0	0	0	0	0	
37.1	0	0	0	0	0	
38.1	0	0	0	0	0	
39.1	0	0	0	0	0	

SHEVILLE CITY COUNCIL

recinct	Robin Cape	Bryan Freeborn	Holly Jones	Carl Mumpower	Chris Pelly	(Continued..)
0.1	0	0	0	0	0	
1.1	0	0	0	0	0	
2.1	0	0	0	0	0	
3.1	4	5	3	3	3	
4.1	13	11	22	23	13	
5.1	3	2	4	3	0	
6.1	0	0	0	0	0	
7.1	0	0	0	0	0	
8.1	0	0	0	0	0	
9.1	0	0	0	0	0	
0.1	0	0	0	0	0	
1.1	0	0	0	0	0	
2.1	0	0	0	0	0	
3.1	0	0	0	0	0	
4.1	21	9	28	38	20	
5.1	2	3	6	15	7	
6.1	45	24	65	69	32	
7.1	0	0	0	0	0	
8.1	0	0	0	0	0	
9.1	0	0	0	0	0	
0.1	33	22	38	33	15	
1.1	0	0	0	0	0	
2.1	13	9	19	23	14	
3.1	0	0	0	0	0	
4.1	0	0	0	0	0	
5.1	0	0	0	0	0	
6.1	0	0	0	0	0	
7.1	0	0	0	0	0	
8.1	0	0	0	0	0	
81	0	0	0	0	0	
9.1	0	0	0	0	0	
0.1	0	0	0	0	0	
1.1	10	5	16	13	10	
ABSENTEE	891	554	1,018	701	608	
CURBSIDE	0	0	0	0	0	
PROVISIONAL	34	22	34	23	15	
TRANSFER	37	30	31	6	9	
Totals	9,827 20%	7,377 15%	11,757 24%	8,606 18%	6,336 13%	

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Keith Thomson	Totals
01.1	111	1,079
02.1	157	2,526
03.1	170	1,983
04.1	205	1,670
05.1	401	2,737
06.1	168	1,369
07.1	110	1,635
08.1	139	1,952
09.1	209	1,712
10.1	83	1,011
11.1	65	743
12.1	123	1,280
13.1	121	1,463
14.1	137	1,653
15.1	164	1,866
16.1	152	1,808
17.1	161	1,377
18.1	255	2,208
19.1	52	425
20.1	66	612
21.1	196	2,160
22.1	199	1,302
23.1	102	966
24.1	141	1,136
25.1	150	1,483
26.1	89	908
27.1	183	1,291
28.1	183	1,743
29.1	178	1,443
30.1	0	0
31.1	0	0
32.1	0	0
33.1	0	0
34.1	0	0
35.1	0	0
36.1	0	0
37.1	0	0
38.1	0	0
39.1	0	0

HEVILLE CITY COUNCIL (Continued)

cinct	Keith Thomson		Totals
1	0		0
1	0		0
1	0		0
1	3		21
1	9		91
1	1		13
1	0		0
1	0		0
1	0		0
1	0		0
.1	0		0
1	0		0
.1	0		0
.1	0		0
.1	12		128
.1	2		35
.1	19		264
.1	0		0
.1	0		0
.1	0		0
.1	21		162
.1	0		0
.1	14		92
.1	0		0
.1	0		0
.1	0		0
.1	0		0
.1	0		0
.1	0		0
1	0		0
.1	0		0
.1	0		0
.1	5		59
BSENTEE	435		4,207
JRBSIDE	0		0
ROVISIONAL	12		140
RANSFER	11		124
otals	5,024	10%	48,927

Tuesday - December 6, 2005 – 5:00 p.m.

ORGANIZATIONAL SESSION:

Mayor-Elect Terry M. Bellamy welcomed everyone to the organizational session.

Mayor-Elect Bellamy stated that she submitted her letter of resignation as a Council member of the Asheville City Council effective December 6, 2005, in order to take her position as Mayor of the City of Asheville. This resignation results in an unexpired term until December of 2007.

Dr. Joseph C. Dunn led City Council in the Pledge of Allegiance, along with the he Asheville High School JROTC.

Mayor-Elect Bellamy then introduced Dr. Ann Hardman from the River of Life International Church, The Reverend James Walker from Biltmore Baptist Church, and Father Demetri Iliou from Holy Trinity Greek Orthodox Church who each gave an invocation.

The Honorable Gary S. Cash, Chief Judge of the Buncombe County District Court, administered the Oath of Office to the following:

Mayor Terry M. Bellamy
Council Member Robin Lynne Cape
Council Member Diana Hollis Jones
Council Member R. Carl Mumpower

RESOLUTION NO. 05-222 - RESOLUTION OF APPRECIATION FOR CHARLES R. WORLEY

Mayor Bellamy read the resolution.

Resolution No. 05-222 was adopted by acclamation.

Mayor Bellamy presented Mr. Worley with the resolution, a plaque, a picture of City Hall, his name plates and a City pen.

RESOLUTION BOOK NO. 29 - PAGE 292

RESOLUTION NO. 05-223- RESOLUTION OF APPRECIATION FOR JOSEPH C. DUNN

Mayor Bellamy read the resolution.

Resolution No. 05-223 was adopted by acclamation.

Mayor Bellamy presented Dr. Dunn with the resolution, a plaque, a picture of City Hall, his name plates and a City pen.

RESOLUTION BOOK NO. 29 - PAGE 293

ELECTION AND OATH OF OFFICE OF THE SEVENTH MEMBER OF THE ASHEVILLE CITY COUNCIL

Councilman Newman nominated Bryan Freeborn to fill the unexpired City Council term left vacant by Mayor Bellamy, as Mr. Freeborn received the 4th highest votes from the November 8, 2005, General Election. Councilwoman Cape seconded the nomination.

After hearing no more nominations, Mayor Bellamy closed the floor for nominations.

Mayor Bellamy called for a vote, resulting in Bryan Freeborn being appointed to serve the unexpired term of Mayor Bellamy until December 4, 2007, on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

City Clerk Magdalen Burleson administered the Oath of Office to Councilman Bryan Freeborn.

ELECTION OF VICE-MAYOR

Councilwoman Cape nominated Councilwoman Jones as Vice-Mayor of the City of Asheville. Councilman Newman seconded the nomination.

After hearing no more nominations, Mayor Bellamy closed the floor for nominations.

Mayor Bellamy called for a vote, resulting in Councilwoman Jones being appointed as Vice-Mayor on a 5-1 vote, with Councilwoman Jones abstaining from voting and Councilman Mumpower voting "no."

COMMENTS FROM MAYOR

Mayor Bellamy shared a few thoughts about the work off City Council over the next few years. She felt we needed to review our vision for Asheville's land use plan, development standards and annexation policies. Basic City services need to be a top priority for this Council. City Council must begin to look at ways we can be a player in helping create an environment where people live and work in the community, by (1) embracing the HUB project, the new regional economic development plan and see what part we can undertake to assist in developing a stronger and more inclusive economy; and (2) creating an affordable housing plan that gives clear direction for the inclusion of more housing for our low to moderate income individuals and families. She is committed to greater public involvement in developing the future of our water utility. In summary, she asked for the support of Council, the community, county officials, and state officials. It is her goal to actively partnership and have an active relationship with the community for the best of the entire community.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:05 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – December 13, 2005 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Erwin High School JROTC led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF PARKS & RECREATION STAFF FROM N.C. RECREATION AND PARK ASSOCIATION

Mayor Bellamy recognized Mr. Mike Waters, Executive Director of the N.C. Recreation and Park Association who presented Randy Shaw with the Young Professional Award, Ray L. Kisiah Sr., with an award for Hall of Fame Inductee, and Irby Brinson with the Fellow Award.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda Item "J" be removed from the Consent Agenda for discussion.

Councilman Davis asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 22, 2005, AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 6, 2005

B. RESOLUTION NO. 05-224 - RESOLUTION ADOPTING THE 2006 SCHEDULED CITY COUNCIL MEETINGS

RESOLUTION BOOK NO. 29 – PAGE 294

C. ORDINANCE NO. 3310 - BUDGET AMENDMENT TO ACCOUNT FOR HOME PROGRAM FUNDS REPAID TO THE CITY BY TRANSYLVANIA COUNTY HOUSING DEVELOPMENT CORPORATION

Summary: The consideration of a budget amendment, in the amount of $108,610, to account for HOME Program funds repaid to the City by Transylvania County Housing Development Corporation.

In 2000 Transylvania County Housing Development Corporation (TCHDC) expended $108,610 of HOME Program funds on the acquisition of vacant land in Brevard for the

development of affordable housing. Due to the high costs of infrastructure construction, the project did not go forward. HOME program regulations mandate that if expenditures occur without the production of affordable housing units all funds must be returned to the U.S. Treasury. TCHDC sold the property and repaid the City. Upon receipt of the funds, the City repaid the Treasury and the funds were then added back into the City's available HOME funding. It is now necessary to amend the Fiscal Year 2006 Budget to recognize the availability of these funds. They have already been committed to HOME projects in the 2005 Annual Action Plan for CDBG & HOME funding.

This action complies with the City's Strategic Operating Plan to address the goals and objectives of the Housing Opportunities Focus Area

Advantage:

- Adoption of the Amendment will allow the City and the Asheville Regional Housing Consortium to expend the funds for eligible activities under the HOME Program.

Disadvantage:

- None

Community Development staff recommends adoption of the budget amendment to account for HOME Program funds repaid to the City by Transylvania County Housing Development Corporation.

ORDINANCE BOOK NO. 22 – PAGE 327

D. ORDINANCE NO. 3311 - BUDGET AMENDMENT FOR NEW SIDEWALK CONSTRUCTION USING FEE-IN-LIEU OF SIDEWALK CONSTRUCTION FUNDS

Summary: The consideration of a budget amendment, in the amount of $100,000, for the construction of new sidewalks using fee-in-lieu of sidewalk construction funds.

In 1999, City Council authorized allowing developers to pay a fee in lieu of constructing sidewalks for projects. Since that time, the City has collected over $322,000 in revenue from this fee. The City has used this money to build new sidewalks, match N.C. Department of Transportation grants, and make pedestrian improvements at intersections. Some of the projects that have been funded include sidewalk on Trinity Chapel, Hiawassee Street, Hilliard Avenue, Tunnel Road and pedestrian landings at the intersection of Wal-Mart and Hendersonville Road.

As mentioned above, to date the City has collected over $322,000 in fee-in-lieu of revenue, an amount which now exceeds the $300,000 approved budget authorization by $22,000. In addition, the City expects to receive another $78,000 in fee-in-lieu of revenue over the next year. This $100,000 budget amendment will appropriate the $22,000 in additional funds that have already been collected and put in place a budget for the $78,000 in revenue that is expected to be collected over the next year. Staff has earmarked these funds for priority sidewalk projects identified on the approved priority list. The specific locations include Hendersonville Highway, Fairview Road and Patton Avenue.

Consideration:

- The additional revenue will allow the City to install sidewalk in priority locations throughout the City.

This action complies with the City Council Strategic Operating Plan in Goal #3 in the focus area of Natural and Built Environment. Goal #2: Increased street and sidewalk connections. Objective #6 Evaluate funding options for increased needs for construction of sidewalks, greenways and street improvements while continuing to pursue additional local and outside funding sources for capital infrastructure improvements.

City staff recommends City Council approve budget amendment, in the amount of $100,000, for the construction of new sidewalks using fee-in-lieu of sidewalk construction funds.

ORDINANCE BOOK NO. 22 – PAGE 328

E. RESOLUTION NO. 05-225 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON BENT TREE ROAD TO SHERYL H. WILLIAMS

Summary: The consideration of a resolution authorizing the Mayor to convey land on Bent Tree Road to Sheryl H. Williams in the amount of $16,000.

On November 22, 2005, City Council authorized advertising for upset bids pursuant to a bid from Sheryl H. Williams for land on Bent Tree Road in the amount of $16,000. The advertisement was published on December 2, 2005, and no upset bids were received.

The land on Bent Tree Road was acquired by the City from Sunset Mountain Company, Inc. in 1954. It is an irregular shaped lot comprising 1.2 acre±. It is very steep and wooded and runs in a long and narrow north/south direction between and parallel to Bent Tree Road and Old Toll Road. It is zoned RS2, but the slope and shape render the lot unsuitable as a home site. The deed of conveyance to the City also restricts the property prohibiting any building or structure of any kind. The bid from Sheryl H. Williams, owner of property across the street, is in the amount of $16,000. Williams has provided an appraisal prepared by Mark Morris SRA dated September 29, 2005, estimating the market value of the property at $16,000. Williams proposes to acquire the property to maintain the lot consistent with the residential character of the neighborhood. She is aware of the deed restrictions and does not plan any construction.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

City staff recommends adoption of the resolution authorizing the Mayor to convey land on Bent Tree Road to Sheryl H. Williams in the amount of $16,000.

RESOLUTION BOOK NO. 29 – PAGE 295

F. RESOLUTION NO. 05-226 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 10, 2006, TO CONSIDER THE VOLUNTARY ANNEXATION OF A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on January 10, 2006, to consider the voluntary annexation of a Habitat for Humanity subdivision located off of Sand Hill Road.

Asheville Area Habitat for Humanity has petitioned the City for the annexation of one lot they own located off of Sand Hill Road containing approximately 18.24 acres. (The property described on the attached legal description is currently showing as three lots on the Buncombe County Tax Listings. It is to be combined into one PIN as it is all part of the same development.) This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and it has been found that the petition meets the standards set forth in N.C. Gen. Stat. sec. 160A-31.

This property has been reviewed and approved by the City's Technical Review Committee for a single-family subdivision of 55 lots and Habitat is requesting annexation prior to the construction of the homes in the development.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would January 31, 2006.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and inspect the development of homes in the proposed subdivision.

Cons:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the resolution setting the date of January 10, 2006, to consider the voluntary annexation of a Habitat for Humanity subdivision located off of Sand Hill Road.

RESOLUTION BOOK NO. 29 – PAGE 296

G. RESOLUTION NO. 05-227 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR BUS SERVICE TO BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System will operate an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Riverbend

Marketplace, Veteran's Administration Hospital, and multiple residential areas. The service will operate five times a day, six days a week. All financing will be provided by the State (maximum of $159,619), the Town of Black Mountain ($13,500), Mountain Mobility ($5,443), and Fare Box Revenue ($13,438). The total budgeted cost is $192,000. The contract has a period of performance of 12 months - from July 1, 2005, through June 30, 2006, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. These funds are currently programmed in the City budget.

This action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources

Pros:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

Cons:

- There are no disadvantages to the City of Asheville.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

RESOLUTION BOOK NO. 29 – PAGE 300

H. RESOLUTION NO. 05-228 - RESOLUTION AUTHORIZING PURCHASE OF EASEMENT ALONG THE FRENCH BROAD RIVER FROM ASTON PARK HEALTH CARE CENTER INC. FOR THE HOMINY CREEK/AMBOY ROAD GREENWAY

Summary: The consideration of a resolution accepting a settlement offer from Aston Park Health Care Center Inc. for an easement along the French Broad River for Hominy Creek/Amboy Road Greenway.

The City of Asheville has received a Settlement Offer from Aston Park Health Care Center, Inc. (Aston Park) for an easement along the French Broad River for the sum of $20,000 for Hominy Creek/Amboy Road Greenway.

The Aston Park Health Care Center is located at 380 Brevard Road on property formerly owned by the City of Asheville that was known as Rhododendron Park. The property is situated on the west bank of the French Broad River adjacent to Hominy Creek Park. The Health Care Center sits on a high bluff above the river with a steep, rocky, bramble covered slope down to a narrow band of partially wooded bottom land along the river. This part of the property is in the flood plain and small portions of it are boggy. The proposed easement will follow a linear route along the river from Hominy Creek Park across this low lying portion of the Aston Park property to connect with other easements to provide a greenway connection between Hominy Creek Park to Carrier Park on Ambny Road. The easement will generally be about 30' wide by approximately 1,500' long and encumber 3.2 ± acres. The highest and best use for the Health Care Center property per the appraisal is its existing use as permitted by the current institutional zoning.

The property was appraised by Laurel Jeanne Peart, General Appraiser in collaboration with Benjamin T. Beasley, MAI. The appraisal was reviewed by Joseph F. Moore, General Appraiser who recommended the estimated value of the easement in the amount of $4,000. In response to the City's offer Aston Park provided a letter of opinion from Elbert L. Taylor, GRI estimating the value of the easement at $64,000. The City and Aston Park subsequently

engaged in good faith negotiations and as a result of those negotiations Aston Park has proposed a settlement of the compensation at $20,000.

The City's Real Estate Manager recommends the offer from Aston Park be accepted because it is a fair and reasonable offer considering the appraisal evidence. The general trend of real estate values for similar properties indicates that a settlement at a lower amount is not likely. The time and expense involved in further negotiation, in gathering value evidence and pursuing eminent domain would be substantial with a high risk of getting a less favorable result. Accepting this offer will resolve the issue of compensation and eliminate the need to consider eminent domain.

The positive aspects of the proposed acquisition are:

- The easement will be acquired on terms favorable to the owner as well as to the City.
- The savings realized in time and expense justifies the purchase price.
- It is a voluntary sale at a fairly negotiated price without the use of eminent domain.
- It will give the City control of a substantial portion of the easement area required for the greenway, which is crucial to retaining State funding for the project.
- It will move the process forward toward construction of the greenway.

There are no negative aspects.

Approval of the resolution will establish $20,000.00 as the just compensation for the property and accept the settlement offer from Aston Park for that amount.

The Planning & Development and Parks & Recreation staff recommend City Council proceed with the purchase of the easement for $20,000.00 and recommend accepting a settlement offer from Aston Park Health Care Center Inc. for an easement along the French Broad River for Hominy Creek/Amboy Road Greenway.

RESOLUTION BOOK NO. 29 – PAGE 301

I. RESOLUTION REGARDING FEMA REIMBURSEMENT FOR HOUSING SERVICES EXTENDED TO HURRICANE KATRINA EVACUEES

This matter was pulled from the Consent Agenda for further discussion.

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR ANTENNAS AT 36 RESERVOIR ROAD

This matter was pulled from the Consent Agenda for further discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-229 - RESOLUTION REGARDING FEMA REIMBURSEMENT FOR HOUSING SERVICES EXTENDED TO HURRICANE KATRINA EVACUEES

Summary: The City of Asheville requests and expects to receive full reimbursement from FEMA, via the N.C. Division of Emergency Management, of the cost of providing housing in accordance with the approved interim shelter plan and published FEMA guidelines.

Community Development Director Charlotte Caplan responded to questions from Councilman Davis regarding the reimbursement procedure.

Councilman Newman moved to approve Resolution No. 05-229. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 -- PAGE 302

RESOLUTION NO. 05-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR ANTENNAS AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Mountain Area Information Network (MAIN) for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

MAIN has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "U S Cellular Tower" which is the tower to the east with several large dish antennas attached. U S Cellular is the primary tenant on that tower and any antenna installations by others are subject to their approval. U S Cellular is agreeable to the installation by MAIN subject to a favorable tower analysis. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation. MAIN will pay for and provide a tower analysis. The proposed License Agreement will enable MAIN to operate three (3) antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. MAIN will pay a License Fee of $7,200 ($200 per antenna per month) the first year with a 4% increase annually thereafter.

The request by MAIN has been reviewed by staff and the proposed equipment compared to existing installations to determine comparability. Currently we have three somewhat similar installations that are producing as follows:

Arch Communications	1 antenna	@	$350 per month
Cingular Communication	4 antennas	@	$287.50 per antenna per month
Morris Communications	3 antennas	@	$276.25 per antenna per month

The license fee proposed for MAIN is somewhat below market rate consistent with the rate approved for the Housing Authority of the City of Asheville by Resolution No. 05-92. Both MAIN and the Housing Authority provide public benefit services to lower income persons that are compatible with governmental function and/or sponsorship. A discounted rate for a non-profit providing such services as well as public safety and emergency response agencies seems reasonable and appropriate

Staff recommends that Council review discounted antenna license fees annually during consideration of appropriations to outside agencies.

Relationship to Broadband Initiative: Antenna rental requests are relatively simple transactions and will not materially affect any potential municipal broadband strategy. Specifically cellular and 900Mhz antenna rentals will not create interference with likely technologies to be used for broadband.

The following benefits will be realized from approval of this item:

- The City will receive revenue that it does not currently receive.
- Antenna space that is currently vacant will be utilized.
- MAIN will have improved capacity to provide low cost high speed wireless internet service to City residents.

The Notice of Intent to enter into a License Agreement with MAIN was published on December 2, 2005, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

City staff recommends City Council authorize the City Manager to execute a License Agreement with Mountain Area Information Network for antennas at 36 Reservoir Road.

Councilman Mumpower felt the City of Asheville should not be subsidizing, regardless of the quality of the service, an organization that has political agendas.

Vice-Mayor Jones moved for the adoption of Resolution No. 05-230. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 303

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING

ORDINANCE NO. 3312 - ORDINANCE TO CONDITIONALLY ZONE 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING

Mayor Bellamy opened the public hearing at 5:14 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building. This public hearing was advertised on December 2 and 9, 2005.

The subject property is located within the City limits on Tunnel Road just past the intersection of Tunnel with Governor's View Road. Surrounding properties are all zoned residentially (either RS-4 or RM-6) and contain single-family homes except for property to the west that contains a large church.

The applicants, Haydn and Terry Hasty, wish to rezone the property in order to convert the existing single-family home into an office. The conversion would include an addition of 910 square feet to a structure currently containing approximately 1,010 square feet. The building is designed to be residential in character. The applicant proposes the required number of parking spaces for the development – 7 with one handicapped space. The applicant meets or exceeds all of the City's landscaping standards. Access was initially proposed off of both Tunnel Road and Governor's View Road. However, the City's Traffic Engineer was not recommending a variance for this purpose of the dual access off onto Governor's View Road, because Governor's View Road is classified as a residential street. The applicant has agreed to revise their site plan to have a singular access from Tunnel Road. She felt this should be a condition if Council chooses to approve the conditional zoning.

At their meeting on October 17, 2005, the Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. Prior to the Planning and Zoning meeting, the applicant submitted revised drawings addressing most of the comments made at TRC. One outstanding issue that was resolved between these meetings was whether or not access would be permitted onto Governor's View Road. The Traffic Engineer recommends only the access onto Tunnel Road, but full access for the following reasons: (1) There is no alternate full access; (2) We cannot realistically enforce such a driveway at this property; (3) Traffic volumes to the use are expected to be low, so left turns are not a major concern; and (4) This section of Tunnel Road is not over congested so left turns are not a major safety concern. The applicants have expressed their intent to comply with this condition (and all others) should the conditional zoning be approved.

At their meeting on November 2, 2005, the Planning and Zoning Commission considered this matter. The Commission recommended 5-1 to deny this project.

Condition Zoning Analysis:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance (UDO). The revised site plan submitted for the Planning and Zoning Commission shows compliance or the intent to comply with all regulations.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The applicant has limited the parking provided on the site to that allowed under the UDO and has limited impervious surface to less than 50% of the site. All required landscaping is to be provided and stormwater provisions will be made.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The applicant is proposing considerable landscaping and other improvements to the subject property and has presented an office design that retains the residential character of the structure. Approval of this rezoning would involve the increase in activity associated with an office use that could be perceived as a nuisance and the value of adjacent properties could be negatively affected. This impact may be reduced due to the orientation of this property to the abutting roadways as opposed to many of the other residential properties in the area. The applicants have tried to address the major concerns of the residents in their design. They are willing to limit the signage on the property and to limit the use to offices and residences only.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The single-family home will not be removed but will be expanded making the structure larger than some, but not all, of the homes in the vicinity. It is designed to retain a residential appearance. The parking area is not typical of most of the neighborhood (with the exception of the church).

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed development supports the goals of the 2025 Plan regarding compatible adaptive reuse but could be considered by some to not protect neighborhood viability in this reuse.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities and other service centers.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The traffic to be generated by a small office facility is not expected to cause traffic congestion or traffic hazard. Additionally, traffic generated by this development will most likely only impact one residential lot in the area.

Pros

- Provides for the adaptive reuse of a vacant structure.
- Provides for office use in an easily accessible area.
- The scale and design of the proposed building is in keeping with the residential character of the area.
- The applicant is willing to address many of the neighborhood's concerns in the design of their project.
- Improves pedestrian amenities through the installation of sidewalks along Tunnel Road and payment of a fee-in-lieu for sidewalks on Governor's View Road.

Cons

- Allows for nonresidential development along a stretch of Tunnel Road that is predominately single-family and institutional in nature.
- Reduced potential for residential use (Office zoning does not preclude residential use but a residential component is not part of this application) on this lot.

- The parking lot will not be in keeping with the character of the area, except the parking found at the neighboring church.

For staff, making a recommendation for this proposal was a challenging one. While the immediate surrounding properties are primarily single-family in nature, there is a large institutional use on abutting property and commercial and office ventures immediately adjacent to the institutional use. It is for this reason and due to the size, design and use limitations of the proposed development that staff feels the benefits and detriment tests and issues to be evaluated in the spot zoning review can be balanced to find no spot zoning in this conditional zoning case. This analysis has been concurred by the City Attorney. Staff does, however, recommend the following additional conditions be placed on this development

- That all conditions of the TRC be met.
- That access be limited to Tunnel Road only
- That principal uses be limited to residential and office uses.
- That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated.

At their meeting on November 2, 2005, the Planning and Zoning Commission recommended denial of this conditional zoning request (5-1).

Ms. Cogburn said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Mr. Ron Sneed, attorney representing the applicants, spoke in support of the conditional zoning, in that the property is losing it's appeal and its usefulness as a home since it is on a busy highway, the uses under the present zoning are less attractive, marketability of the property since it is on Tunnel Road, and the property is about 20 seconds from one commercial strip to another commercial strip. He said that this development will not hurt property values in the neighborhood. He explained why there are no private restrictions on this property imposed by the Beverly Hills Company. He explained how the business will look like a home and will have low traffic. He urged Council to support this conditional zoning.

Ms. Terry Hasty, one of the owners of 966 Tunnel Road, spoke in support of the conditional zoning in that they will improve the safety of the property, which has been vacant for 3-4 years. They will be decreasing the noise from Tunnel Road to the Governor's View Road properties with their added buffering. Also, they will be constructing a sidewalk on Tunnel Road for safe passage. She reviewed with Council their traffic analysis for 2004-05, showing that a daily average (20-day working month), of only 3.22 cars in their parking lot.

Mr. Carleton Collins, architect for the project, spoke in support of the conditional zoning. He said they have tried to be sensitive in their design and reviewed with Council the building elevation pictures. He felt this would be a good fit into the community.

Ms. Laura I. Hale, Realtor with Keller Williams Professionals Realty, reviewed with Council a sales comparison chart of the property on 966 Tunnel Road, along with a market value analysis. She explained how the property values have increased consistently in the area.

Mr. Haydn Hasty, one of the owners of 966 Tunnel Road, spoke in support of the conditional rezoning and reviewed with Council the list of businesses that already surround Beverly Hills that operate in harmony with the residential neighborhoods. He noted that there are more cars and people that move out of the area businesses in one day, than move in and out of his business in one week. No harm from the current businesses.

The following individuals spoke in support of the conditional zoning for various reasons, some being, but are not limited to: other businesses are allowed along Tunnel Road and this should be no different; this type-business will be less intrusive than other allowable uses; the property seems less desirable for a residential component; the development will not cause traffic, noise or litter in the area; the development will do no harm to the residential community; the owners have made every effort to cooperate with the needs of the neighborhood; a consulting firm will fit in well into a residential area; and office uses are allowed throughout Asheville and they do not lower real estate values:

Owner of Pomodoros on Tunnel Road in East Asheville
Mr. Charlie Campbell, property owner at 960 Tunnel Road
Resident from Haw Creek
Ms. Dorothy Olson, resident at 968 Tunnel Road
Resident of Asheville

The following individuals spoke in opposition of the conditional zoning for various reasons, some being, but are not limited to: this will create an intrusion in the back-side of the property which abuts a residential neighborhood; the area is not a transitional area; homes on Governor's View Road are very small and affordable; when someone buys a home, they should be able to rely on the current zoning; to allow the conditional zoning will start to destroy the integrity of the residential neighborhood; City Council should listen to their appointees on the Planning & Zoning Commission who denied the project; since the developer originally proposed 20 parking spaces and scaled back to 8, where will the overflow parking be located; the property is located on a hill and blind curve and will be a dangerous place to exit; the conditional zoning of the property will result in an illegal spot zoning; approval will send a message that the will of the majority is ignored for the benefit of one entity, even though commercial and office space is plentiful outside of a residential subdivision; and the current property owners bought the property knowing it was zoned residential and it should remain residential:

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods
Ms. Diane Hankins, resident at 421 Governor's View Road
Ms. Debbie Applewhite, resident at 56 Fairway Way (presented Council with a definition of "Spot Zoning" from the Modern Real Estate Practice in North Carolina 2003 Edition)
A resident at 178 Beverly Road
Ms. Janet McPherson, adjacent property owner on Governor's View Road
Mr. William Lutz, resident in Beverly Hills
Mr. Moody, resident at 32 Fairway Drive
Ms. Judy Sexton, resident in Beverly Hills
Mr. Mike Cate, resident at 28 Fairway Drive
Mr. Tim Wagner, resident of Beverly Hills
Mr. Fred English, resident in Haw Creek
Mr. Richard Gartz, resident on Governor's View Road
Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods
Ms. Marilyn Storey, resident at 439 Governor's View Road

Mr. Lee Towery, resident in Haw Creek, spoke in support of the conditional zoning, but noted that the Board of Trustees at Grove Methodist Church opposed the conditional zoning.

Mayor Bellamy closed the public hearing at 6:23 p.m.

Councilman Brownie moved to approve the conditional rezoning of 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building, subject to the following conditions: (1) That all conditions of the TRC be

met; (2) That full access be limited to Tunnel Road only; (3) That principal uses be limited to residential and office uses; and (4) That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Newman regarding regulating overflow parking on Governor's View Road, City Attorney Oast suggested a condition that says no use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate.

Councilwoman Cape suggested additional buffering in the rear of the property since the Governor's View Road access is being eliminated. Ms. Cogburn suggested a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic.

In response to Councilman Mumpower, Ms. Cogburn tried to relay to Council the reasoning behind the Planning & Zoning Commission denial of the project.

At the request of Councilman Mumpower, City Attorney Oast explained that the ordinance requires each application for conditional zoning be evaluated in reference to the seven conditional use permit standards, but Council is not required to make findings in favor of all of the criteria in order to grant a conditional use request.

In response to Councilman Mumpower, Ms. Cogburn explained why City staff did not feel this conditional zoning was spot zoning.

When Councilman Mumpower asked for data regarding accidents on that portion of Tunnel Road, Ms. Cogburn said that the City's Traffic Engineer was not present and she did not have the traffic counts. However, she read from an e-mail from the Traffic Engineer that said "traffic volumes to the use are expected to be low, so left turns are not a major concern and that section of Tunnel Road is not overly congested."

In response to Councilman Davis regarding the limited number of parking spaces, Mr. Hasty said that when they do host a seminar their clients typically come in groups and car-pool.

In response to Councilman Mumpower, Ms. Cogburn said that if the property is sold and another office use came in, they would have to keep the same site plan, with no alterations to the building, the landscaping, or the ingress/egress onto Tunnel Road.

In response to Mayor Bellamy, Mr. Hasty said that as soon as they can get workable locks on the doors, he has every intention in removing the fence on the property.

When Mayor Bellamy questioned the lighting in the parking space area, Ms. Cogburn said that Council could add a condition that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood.

Planning & Development Director Scott Shuford responded to a question from Councilwoman Cape, stating that this conditional zoning doesn't create a precedent situation of opening the door to more commercial zoning.

Councilman Newman and Councilwoman Cape accepted the following amendments to their main motion: (1) a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic; (2) that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood; and (3) no

use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate.

The amended motion by Councilman Newman and seconded by Councilwoman Cape to approve the conditional rezoning of 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building, subject to the following conditions: (1) That all conditions of the TRC be met; (2) That full access be limited to Tunnel Road only; (3) That principal uses be limited to residential and office uses; (4) That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated; (5) a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic; (6) that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood; and (7) no use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate, carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 331

At 7:00 p.m., Mayor Bellamy announced a short recess.

B. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 440 MONTFORD AVENUE FROM OFFICE DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3313 - ORDINANCE TO REZONE A PORTION OF 440 MONTFORD AVENUE FROM OFFICE DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 7:18 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone a portion of 440 Montford Avenue from Office District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on December 2 and 9, 2005.

The property owners, Tim Schaller & Suzanne Kirby, are interested in subdividing the existing .92 acre parcel located in the Montford neighborhood to allow for single family residential infill development. Office zoning does allow single family detached homes as a permitted use and the lot could be subdivided to create two additional lots under the current zoning; however subdividing the existing lot under those standards would result in relocating the existing office use parking and would result in a heavier impact to the site. A recent amendment to the subdivision standards allows greater flexibility in subdividing residentially zoned property for single-family lots and would allow for a more sensitive design.

The rezoning proposal as presented would allow for up to two single family home lots while retaining the existing office use and zoning on the balance of the property. The residential portion of the property would be located at the rear of the site adjacent to other single-family uses, while the existing office use would remain fronting on Montford Avenue. Any new construction on these lots would require HRC review.

- The RS-8 zoning district is designed to establish and promote a suitable and high density single-family district where public infrastructure is sufficient to support such development.

- The purpose of the Office zoning district is to provide small scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition between residential and commercial areas.

At their November 2, 2005, meeting, the Planning & Zoning Commission voted unanimously to approve the rezoning request and forward the application to the Asheville City Council.

Pros

- Provides opportunity for compatible residential infill development

Cons

- Reduces opportunity for expanding the existing office use

Staff concurs with the Planning & Zoning Commission and recommends approval of the rezoning request for a portion of the property located at 440 Montford Avenue to be rezoned from Office to RS-8.

Mr. Tim Schaller, property owner, spoke in support of this rezoning that will have minimum impact on the neighborhood.

Mayor Bellamy closed the public hearing at 7:22 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3313. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 335

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-231 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND AN EXISTING CONTRACT WITH BUNCOMBE COUNTY TO CONTINUE FIRE AND RESCUE DISPATCH SERVICES

Fire Chief Greg Grayson said that this is the consideration of a resolution authorizing the City Manager to extend an existing contract with Buncombe County Government in order to continue providing 911 emergency dispatch services for the Asheville Fire and Rescue Department.

On June 3, 2003, City Council gave staff direction to participate with Buncombe County in a joint 911 emergency communications center in approximately 2.5 years. On September 2, 2003, by resolution, City Council authorized the City Manager to execute a performance based contract with Buncombe County Government for dispatch of fire and rescue calls and continue dispatching police emergency calls as we were currently doing. This interim arrangement was to be in effect until a joint, consolidated 911 emergency communications center was constructed and operational – which was anticipated by January 1, 2006.

Due to a number of unexpected factors, Buncombe County has not yet been able to construct and make operational a joint consolidated 911 emergency communications center. The facility was originally planned for the new County Detention Facility Annex. However, conditions

were such that the County decided not to place the center in that building and seek another location. A number of alternative locations have been considered included several sites in the downtown Asheville area. A suitable alternative site was not found by Buncombe County in the downtown area. However, the County is now planning renovation and construction of a facility near Erwin High School.

In order to ensure continuity of emergency fire and rescue operations, Buncombe County has offered to continue all of the terms and conditions in the performance based contract from 2003 for interim 911 emergency dispatch services for the Asheville Fire and Rescue Department until such time that a proper facility can be constructed and made operational.

The current contract is set to expire on December 31, 2005. City staff recommends that the current contract with Buncombe County be extended for a one (1) year period until December 31, 2006.

The method of operation with Buncombe County providing fire and rescue dispatches directly at the public safety answering point (PSAP) has improved the city's fire and rescue response time standard of cover by approximately 5%. This current method of operation also earns approximately 25% higher credit under the communications component of the insurance rating services (ISO) versus a dispatch method involving a 911 call transfer.

Staff recognizes that more work needs to be done between the City of Asheville and Buncombe County once a communications center site is agreed upon and the design of the facility is complete. There are a number of operational issues that have not been able to be addressed because the center location has not yet been confirmed. Management of police emergency calls is the primary point of consideration.

Pros:

- The current contract is a "no financial cost" contract for the City of Asheville;
- The current method of operation has been working well operationally for Asheville Fire and Rescue;
- Improved standard of cover and improved insurance rating points versus the call transfer method for fire and rescue emergencies.

Cons:

- The extended contract would continue the agreement that the City of Asheville agrees not to establish its own Public Safety Answering Point (PSAP) as long as the county meets their contractual agreements.
- Because the city does not operate a PSAP, Police 911 emergency calls will continue to be transferred to Asheville Police Department for dispatch.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends that the City Manager be given authority to extend the current performance based contract with Buncombe County for fire and rescue 911 emergency communications dispatch services from the previous expiration date of December 31, 2005, until December 31, 2006.

EMS Director Jerry VeHaun explained the reason for the delay and hoped to begin construction in January, 2006.

Fire Chief Grayson responded to a question raised by Councilman Mumpower regarding the Police 911 emergency calls continuing to be transferred to the Asheville Police Department for dispatch.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 05-231. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 304

VI. OTHER BUSINESS:

Mayor Bellamy announced that starting at this meeting, citizens interested in speaking during the public comment period (not during scheduled public hearings), will be required to sign a "Sign Up" Sheet which is available outside the Council Chamber on the table and also next to the City Clerk. Speakers must complete the form and give it to the City Clerk prior to the public comment period. Speakers will be called on in order to which the forms were received. This will ensure that all comments heard will be followed up by appropriate City staff. She thanked the citizens for their cooperation in this change.

Councilman Mumpower thanked (1) the Seabees and others for their help in the first Top-A-Stop built at Pisgah View; and (2) the volunteers who participated in the clean-up day in and around Aston Park Towers.

On behalf of City Council, Councilman Davis expressed deep sympathy on the passing of Rick Maas.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English, resident of Haw Creek, felt that public comment should have been allowed on the nomination of the seventh member of City Council at City Council's December 6, 2005, organizational meeting.

Ms. Leslee Kulba, speaking on Freedom Works, Fishburne Communications, and The Libertarian Party of Buncombe County, presented City Council with "The Law – The Classic Blueprint for a Just Society" by Frederic Bastiat, as a reminder that America was founded on the principles of liberty and justice for all.

Closed Session

At 7:37 p.m., Councilman Mumpower moved to go into closed session for the following reason: To consult with attorneys employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, Reid Thompson, Board of Adjustment, and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 9:20 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:20 p.m.

Magdalen Bowlerson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – January 10, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

Ms. McLain R. Rose started the new year by singing the National Anthem.

INVOCATION

The Reverend Jim Abbott from St. Matthias Episcopal Church gave the invocation.

I. PROCLAMATIONS:

A UNITED WAY CAMPAIGN

Mr. David Bailey, representing the United Way, thanked the City of Asheville for the 2005 outstanding United Way campaign. The goal set by the City of Asheville was $85,000 and the City employees contributed $94,000. Mr. Bailey presented the City of Asheville with the Spirit of the Mountain Award. He spoke highly of the City of Asheville's Campaign co-coordinators Police Chief Bill Hogan and Marketing Communications Coordinator Laurie Saxton.

B. RECOGNITION OF FIRE DEPARTMENT EMPLOYEES

Mayor Bellamy recognized Fire Department employees Captain Steve Fridl, Firefighter Josh Walton and Engineer Brian Metts. These men responded to a call involving a 2-year old boy on Saturday, December 10, 2005, who had chocked on candy while shopping with his parents at the Mast General Store. These men were able to work with the child and obtain an open airway, as he was non-breathing and blue in color. The Emergency Medical Services staff arrived after they opened the airway and the child was transported.

On behalf of City Council, she commended them for their fine work!

II. CONSENT AGENDA:

Mayor Bellamy removed Items "B", "C" and "H" from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 13, 2005

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PEARCE, BRINKLEY, CEASE AND LEE ARCHITECTURE TO DEVELOP A MASTER PLAN AND CONSTRUCTION DOCUMENTS FOR THE W.C. REID CENTER FOR CREATIVE ARTS

This matter was pulled off the Consent Agenda for further discussion.

C. **RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE NATIONAL WEATHER SERVICES TO ACCEPT A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM**

BUDGET AMENDMENT FROM THE NATIONAL WEATHER SERVICE FOR A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM

These matters were pulled off the Consent Agenda for further discussion.

D. **RESOLUTION NO. 06-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE EASEMENT FOR ELECTRIC POWER DISTRIBUTION FACILITIES IN PACK SQUARE/CITY COUNTY PLAZA AREA**

Summary: The consideration of a resolution authorizing the City Manager to execute an easement allowing for the location / relocation of electrical power distribution facilities and lines.

In connection with the construction and renovation activities in the Pack Square / City County Plaza area, Progress Energy needs to reconfigure some of its power distribution facilities in the area. There is already a switchbox located in the grassy area at the southeast corner of the North Market Street and College Street intersection. A line runs underground from the switchbox to a manhole in the middle of that intersection. There is also an existing line running underground along Spruce Street (from Court Plaza to College). The transformer located on the southeast corner of Spruce Street and Court Plaza will remain where it is.

The proposed easement calls for moving the switchbox from its current location to the sidewalk along the south side of College Street, where it will be installed in a vault underground, and a new distribution line to be installed underground in College Street from Market to Spruce Street. A new transformer will be installed in front of the Police/Fire building. The easement will also recognize existing underground lines. This easement request has been reviewed by Public Works and Engineering, and no issues were identified.

Considerations:

- This work will result in utility structures being moved to an underground location
- This work will be performed by the PS/CCP area is under construction
- This should result in improved appearance
- There should be no interference with the use of the road or other utilities
- Existing lines will be reconfigured
- The City will receive no compensation (but usually does not for these utility installations in the right-of-way)

If Council approves of the easement, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 306

E. **ORDINANCE NO. 3314 - BUDGET AMENDMENT FROM THE N.C. DIVISION OF AGING AND THE LAND OF SKY REGIONAL COUNCIL FOR IMPROVEMENTS AT THE SENIOR OPPORTUNITY CENTER**

Summary: The consideration of a budget amendment, in the amount of $5,454, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Senior Opportunity Center.

Funds will be used for center improvements and for purchase of supplies and equipment that will enhance center operations and services.

Pro: Provide improvements, equipment and supplies that will enhance center operations and services specifically for the senior citizens who use the center daily.

Cons: - None noted

This action complies with City of Asheville Strategic Operating Plan. Focus Area: Partnership to improve critical services and infrastructure. Goal #2: Diversified and broadened revenue sources-develop alternative revenue sources that are available to address local needs.

City staff recommends City Council approve the budget amendment to establish a budget for center improvements, equipment and supplies for the Senior Opportunity Center.

ORDINANCE BOOK NO. 22 – PAGE 337

F. ORDINANCE NO. 3315 - BUDGET AMENDMENT FROM THE N.C. DIVISION OF AGING AND THE LAND OF SKY REGIONAL COUNCIL FOR IMPROVEMENTS AT THE HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of $16,362, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Harvest House.

Funds will be used to install new floors throughout the first floor of the Harvest House. The current floors are old and deteriorated and have outlived their useful life. This update will make the Harvest House safer and more aesthetically pleasing.

Pros: - Achieves much needed repairs without using general fund dollars.

Cons: - None noted

This action complies with City of Asheville Strategic Operating Plan. Focus Area: Partnership to improve critical services and infrastructure. Goal #2: Diversified and broadened revenue sources-develop alternative revenue sources that are available to address local needs.

City staff recommends City Council approve the budget amendment to establish a budget to install new floors on the first floor of the Harvest House.

ORDINANCE BOOK NO. 22 – PAGE 339

G. ORDINANCE NO. 3316 - BUDGET AMENDMENT FROM A GRANT FROM THE U.S. TENNIS ASSOCIATION FOR RENOVATION OF THE ASTON PARK TENNIS CENTER

Summary: The consideration of a budget amendment, in the amount of $89,000, to recognize a grant award from the United States Tennis Association.

In June 2005, the City of Asheville applied for a grant from the United States Tennis Association to assist with the renovation of the Aston Park tennis facilities. The grant was recently awarded in the amount of $89,000.

Pros:

- Allows for the City to develop improvements to Aston Park without taxpayer investment.
- Completes the construction of the Irene and Dick Covington Tennis Center.
- Completion of the Center will allow for community use in the meeting space provided

Cons:

- None

City staff recommends City Council approve the budget amendment to increase the budget for the renovation of Aston Park.

ORDINANCE BOOK NO. 22 – PAGE 341

H. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO APPLY TO THE N.C. PARKS AND RECREATION TRUST FUND FOR A GRANT TO ASSIST WITH THE RENOVATION OF REID CENTER

This matter was pulled off the Consent Agenda for further discussion.

I. RESOLUTION NO. 06- 4 – RESOLUTION AUTHORIZING THE MAYOR TO CONVEY WHATEVER INTEREST, IF ANY, THE CITY MAY HAVE IN THAT PORTION OF THE RIGHT-OF-WAY OF CRESTMONT AVENUE WHERE THE DWELLING LOCATED AT 80 BEVERLY ROAD ENCROACHES

Summary: The consideration of a resolution authorizing the conveyance of a non-warranty deed to Mary E. Kingston for the slight encroachment of her residential dwelling into the City's right of way of Crestmont Avenue.

Crestmont Avenue was platted in 1926 and the dwelling located at the corner of Beverly Road (80 Beverly Road) and Crestmont Avenue was built in 1934. There are three different right of way widths for Crestmont Avenue, 40 feet, 45 feet and 50 feet. The dwelling located at 80 Beverly Road encroaches approximately 2 feet at 2 separate points into the right of way of Crestmont Avenue and has been so encroaching since its construction in 1934. The current owner of the dwelling at 80 Beverly Road, Mary E. Kingston, has requested that the City quit claim any interest if any, the City may have in the areas of the encroachment. The reason for the request is that the areas of the encroachment are defects on Ms. Kingston title to the property, which impacts the marketability of the property. Additionally, there is a pending sale of the dwelling and the new prospective owner has conditioned the purchase on the encroachment defects being resolved prior to purchase.

City staff has investigated the request by reviewing the land records, plats and surveys and inspecting the property in question. Additionally, other appropriate affected departments have been informed about Ms. Kingston's request. There has been no opposition to the request. The City is not in need of the property where the encroachments are located.

The positive aspects of the conveyance by non-warranty deed are:

- It relieves the City of potential liability for the areas of encroachment
- The property owner is not required to obtain an encroachment agreement from the City
- Addition onto the tax roll of the small areas previously classified as City right of way

The negative aspects are:

- Irregular shaped right of way along that portion of Crestmont Avenue

City staff recommends that the City Council authorize the Mayor to convey by non-warranty deed the two (2) areas of encroachment as shown in Plat Book 10 at Page 95 of the Buncombe County Registry.

RESOLUTION BOOK NO. 29 – PAGE 308

J. RESOLUTION NO. 06-5 - RESOLUTION ACCEPTING THE BID FROM CAROLINA SPECIALTIES INC. AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA SPECIALTIES INC. FOR ROOF IMPROVEMENTS TO THE TRANSIT GARAGE

Summary: The consideration of a resolution accepting the bid from Carolina Specialties, Inc. and authorizing the City Manager to enter into an contract with Carolina Specialties, Inc. for roof improvements to the transit garage.

The City has received a federal grant to purchase construction services for roof rehabilitation to the transit garage. This project is part of a routine maintenance schedule with a total cost of $97,187.60. The project is funded by a grant from the Federal Transit Administration. The project is in the Capital Improvement Plan budget and the matching funds have been accumulated.

Pros:
- Rehabilitation of aging facility
- Leverage outside funding source to improve City facility

Con:
- The project will have no negative impact on any city operation or create any secondary operating or capital expenses.
- The neighbors may experience some construction noise for a few days during business hours as the rusted roof is removed and the new plates installed.

This action complies with the City Council's Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources

City staff recommends City Council grant the City Manager authority to purchase the improvements funded by Federal Grant Number NC-90-X352-01.

RESOLUTION BOOK NO. 29 – PAGE 309

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 06-1 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PEARCE, BRINKLEY, CEASE AND LEE ARCHITECTURE TO DEVELOP A MASTER PLAN AND CONSTRUCTION DOCUMENTS FOR THE W.C. REID CENTER FOR CREATIVE ARTS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Pearce, Brinkley, Cease and Lee Architecture to develop a master plan and construction documents for the W.C Reid Center for Creative Arts based on City Council direction during the Fiscal Year 2005-06 budget process.

The City of Asheville Parks and Recreation Department is in the process of developing a master plan and construction documents for the W.C Reid Center for Creative Arts.

This municipal recreation center is the site of a former school on Livingston Street. The existing facility has served the community for many years with modest improvements to enhance its basic recreation services. For the facility to evolve into a more focused multi-disciplinary arts program, the building and grounds require building code, functional and aesthetic improvements. A master plan is required in order to manifest these improvements and will include extensive community input sessions and focus group sessions with various users of the facility. If consultant's master plan/design work is satisfactory, the consultant will be asked to implement the construction documentation phase immediately. A request for qualifications was issued to all local architects, and the selection process was conducted by a committee that consisted of members of the Parks and Recreation staff as well as a representative from the Reid Center Advisory Board. The project was bid out according to city standards that included the Minority Business Plan. The firm of Pearce, Brinkley, Cease and Lee Architecture was selected as the optimum firm during the course of this process. Funds are available in the current capital improvement budget for this phase of the development.

Pros

- The development of this project would greatly enhance the ability to provide unique, vital recreation services to the community.
- The improvements at the center will enhance its physical and programmatic relationship to the surrounding neighborhood.
- The center will be a local and regional attraction that will foster economic development.
- Continuity of master plan and construction documentation with one firm.

Cons

- The work is extensive and costly to develop this high quality center.
- The facility will require increased staffing and materials to maintain it via the operating budget.

City staff recommends that City Council authorize the City Manager to enter into a contract with Pearce, Brinkley, Cease and Lee Architecture in the amount of $103,350 to develop a master plan for the W.C Reid Center for Creative Arts with construction documentation to follow.

Upon inquiry of Councilwoman Cape, Mr. Brinson explained who they will look to for the focus group on the design of the Reid Center.

Councilman Newman moved to approve Resolution No. 06-1. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 305

RESOLUTION NO. 06-3 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO APPLY TO THE N.C. PARKS AND RECREATION TRUST FUND FOR A GRANT TO ASSIST WITH THE RENOVATION OF REID CENTER

Summary: The consideration of a resolution authorizing the Mayor to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources for a grant to assist with the renovation of the Reid Center.

The renovation of the Reid Center is identified as a priority by the Asheville Parks and Recreation Department comprehensive master plan, the Reid Center Advisory Board, by the neighborhoods surrounding the center, and by the community at large. The Reid Center in located in the heart of several neighborhoods and daily serves a high proportion of at-risk youth and teens who live in the neighborhoods. In addition to general recreation programs, Reid Center is planned to become one of Asheville's leading cultural art venues with an emphasis on the performing and visual arts.

The Parks and Recreation Department is in the second year of a three-year partnership with the Junior League of Asheville to implement a capital campaign to raise most of the $3 million needed to support renovation cost. The Parks and Recreation Trust Fund will be the first significant grant application as part of the capital campaign, and serve as seed money for future fundraising efforts.

The Parks and Recreation Department is requesting $500,000 in grant funds for renovation of the Reid Center from the North Carolina Parks and Recreation Trust Fund. The grant application requires a dollar for dollar cash match. The cash match is in the proposed Parks and Recreation Department's Fiscal Year 2006/2007 Capital Improvement Project budget.

Pros:

- Continue to make progress on the Parks and Recreation Department's strategic plan to renovate and improve the Reid Center.
- Respond to public demand to improve the Reid Center.
- Raise outside funds to support facility renovations and reduce reliability on City funds to support Capital Improvement Project cost.

Cons: - None noted.

This action complies with the City of Asheville Strategic Operating Plan. Focus Area: Partnership to improve critical services and infrastructure. Goal #4: Develop programs and policies to defeat street level drug problems and crime.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund for $500,000 for renovation of the Reid Center.

Councilman Mumpower said that the Reid Center does good things and really makes a difference, however, he was concerned with the $3 Million needed for renovations and the $500,000 needed for a cash match.

Mr. Brinson responded to various questions and comments from Council. He explained that generally they have been good in securing funds to where 80% of what we bring in is raised from outside and 20% is the City's commitment.

In response to Vice-Mayor Jones' question if the $500,000 could be spread out over a 5-year period or if the match must be made in a lump sum, Mr. Brinson explained why the $500,000 could not be spread over multiple years. Vice-Mayor Jones urged Mr. Brinson to continually look for other ways to match the $500,000 so the General Fund would not be impacted so much.

Upon inquiry of Vice-Mayor Jones, Mr. Brinson said that the renovation of the Reid Center will be their number one priority in the Capital Improvement Plan because of the match potential to double their money.

In response to Councilwoman Cape, Mr. Brinson said that he would be happy to share with Council the Parks & Recreation Department's overall strategic plan.

In response to Councilman Newman, Mr. Brinson said that over the years the City has been aggressive with new park development and at this point he feels they need to stabilize and begin maintaining the facilities we currently have. He shared his long-term vision for the 11 community centers around the City.

Ms. Sophie Dixon and Ms. Cory White both spoke in support of the need for the renovation of the Reid Center.

Councilman Newman moved to approve Resolution No. 06-3. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 307

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE NATIONAL WEATHER SERVICES TO ACCEPT A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM

BUDGET AMENDMENT FROM THE NATIONAL WEATHER SERVICE FOR A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM

Summary: The consideration of a resolution authorizing the City to enter into an agreement with the National Weather Service for a grant for an automated flood warning system consisting of four (4) rain gages and four (4) combination rain and stream gages, and an associated budget amendment in the amount of $103,955.

In October 2004, the City of Asheville applied for an $184,245 grant from the National Weather Service. This grant included the following: 1) Development of an Automated Flood Warning System which consists of four rain gages and four combination rain and stream gages, including equipment and installation; 2) Development of a Flood Response Plan; and, 3) Preparation of Public Outreach Materials, including public meetings to promote the Automated Flood Warning System and the Flood Response.

Ultimately, the National Weather Service awarded the City $57,620 to cover the purchase of four rain gages and four combination rain and stream gages. The City will bear the cost of installing these gages, which will be $46,335. The City will contract out the installation of the gages, and this expense will be paid for with revenues from the Stormwater Utility Fund. The North Carolina Flood Mapping Program has agreed to maintain these gages after they're installed so they can become a part of the United States Geological Services overall flood warning program. The exact location of these gages will be determined as part of the reservoir study. The gages should be installed by July 2006.

Considerations:

- The first consideration of this project is the cost the project. The grant is covering approximately 55% of the project cost.
- The grant does not cover the maintenance cost of the gages. John Dorman with the National Weather Service has agreed to pay these costs.
- The data from these gages will allow us to better prepare for flooding.
- The National Weather Services has indicated they would like to fund more projects for the City once this project is complete.

This action complies with the City Council Strategic Operating Plan in Goal #1 in the focus area of Natural and Built Environment. Goal #1: Enhance and preserve air and water quality through comprehensive efforts. Objective #D Improve water quality.

City staff recommends City Council authorize the City to enter into an agreement with the National Weather Service for an automated flood warning system consisting of four (4) rain gages and four (4) combination rain and stream gages, and adopt the associated budget amendment.

Ms. Ball responded to various questions/comments from Council regarding the need for the rain gages and why the data from the gages will produce a better, more precise, product for the inundation study.

After further discussion, Councilman Mumpower moved to continue this matter to the next worksession to allow Council more time to get a better understanding of the automated flood warning system. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

Mayor Bellamy said that the City and the property owner have requested this public hearing be continued until February 14, 2006. Therefore, Vice-Mayor Jones moved to continue the public hearing until February 14, 2006. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON MILLS GAP ROAD AND SWEETEN CREEK ROAD, KNOWN AS MILLS CREEK CONDOMINIUMS, FOR A 76-UNIT CONDOMINIUM DEVELOPMENT

ORDINANCE NO. 3317 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON MILLS GAP ROAD AND SWEETEN CREEK ROAD, KNOWN AS MILLS CREEK CONDOMINIUMS, FOR A 76-UNIT CONDOMINIUM DEVELOPMENT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:03 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for property located on Mills Gap Road and Sweeten Creek Road, known as Mills Creek Condominiums, for a 76-unit condominium development.

The applicant is requesting a review of a master plan for a seventy-six (76) unit condominium development along with the associated private roads, open space, and required landscaping (Attachment to City Exhibit 3 – Location Map). The proposed development is located on 9.75 acres off of Mills Gap Road (Attachment to City Exhibit 3 – Aerial Map). One of the 76 units is an existing single family home that will be sold as a condominium cottage home while the rest of the units will be 2 story, attached condominiums of new construction and clustered in groups of 2, 3, and 4 units (Attachments to City Exhibit 3 – Preliminary Master Plan; Building Front and Rear Elevations). The property is within City limits and is zoned RM-16 Residential Multi-Family High Density. This property is subject to Hillside Development Standards.

Review of this master plan includes only a portion of the 2 subject properties proposed to be developed for residential uses. A subsequent 'Phase 2' is included in the master plan only to demonstrate a second access point to Sweeten Creek Road required for emergency access. This future phase will be developed separately under a different application and development standards based on the existing Commercial Industrial zoning.

This project was reviewed at the November 21, 2005, Technical Review Committee (TRC) meeting where the project was approved with a number of conditions. Revised plans were submitted addressing the majority of those conditions and were reviewed by the Planning & Zoning Commission at their December 7, 2005, public hearing. After comment and deliberation, the Commission recommended approval of the site plan review subject to:

- All outstanding TRC conditions are met.
- Applicant shall work with Traffic Engineer on establishing appropriate traffic calming measures to be installed along the proposed road (to control cut-through traffic).
- Applicant shall work with staff on flexible setback standards so that roads may be public.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The majority of the project area has an average natural slope of over 15% and is over elevation 2220 which renders the property subject to hillside development standards. Although fairly extensive, the amount of clearing and grading is not unusual for a project of this size where topography and other natural features present challenges to development. The applicant is proposing to preserve some small creek beds and existing vegetation around the cottage home and by doing so will remain in compliance with the hillside development standards. Landscape buffers and a small amount of tree preservation will provide some minor mitigation. The extent of clearing, grading, and retaining walls could be further mitigated by reducing the number of units and/or by massing the units in an alternative layout.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   There is a significant amount of literature that describes how work force housing does not negatively impact adjacent property values; developments of this size in the City do require a home owner's association that manages the common open space and typically has minimum site standards that control the deterioration that can contribute to a decrease in property values. These units will be individually owned units that, historically, inspire care and upkeep. In addition, the higher density development could serve as a buffer/transition area to the existing single family residences that could be impacted by the more intense uses permitted in the CI zoning district

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   This neighborhood appears to be a neighborhood in transition; currently there is an unusual mix of low, medium, and high density residential uses ranging from large single family homes on large lots to high density apartments. The character of the neighborhood appears to be transitioning from a more rural low density single family character to a more urban, higher density form. The proposed development is classified as a medium density project and will be an appropriate transition between the existing low and high density residential properties already existing in the area. The proposed density for the project is 7.8 units an acre, well below the 11.3 units per acre normally allowed under the existing zoning and hillside development standards. The homes are modest in size and grouped in relatively small clusters of 2, 3, and 4 units per cluster, each unit fronting on the new road and, again, will be an appropriate transition between the existing single family homes and multi-family apartment buildings.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing market (or zoning) conditions. The *ACDP 2025* encourages a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property to meet the increasing housing needs of the City of Asheville's work force population.

   This property, located on a major corridor, is already zoned to allow for a high-density residential development and is one of many development projects proposed for this growing area of the City.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The project area is located in clear and close proximity to major road facilities, interstate connections, service centers, and easily accessed employment centers. Technical review has not revealed any significant problems for future utility or emergency service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed project will include the construction of a new road connection between Mills Gap Road and Sweeten Creek Road. This new road will provide clear and safe access to the individual units, each of which will front on the new road. In addition, preliminary review by the City's traffic engineer does not reveal any significant concern over traffic loads generated by a development of this size.

Pros

- Provides the opportunity for residential infill development on a major corridor.
- Provides new road connection between two major roads.

Cons

- Requires extensive clearing and grading
- Proposed development does not reflect traditional neighborhood development patterns (i.e. lack of diversity in housing types)

Staff concurs with the Planning & Zoning Commission and recommends approval of the Level 3 site plan for the Mills Creek Condominium project.

Mr. Chris Eller, Civil Design Concepts, spoke in support of the development in that they have reservations on all the units, which are reasonably priced. Even though details are not finalized, they anticipate them being from the mid-$150,000's to the $180,000's.

After rebuttal, Mayor Bellamy closed the public hearing at 6:09 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3317, granting a conditional use permit for the Phase I Mills Creek Condominium development, subject to the following conditions: (1) All outstanding TRC conditions are met; (2) Applicant shall work with Traffic Engineer on establishing appropriate traffic calming measures to be installed along the proposed road (to control cut-through traffic); and (3) Applicant shall work with staff on flexible setback standards so that roads may be public. This motion was seconded by Vice-Mayor Jones.

Councilwoman Cape was concerned about the cut-through traffic that might result from the proposed road. Ms. Tuch said that given the restraints of the existing lot, the proposed road is the most logical. Traffic Engineer Anthony Butzek also responded that the developer will need to submit plans showing traffic calming measures meeting standard adopted criteria for effective traffic calming projects and that involves setting a minimum and maximum spacing of the measures and using specified types of measures. The City will work with them on finalizing what those measures would be – typically a mix of speed humps and possibly some islands in this case.

In response to Councilman Davis about green space, Mr. Eller said that they have kept a good portion of the project undisturbed. It is passive green space now and they will leave it up to the homeowners to decide what, if anything, to put in there.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT OAK PARK ROAD AND SKYVIEW ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING TO PERMIT CONSTRUCTION OF TWO DUPLEX BUILDINGS AND THREE SINGLE-FAMILY HOMES

Mr. Gerald Green, representing the developer, stated that they had recently been informed that a valid protest petition had been filed and they wish for additional time within which to meet with the neighborhood to understand and possibly address their concerns. Therefore, Councilman Mumpower moved to continue the public hearing until February 14, 2006. This motion was seconded by Councilman Davis.

City Attorney Oast noted that if City Council continues the public hearing, the protest petition would remain valid and there would be no need for the neighborhood to file another one.

Ms. Patsy Brison, attorney representing some members of the neighborhood, spoke against the continuance in that the neighborhood has made special arrangements to be at this meeting and they are prepared to move forward. She said that last year the developer had expressed an interest in working with the neighborhood to address the concerns on this project, however, they didn't. She asked for Council to proceed with the public hearing.

Councilman Mumpower felt that since the protest petition was only validated on Friday or Monday, that it would only be fair to give the developer an opportunity to work with the neighborhood to address their concerns.

Councilman Newman felt that this is a slightly different proposal from what came before City Council last year and hoped that the developer and the neighborhood can work together.

The motion made by Councilman Mumpower and seconded by Councilman Davis to continue the public hearing to February 14, 2006, carried on a 6-1 vote, with Councilman Freeborn voting "no."

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF TWO LOTS RECENTLY ANNEXED KNOWN AS SOUTHRIDGE AREA TO BE ZONED HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3318 - ORDINANCE TO ZONE TWO LOTS RECENTLY ANNEXED KNOWN AS SOUTHRIDGE AREA TO BE ZONED HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:22 p.m.

Ms. Julia Cogburn, Urban Planner, said that this is the consideration of an ordinance to zone two lots recently annexed known as Southridge area to be zoned Highway Business District. This public hearing was advertised on December 30, 2005, and January 6, 2006.

The North Carolina State Legislature recently passed a bill adding properties on Airport Road to the corporate limits of the City of Asheville. This bill was enacted at the request of Southridge Associates, LLC, developers of the shopping area and outparcels at the intersection of Airport Road and Rockwood Road. The effective date of annexation for two of these parcels was September 30th of this year. These parcels are currently under the zoning jurisdiction of Buncombe County and are zoned "Employment" under their Limestone Township Ordinance. The two parcels for which initial zoning is proposed total 1.60 acres in size.

Other properties in the Airport Road area that are within the City's jurisdiction (such as the Holiday Inn Hotel) are zoned HB. Staff proposes the same zoning for these parcels.

Pros

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Cons

- None

The Planning and Development Staff recommends approval of this initial zoning. The City's Technical Review Committee, at its meeting on November 21, 2005, voted unanimously to recommend approval of this initial zoning, as did the Planning and Zoning Commission (6-0) at their meeting on December 7, 2005.

Mayor Bellamy closed the public hearing at 6:24 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3318. This motion was seconded by Councilman Davis.

Upon inquiry of Councilwoman Cape, Ms. Cogburn outlined the other zoning district options for the property, noting that the property owner did wish this property to be zoned Highway Business.

Councilwoman Cape was hopeful to start some dialogue about the City's overall economic impact of some of our development choices.

Mr. Bob Stultz, representing the developer of the property, said that their entire property is restricted by covenants and restrictions which are much more restrictive than the Highway Business District. They are aggressively marketing the property for a full-service restaurant.

City Attorney Oast cautioned Council that if the property is rezoned, any use permitted in that zoning district can be built on the property.

Upon inquiry of Councilman Freeborn, Planning & Development Director Scott Shuford said that he would submit to Council some information on what the key characteristics are for each of the different zoning districts for Council to refer to in the future.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried unanimously.

E. **PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS GROVE PARK COVE TO BE ZONED RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT**

ORDINANCE NO. 3319 - ORDINANCE TO ZONE PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS GROVE PARK COVE TO BE ZONED RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:40 p.m.

Ms. Julia Cogburn, Urban Planner, said that this is the consideration of an ordinance to zone portions of recently annexed properties known as Grove Park Cove to be rezoned RS-2 Residential Single-Family Low Density District. This public hearing was advertised on December 30, 2005, and January 6, 2006.

The City of Asheville has recently completed the voluntary annexation of portions of two lots located off of Patton Mountain Road. These areas are currently in the Beaverdam Township of Buncombe County and are zoned low-density residential. The areas are part of a larger tract of land that has been reviewed and approved for a seventeen (17) lot subdivision to be known as Grove Park Cove. The entire tract is approximately 30 acres in size. The portions to be annexed are 3.51 acres in size. The portions of the property currently within the city limits are zoned RS-2 Residential Single-Family Low Density District.

Pros

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use.

Cons

- None

The Planning and Development staff recommends approval of this initial zoning. The City's Technical Review Committee, at its meeting on November 21, 2005, voted unanimously to recommend approval of this initial zoning. At a meeting on December 7, 2005, the Planning and Zoning Commission unanimously (6-0) recommended approval as well.

Mayor Bellamy closed the public hearing at 6:42 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3319. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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At 6:45 p.m., Mayor Bellamy announced a short recess.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. **RESOLUTION NO. 06-6 - RESOLUTION OF SUPPORT FOR THE HUB PROJECT PLAN**

Mr. Sam Powers, Economic Development Director, said that this is a review of the HUB Project and for Council to consider a resolution providing policy direction.

Mr. Powers reviewed the economic development strategies and the benefits of the Office of Economic Development.

The multi-cluster HUB Project is a coordinated effort by public, private and nonprofit participants to create sustainable economic development strategies for Buncombe County.

As follow-up to the recent presentation given to City Council at the October 18, 2005, Council worksession, County Manager Wanda Greene met with City Manager Jackson and several City staff to discuss the HUB Strategic Goals relevant to the City of Asheville. The City's Economic Development Advisory Committee ("EDAC") has also received an overview of the HUB Project and has been given an opportunity to provide comment.

Mr. Chuck Tessier, Chair of the Economic Development Advisory Committee, spoke in support of the strategic goals and thanked Council for the opportunity to comment.

Mr. Powers then summarized the following 17 strategic goals responding to Council's questions/comments as each goal was discussed:

1. *To establish a Community and Economic Development Authority to leverage Buncombe County's unique assets to attract, create and expand business opportunities while improving the well-being of our citizens.*

   The County Manager indicated the preliminary plan calls for a 30-35 member Authority, with two members from the City of Asheville. City staff indicated to Ms. Greene that City Council may have an interest in the final authority structure, including an increase in the proportion level of city representation on the board, given that 60% of projects in the HUB plan are in the City.

   Mayor Bellamy felt that a good portion of the plan is in Asheville and suggested City have more input in the governance of the Authority with more seats than two.

   Councilman Davis agreed with Mayor Bellamy and felt we had fairly minor seating on the board.

   Councilwoman Cape felt the Authority should include members from the alternative health field and small businesses.

   Councilman Mumpower felt the proposed Authority is a good beginning and too many people at the table would not be functional. In addition, the Authority is a planning effort to us to go in a better direction.

   Vice-Mayor Jones suggested the City have 5 designations in the open at-large seats. She felt this planning effort is the beginning of an entity that will have authority.

   Councilman Newman said that if the City endorses this project, the City will need to determine how much to invest in staff time and financial resources.

   Councilman Freeborn also agreed that Asheville should have more than 2 seats on the Authority.

2. *To expand our community organizing capability to ensure that both urban and rural communities throughout Buncombe County can play an active role in their future development.*

   The City may contribute to achieving this goal by continuing our aggressive Community Oriented Government format. This effort includes but is not limited to: community neighborhood walks, community council meetings, citizens academy, developer's forum, and numerous community meetings on an on-going basis. The City's Office of Economic Development ("OED") & Minority Affairs can provide leadership in reaching under-represented neighborhood populations.

3. *To implement inter-related strategies, that combines our unique assets and existing initiatives, and bring about synergy for implementation.*

   The shared vision for riverfront development, downtown, Broadway corridor, Biltmore corridor/medical center, Biltmore Village, West Asheville, are all specific action steps that the City will take to meet the Strategic Goal.

   Visioning and comprehensive planning efforts of the City, such as Asheville 2025 and Council strategic goal setting, serve to further this goal. The City Council is scheduled to conduct 2006 strategic planning efforts with enhanced public involvement and financial forecasting.

   Vice-Mayor Jones wanted there to be recognition of the investment of Asheville taxpayer dollars in these examples and that Asheville be given the credit for the models we started. She felt this is not a regional plan but a geographical part of Buncombe County.

4. *To foster public, private and nonprofit investment in the development of strategic elements of the HUB project.*

   Public investment requirements for the HUB project are unknown at this time. The City investment for such purposes in outside agency appropriations for Fiscal Year 2004 - 2005, was $140,000 and in Fiscal Year 2005 – 2006 $100,000. Future funding could be considered in the City's budget process.

   Discussion surrounded the level of monetary contribution after a clearer sense of how the plan will be executed.

5. *To work with existing industry in the preservation of productive manufacturing operations and target manufacturing niches that build on our unique assets.*

   The County Manager indicated that the Economic Development Commission ("EDC") would like to take the lead on this. Our contribution to this goal would come through the desired level of involvement in the EDC.

6. *To complete the build-out of broadband and high performance computing and storage infrastructure.*

   There may be significant opportunities for partnerships between the City, the county, and other agencies (notably the Education and Research Consortium with its fiber optic network) for initiatives such as broadband. The City has various assets to bring to bear including proven radio tower sites and site management; the County has a functional free wireless network covering outdoor downtown. Potential partnerships could improve and expand upon this type of service. The City's Information Technology Department has

been actively studying the possibilities for City-wide broadband service and the HUB Project could be a vehicle for achieving build-out.

7. *To utilize the world's largest environmental database to lure federal government and private meteorological agencies and companies to Western North Carolina.*

   This will require coordination at all levels of government with federal government staff and elected officials taking the lead. The EDC is also actively interested in leading and promoting this goal. This also ties in with goal number 6.

8. *To establish a Digital Media Center as a public, private, nonprofit partnership to spur growth and development of our existing multimedia industry.*

   MAP, URTV, and EDC are identified as taking the lead with city and county continuing to collaborate in a supportive role.

9. *To build the Western North Carolina Center for Technology Commercialization into a technology hub for research and development.*

   Asheville-Buncombe Technical College may be the lead on this effort, which will build on tech transfer with other regional Universities such as UNC-Asheville, WCU, and ASU.

10. *To utilize the existing technology infrastructure and the desirability of our location, to promote economic development options in the public, private and nonprofit sectors for secure data storage and retrieval.*

    The EDC and ERC have expressed a desire to coordinate this goal in a lead role.

11. *To build the "Asheville Brand" as an international identity for our people, culture, products, and services.*

    The Tourism Development Authority ("TDA"), with its hotel occupancy tax, is positioned to lead in international marketing. City leaders rightfully should be consulted by TDA and HUB in the process of branding "Asheville."

    Discussion surrounded Asheville being consulted in not only the process as the "branding" moves forward, but also the elements that make the brand strong in quality.

12. *To further develop the region as a center for rejuvenation of the mind, body and spirit.*

    Further discussion from within this innovative field will determine the appropriate lead organization(s) on this goal.

13. *To establish Asheville as a national center for integrative medicine which combines conventional therapies with complementary and alternative therapies.*

    Mission Hospital has expressed interest in taking the lead on this goal.

14. *To strengthen cultural development through orchestrated public, private, and nonprofit sector collaborations.*

    Staff suggests that the Asheville Area Arts Council as a possible lead organization within this richly diverse field. The City's Division of Cultural Arts can provide valuable collaboration on cultural development initiatives within the City.

15. *To establish design centers that market handmade objects and ensure the capacity for their production in multiples.*

    Handmade in America and Southern Highland Crafts Guild may take the lead on this goal. The resources of the Blue Ridge National Heritage Area can be strength in development of this goal.

16. *To investigate "customization" as a market trend that could position traditional industries and craftspeople in their marketplaces.*

    This goal is tied to number 15. The EDC will also help take lead in promoting business development and expansion.

17. *To establish a service provider system to support business development and retention.*

    Further discussion will determine the lead organization(s) on this goal. The NC Dept. of Commerce and EDC (Chamber) have Retention and Expansion specialists in place currently, and AB Tech, ESC, Job Link, and Work force Development Boards are networked already. The City OED will provide support and collaboration, including support to minority and underserved populations.

City staff's recommendation is inclusive of comments received by your Economic Development Advisory Committee members. Staff recommends that City Council support the concepts and goals of the HUB project. Additionally staff recommends that the County Manager be provided a list of the goals along with the recommendation of each goal in which the City will be in a position to provide leadership and/or collaboration.

Discussion surrounded Councilman Davis' disappointment that the Civic Center was not included as one of the goals, in that this is a great opportunity for the region to come together and do things that we can't do alone.

The Executive Director of Mountain Micro Enterprises spoke in favor of the HUB Project. He felt this was a good blueprint on how to spend our economic development money. He said the 36% of the Buncombe County workforce is employed by small businesses of 20 employees or less and these small businesses grew their workforce about 11% over the last 4 years. Businesses over 20 employees had no net increase in their employment. He felt Council should focus on small businesses because this is how we grow our economy.

Mayor Bellamy asked that Mr. Chuck Tessier, Chair of the Economic Development Advisory Committee, take Council's recommendations to the group forming the HUB Project and then find ways for City Council to begin actually implementing the Project.

Mr. Fred English felt the HUD Project had too many goals and the City will not be able to support it financially. He felt the City should concentrate on factory jobs in our area.

Mr. Grant Millin, President of Public Fuel Cell, spoke about how the HUB Project should be a results-oriented plan.

Ms. Kyle Ross had no problem with the City representation of the Authority if more people will stand behind them giving them their ideas.

Councilman Mumpower moved to approve Resolution No. 06-6, with the following amendments: (1) That the City Council is supportive of the concepts of the HUB project's goals and the City desires to be actively engaged in the HUB project; and (2) City Council directs that

the City staff report and the summation of City Council comments be incorporated into a response letter to the County Manager outlining areas in which the City is best positioned to provide leadership and/or collaboration. This motion was seconded by Councilman Davis.

Councilman Newman felt that the plan contains a lot of good things that are already happening in the community. However, he was concerned that there is no focus because there is so much in the plan. Because the City has a small amount of resources set aside for economic development, he felt we should be really focused on how we use them. His concern is we are getting involved in something where the small amount of resources we do have are going to end up being not very focused at all.

Councilman Mumpower felt that our participation does not preclude us doing whatever we want to for economic development. We are not making a monetary commitment, other than manpower on a limited basis. He felt this is a work in progress and believed they need a commitment from the City.

Councilwoman Cape liked the ability to leverage what funds we do have with other players and that we start working together and not just be dependent on our funds. We will be building relationships that can be mutually beneficial.

Councilman Davis agreed with Councilwoman Cape in that we will be able to leverage what small resources we have and he doesn't think they are expecting the City to step forward and sign on to everything. He felt it would be worth Council's while to learn more about the project.

Vice-Mayor Jones felt encouraged with the endorsement of the small business community.

Councilman Freeborn liked the idea that the plan is not focused on one thing. He felt we need to have diversity for sustainability.

Councilman Newman hoped that once the Authority is formed, that the ultimate goal will be to be efficient with our resources, as we currently have the Economic Development Advisory Committee, the Buncombe County Economic Development Commission, etc.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried unanimously.

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B. RESOLUTION NO. 06-7 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH EMA, INC. AND MRO SOFTWARE INC. TO PROVIDE AND IMPLEMENT A COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM

ORDINANCE NO. 3320 - BUDGET AMENDMENT FOR A COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM

Water Resources Director David Hanks said that this is the consideration of a resolution authorizing the Mayor to enter into a contract with EMA, Inc. and MRO Software, Inc. to provide and implement a Computerized Maintenance Management System (CMMS) for the water utility, and approval of a budget amendment, in the amount of $476,307, to provide funding for this project.

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The Water Resources Department has a need for a CMMS to accurately track the maintenance and performance of assets and the costs associated with maintenance, repair, and replacement. The City's current Enterprise-Wide Software System, HTE, cannot perform to the needs or expectations of the Department. A new CMMS is a critical piece of the on-going Asset Management Program the Department has been working on for over two years.

The benefits of implementing a full-featured CMMS include:

- Better maintenance management including lower maintenance costs, reduced equipment downtime, less overtime for unplanned maintenance, and extended equipment life
- Ability to do analysis of asset performance data such as replacement planning, failure analysis, and reliability centered maintenance
- Improvements in work flow, data flow, and customer service

It is anticipated that this program will be fully implemented in the Water Resources Department by August 31, 2006. This is considered to be a pilot program that can easily be expanded to allow all City operational departments to better track maintenance and performance of assets. It has an excellent Call Center feature that will allow the City's Customer Services Division to respond to customer requests in a more timely manner. A Request for Proposal (RFP) was released on July 18, 2005, and six firms in the Water and Wastewater industry responded. A selection team was formed that included representatives from the Customer Services Division, Information Technology Department, all divisions of the Water Resources Department, and our consultants Brown and Caldwell. The selection process took two months and included demonstrations, telephone interviews, on-site client interviews, and client reference checks.

After extensive deliberation, EMA, Inc. was selected to install, configure, convert data, and integrate a CMMS based on MAXIMO software provided by MRO Software, Inc. The cost is not to exceed $476,307.

There is sufficient funding for this project in the Water Major Capital Projects. Staff is recommending that funding for Annexation 2001 Improvements (Lake Julian Area) be reprogrammed to fund this important project. The Annexation 2001 was settled out of court by action of City Council on November 22, 2005. A budget amendment will close Annexation 2001 and establish funding for a CMMS.

PROS:

- A CMMS will enable the Water Resources Department to more accurately track the maintenance and performance of its assets thus minimizing costs and increasing operational efficiency in the long term.
- Once the CMMS is implemented in the Water Resources Department, it can be expanded and used by all City operational departments to track field work orders, such as storm drains, street paving, and parks maintenance, etc.

CONS:

- The cost of this project is a factor; however, sufficient funding is available for this important project by reprogramming funds from an obsolete Annexation Project.

City staff recommends City Council approve the request for the Mayor to enter into a contract with EMA, Inc. and MRO Software, Inc. to provide and implement a Computer Maintenance Management System as well as approve a budget amendment to provide funding for this project.

Discussion surrounded Mr. Hanks responses to various questions/comments from Council, some being, but are not limited to: will we realize any savings in staff reduction; how will other departments be able to utilize the data; does the company have references with other entities in North Carolina; explanation of the funding; is this system similar to what the Metropolitan Sewerage District uses; is the payback in personnel cost savings or lower capital costs; and will there be on-going costs.

Councilman Mumpower expressed his personal difficulty with the amount of money for the system, at a time when we are in financial jeopardy with limited infrastructure monies. He was concerned that we are pursuing something convenient and efficient at a time we should concentrate on necessity, until there is a clearer vision on where we are going.

Councilwoman Cape was concerned with spending this amount of money, especially when we have so much infrastructure to work on and the City is in the middle of a lawsuit.

Information Services Director Jonathan Feldman spoke in support of this system and felt Council needed to look at this in terms of being a large organization servicing 10's of thousands of people with a 5-year payback period.

City Manager Jackson understands that Council's interest is improving the infrastructure. This is an investment that should be made on behalf of the people who are pay the water rates. This is a basic tool that they need to see is in place so that their money is being used wisely. He felt we do not have a well-maintained water system at this point. He sees this as a system that every penny we put into it we want to spend wisely and where it is needed the most. The goal here is not to do less maintenance, but to do more and position ourselves so that the time and the deployment of our people resources and our capital dollars get the job done. The payback is in having a better managed system that is a better investment of a ratepayers dollars.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 06-7. This motion was seconded by Councilman Freeborn and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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Councilman Newman moved to approve Ordinance No. 3320. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 353

C. ORDINANCE TO INCREASE TAXICAB FARE MILEAGE CHARGE FROM 25-CENTS PER 1/10TH MILE TO 28-CENTS PER 1/10TH MILE

Mayor Bellamy announced this that item will be discussed at a later date.

D. DISCLOSURE STATEMENT REQUIRED BY HUD FOR MAYOR BELLAMY

City Attorney Oast said that he has prepared a statement for Mayor Terry Bellamy, requesting waiver of a conflict that arises under HUD regulations because she is an elected official of a recipient agency of CDBG funds, and works for a corporation that participates in CDBG activities (Mountain Housing Opportunities). According to the interpretation of the

applicable regulations by HUD officials in the Greensboro office, the conflict arises by the mere fact of her employment, not as the result of any particular activity, and a waiver must be obtained in order for Ms. Bellamy to continue working in her professional and elected capacities.

Ms. Bellamy would still be subject to applicable provisions of North Carolina law that prohibit self-dealing or voting on matters that affect her financial interest. As with other conflict situations, a determination as to how these statutes apply will have to be made on a case-by-case basis. For example, Ms. Bellamy might not be able to participate in Council consideration of funding allocations where MHO was one of the competing agencies, but she would be able to vote on adoption of the City's annual budget.

The law requires that these conflicts be publicly disclosed, and this is usually done at Council meetings, so that it will appear in the minutes. This was done initially in 2000, following Ms. Bellamy's election to Council in 1999, but the HUD Greensboro office has suggested that it be done again. The statement is as follows:

"Under North Carolina law, all members of City Council, including the Mayor, are precluded from voting on matters in which they have a financial interest or that involves their own official conduct. They are also prohibited from entering into contracts with the City. Further, recent amendments to the zoning enabling laws have expanded and clarified the issue of council member conflicts of interest with respect to land use decisions. Under State law, a Council member may not only not participate in the vote on matters in which they have a financial interest, they may not attempt to influence the vote.

Where an employee of an agency that receives funds from the U. S. Department of Housing and Urban Development (HUD) becomes a member of the governing board of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. Such opinions are routinely requested, and exceptions are made as appropriate.

Mayor Terry Bellamy is an employee of Mountain Housing Opportunities, an organization that receives funds from HUD, through the City of Asheville. Although she is not directly involved in any HUD-funded activities, her election to Council in 1999 and as Mayor in 2005 triggers the application of the regulation requiring us to seek an exception. Our review – including analysis of the regulation, conversations with HUD officials, Ms. Bellamy and other officials at MHO – has indicated that Ms. Bellamy, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as Mayor and a member of Council, State law would preclude her from voting on any matters that directly affected MHO. Following Ms. Bellamy's election to Council in 1999, we sought and obtained an exception from HUD, allowing Ms. Bellamy (then Ms. Whitmire) to act as a Council member and maintain her employment with MHO.

On the advice of HUD officials, we propose to write to HUD to request an opinion as to the continued application of the HUD regulation to Ms. Bellamy in her new role as Mayor, and, depending on that opinion, request an exception or some other action by HUD that will permit Ms. Bellamy to serve as Mayor while working at MHO.

This is brought to your attention now because public disclosure is one of the prerequisites of requesting the opinion from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence to HUD to inquire about and, if necessary, to secure the exception as soon as possible."

VI. OTHER BUSINESS:

Vice-Mayor Jones announced the upcoming board and commission vacancies.

Councilman Davis updated City Council on the City Center Task Force's meetings and invited the public to their public input session on January 18, 2006.

Mayor Bellamy announced City Council's annual retreat on January 20-21, 2006.

The following claims were received by the City of Asheville during the period of November 18 – December 15, 2005: Jeff Joyce (Fire), Jont Johnson (Water), Randi Glover (Streets), Enterprise Rent-A-Car (Streets), Sharon Alexander (Transit), Michael Cherco (Sanitation), Pat Kelly (Water), Thomas F. Williams (Police), BellSouth (Water) and Homes America (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross urged City Council to commit to community policing.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:22 p.m.

Magdalen Bowerson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – January 17, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

BELE CHERE REPORT

Mr. Irby Brinson, Director of Parks & Recreation provided information regarding the community and economic impact of Bele Chere, and shared the results of a survey administered by Western Carolina University. In addition, he sought direction concerning the following three policy matters:

(1) Should Bele Chere continue to be located downtown? Or should it be moved to an alternate location (e.g., the riverfront area)?

Staff has investigated the possibility of relocating Bele Chere to the river district. In the future, staff will look to do an event similar to Bele Chere in the River District to help revitalize that area.

Pros:

- Relocation of Bele Chere could complement plans to revitalize the river district.
- The river itself as a backdrop for the festival.
- There is some support in the community for the move.

Cons:

- Traffic control would be difficult. There are concerns about I-240 flow, impact on nearby neighborhoods, and ambulance and railroad access.
- There are very few places in the area that could be used for parking. Visitors who might attempt to park along I-240 would create a safety hazard.
- Access to the event would be difficult for those involved, including city staff, volunteers, vendors, suppliers and entertainers.
- There are security/safety concerns in the area. Visitors not familiar with the area could find themselves in an unsafe location. The river running directly behind the location requires a constant water rescue component.
- Additional infrastructure concerns include lighting, electricity, few sidewalks, narrow streets, and many overhead utilities and poles.
- Return visitors from outside WNC have a history with the downtown location.

Staff's recommendation, after conferring with other City departments, including Fire, Police and Traffic Engineering, is to keep Bele Chere downtown.

After Council discussion, it was the consensus of City Council to not relocate the Festival to the River District.

(2) Should Bele Chere keep and/or expand gated event(s)?

Pros:

- The gated concert in 2005 generated more than $80,000 in new revenue and was deemed a success by the media.
- Festival staff estimates that producing a gated event on both Friday and Saturday in 2006 could produce more than $200,000 in event revenue.
- A survey has indicated a desire for big-name entertainment; a gated event is the most affordable way to meet this need.

Cons:

- Increased administration to sell tickets and handle cash; this was handled largely by volunteers in 2005.
- There were some community concerns last year about change; these may have been dispelled now.

Staff's recommendation, along with the 2006 Bele Chere board of directors, is to add a second evening gated event for 2006.

After Council discussion, it was the consensus of City Council to add a second evening gated event for 2006.

(3) Should Bele Chere keep the family-friendly (no beer sales) focus for Sunday?

The last year that beer was sold on Sunday during Bele Chere was 1998; Sunday sales made up 15% of beer sales that year, and produced $13,000. The WCU survey shows a significant increase in Sunday attendance since 2000, however; this higher attendance likely makes up for any lost revenue from beer sales. Sunday attendance increased from 45% of respondents in 2000 to 61% in 2005.

Staff's recommendation is to keep the family-friendly focus, and not sell beer on Sunday.

After Council discussion, it was the consensus of City Council to keep the family-friendly focus, and not sell beer on Sunday.

Throughout the presentation, Mr. Brinson responded to various questions/comments from Council, some being, but are not limited to: explanation of the $60,000 contributed to area non-profits; what is the economic impact on downtown businesses; what is the economic balance of local vs. out-of-town vendors; what were some of the problems or issues that occurred at Bele Chere this year and how did the City deal with those; do the expenditures include staff time; did the gated event add to the cost of the expense; was the gated event a success; concerns of competition with the local club scene; need to make sure local bands and artists are included; do we advertise in outside markets; what is the overall increase in attendance from the 2000 festival to this year's festival; was staff turnover an impact on the festival; where are the options to change the festival if not at City-County Plaza; and explain the sponsorships with the beer distributors.

Upon inquiry of Vice-Mayor Jones about a relationship with the Tourism Development Authority (TDA), Mr. Brinson explained that the TDA has made it clear that until their guidelines are changed, their funds can only be used for construction projects. Vice-Mayor Jones wondered if this new Council could begin conversation with the TDA to see if their guidelines can be modified. Councilman Newman agreed in that maybe the TDA could contribute some of its advertising money.

Councilman Mumpower felt there are better places the City can put the $250,000 other than a community party that does good things. He said the City has been talking about paring

that down for years. He doesn't think the City should be in the business of being a provider of alcohol, directly or indirectly.

MIGRATION FESTIVAL RECOMMENDATION

Mr. Irby Brinson, Director of Parks & Recreation, said that City Council has been asked to endorse the Migration Event Festival, which includes permission for the installation of approximately 100 butterfly-shaped banners in the Central Business District (CBD), for a period of 16 days beginning February 25 through March 12, 2006.

At the direction of the Mayor, Council members Mumpower and Freeborn recently met with Brian Bock, President of Foundation Endowment, Inc., along with David Starkey, General & Artistic Director, Asheville Lyric Opera, to consider this proposal. At the conclusion of this meeting, City Council approved the request for this item to receive consideration at the January 17 worksession. In the interim, City staff met with Mr. Bock and Mr. Starkey to understand the scope of the project in relation to the City's current Banner policy. It is our understanding that they intend to meet all of the requirements of the Banner Policy and pay for the installation and removal of the Butterfly Banners, which will be approximately $3,000.

After a short discussion, Councilman Davis moved to waive the rules and take formal action on this matter at this meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Mumpower moved to endorse the Migration Event Festival as a co-sponsored event with the City of Asheville. This motion was seconded by Vice-Mayor Jones and carried unanimously.

QUARTERLY FINANCIAL REPORT

Finance Director Ben Durant summarized the City's quarterly financial report. He gave an overview by stating that (1) Asheville continues to live within its means; (2) Fund balance will see a slight decline; (3) continued fuel and energy conservation efforts are necessary; and (4) staff recommends no major mid-year budget additions.

He reviewed the Council the following (noting that the revised budget does not include $1.1 Million adjustment for Sullivan Acts):

Fiscal Year 2005-06 Adopted Budget	$74,357,126
Additions:	
Amendment for County Park Facilities	503,936
Prior Year Encumbrances	820,071
2005 Annexations	318,044
Insurance Claims	250,000
Outside Legal Expenses	50,000
Burton Street Demolition	9,565
Fiscal Year 2005-06 Amended Budget	$76,308,742

Mr. Durant reviewed the General Fund revenue highlights as follows: (1) City has received $1.2 Million in one-time revenue from sale of property; (2) approximately 90% of property tax revenue will be received in January; (3) sales tax revenue running 3.2% above last year, will exceed budget by $369,173; and (4) overall, General Fund revenues will exceed budget by a net of $273,623.

General Fund expenditure highlights include: (1) overall, departments will save approximately $1.1 Million through targeted savings plans, normal attrition and other operating savings; (2) these savings combined with $273,623 in total revenues over budget will nearly offset $1.43 Million in budgeted use of Fund Balance; and (2) projected actual use of Fund Balance = $89,945. He then reviewed with Council the Fund Balance, which year-end estimate is 22.8%.

Mr. Durant then summarized the year-to-date and year end projections for the City's seven enterprise funds (Water, Civic Center, Transit, Parking, Festivals, Golf and Stormwater)..

Mr. Durant responded to various questions/comments from Council regarding the financial report, including, but not limited to: what kind of services do we contract with Biltmore Forest; what is the user-fee process; how high has our Fund Balance been in recent years; is data available for the seven enterprise funds similar to the General Fund; and why has there been a decrease in the Powell Bill funds.

Mayor Bellamy said that this topic will be discussed further at the Council's annual retreat.

CITY-OWNED PROPERTY REDEVELOPMENT FEASIBILITY

Planning & Development Director Scott Shuford summarized with Council selected City-owned properties and the redevelopment potential for each. He explained the following methods of sale or transfer: (1) private negotiation and sale; (2) advertisement for sealed bids; (3) negotiated offer, advertisement and upset bids; (4) public auction; (5) exchange; and (6) Request for Qualifications (RFQ)/Request for Proposals (RFP). He said that (1) it is important that the transfer of public property be transparent to the public; (2) it is important that the public get fair value for transferred property; and (3) it may be important that property transfers accomplish broader public goals than simply getting the highest price.

The selection criteria for reuse or redevelopment include: possible workforce housing site; potential for significant tax base enhancement; consistent with City plans or policies; opportunity to guide low impact development; and potential to promote a smart growth development pattern.

He then described the redevelopment options; sample projects; development challenges and opportunities; and possible method(s) of transfer on the following City-owned properties:

- Asheland Avenue (1.1 acre)
- Old Asheland Avenue (1.8 acres)
- East Riverside Park Area (9.8 acres)
- Memorial Field Area (16.2 acres)
- Martin Luther King Jr. Boulevard Area (3.3 acres)
- Circle Street Area (1.2 acres)
- Public Works Area (12.5 acres)
- City Hall Parking Lot (2.5 acres)
- Beaucatcher Reservoir Area (10.3 acres)
- Parks Maintenance Facility (3.6 acres)
- Bus Transit Center on Coxe Avenue (0.6 acres)
- 29 Haywood Street (0.18 acres)
- Transit Facility - West Haywood Street (3.5 acres)
- Civic Center
- Haywood Street Parking Garage Properties
- East side of S. Charlotte Street

- Morrow Street Area

He offered the following recommendations: (1) to direct staff to refine report for specific council action; (2) direct staff to expand scope to all City-owned property for inclusion in report; and (3) direct staff to prepare long-range facilities management plan, including an evaluation of how properties might be transferred without affecting City operations.

Suggested next steps would include (1) a City-owned property report: (a) suggestions for priority properties; (b) suggestions regarding bundling properties for RFQ/RFP; and (c) timeframe: within 60 days; and (2) a facilities plan: (a) may require a consultant; and (b) timeframe – return with a suggested approach.

Councilman Newman supported proceeding with looking for pieces of property that obviously there is a better use for that property. He also suggested meeting with Buncombe County to see if they have some property in the downtown area that can possibly be a joint partnership.

Councilwoman Cape didn't support piecemeal development but liked the idea of bringing together downtown property owners and Buncombe County to start talking about a cohesive planning effort.

In response to how much staff time was involved in preparing this report, Councilman Mumpower felt that going forward, it might be helpful that if Council has requests for information from staff to get some idea what the impact it would be on the staff, and that the staff time be translated into action.

Councilman Freeborn felt that in term of long-range planning, the City should talk with Buncombe County in order to possibly combine some efforts. In the short-term, he agreed with Councilman Newman to look at obvious pieces of property that do not involve significant infrastructure changes.

Councilman Davis felt that the City needs to be cognizant of the areas around the properties that the City already owns. In order to plan for the future, we need to be pro-active.

Mayor Bellamy wanted to make sure that as we move forward that the process that we put in place, for whatever we do, is inclusive of public input from those impacted neighborhoods at the forefront. In addition, she wanted an affordable housing component to be included in any project brought forward.

Councilwoman Cape felt the City could generate substantial revenue if we give our developments some heights in certain areas. In addition, that would reduce the impact on the neighborhoods and the other areas around the Central Business District. The Downtown Commission and other public interest groups involvement might result in a development vision of what we want to hold and save and where we want to focus this development energy in a way that will be constructive and unified.

Mr. Shuford said that he will focus his next report so that we do identify the opportunity costs if we take different actions, move forward on the catalytic project opportunities, and develop some neighborhood level of communication about the potential development of the sites. He said that perhaps a facilities management plan will help us with some of the issues raised by Councilman Davis regarding being strategic about property acquisition.

At 4:54, Mayor Bellamy announced a short recess.

TRANSIT COMMISSION REPORT

Transit Services Director Bruce Black said that the Transit Commission had its retreat in August of last year. The Commission discussed several options for increasing ridership. It recommended that all options be emphasized but that one in particular be pursued at this time. It also reviewed the financial issues coming up in the next fiscal year, and recommended expanding the conceptual horizons of public transportation to include other forms of transport.

The option felt to hold the most promise to increase ridership is based on a model from Olympia, Washington. This program charges employers and institutions who agree to the program a reduced rate based on the average per trip revenue from the preceding year. This can be combined with an incentive to promote use of the bus by charging a declining per trip fare as the number of trips increases through the year.

The financial future for transit involves a significant deficit created both by increasing costs (particularly fuel), historically flat revenues, and the loss of federal operating revenues due to population growth and a quirk in the census methods of determining Urbanized Areas of over 200,000 Population. The combination of these items will produce a deficit of $150,000 to $190,000 this fiscal year and over $700,000 next fiscal year.

There are various things that can be done to offset some of these expenses. Among the options are (1) the implementation of an Olympia based corporate fare model in the 2007 Fees and Charges Manual; (2) increasing the transit fares from 75-cents to $1.00; (3) wrapping the bus; (4) cut service; (5) partner with other local governments to explore consolidated services and funding; and (6) aggressively implement transportation demand management program, specifically ride share and emergency ride home programs.

City staff seeks direction for policy direction on the following items: (1) the implementation of an Olympia based corporate fare model in the 2007 Fees and Charges Manual; (2) increasing the transit fares from 75-cents to $1.00; (3) proposal to wrap the bus service; (4) service cuts; (5) partner with other local governments to explore consolidated services and funding; and (6) aggressively implement transportation demand management program, specifically ride share and emergency ride home programs.

Councilman Newman said that he, Vice-Mayor Jones, Councilman Freeborn prepared the following proposal to create a more effective Asheville Transit Network. He explained three overarching goals for 2006: (1) to broaden the funding formula for transportation in Asheville, forming our current "parking (garage) fund" into a Transportation Demand Management Fund; (2) implementing a Transit Innovative pilot project; and (3) create a new Transportation Demand Management Commission.

Regarding the creating a multi-modal transportation fund, he said that currently all the proceeds generated by street parking (about $800,000), parking tickets (about $500,000), and from parking lots and garages (about $1.2 Million) is earmarked exclusively to build new parking decks. All of these dollars are put into what we call our "Parking Fund" but which should really be called our "Parking Garage Construction Fund." They propose converting this into a fund that can be used for multi-modal transportation purposes rather than just to build more parking decks. They suggest earmarking funds generated by parking tickets to transit. This would generate about $500,000 for transit innovations and serve level improvements. Arguments for creating a Transportation Demand Management Fund include: (1) creating a more viable transit network will free up some parking by allowing some people to travel downtown without their car; (2) additional revenue can be created to build more parking capacity by increasing the fees we charge to park in them. Monthly rental rates can be bumped up and the "first hour free" policy can be reduced to half an hour or 20 minutes; and (3) the debt service on the Rankin, Wall Street

and Civic Center decks will soon be paid off, freeing up additional funds to invest in new parking facilities.

Regarding the implementing a Transit Innovative pilot project, he said they believe it makes sense for the City to implement a 12-month "transit innovation pilot project" starting in July of 2006. The criteria for selecting a pilot project is (1) to better serve the needs of citizens in Asheville who rely on the transit system for mobility; (2) to significantly increase the number of riders on the Asheville transit system, which will (a) reduce congestion on streets and highways; (b) reduce pressure to build costly and ugly new parking facilities; (c) improve air quality; and (d) build public confidence that transit can be a viable part of the overall transportation system; (3) to build partnerships in the community, including partnerships with the business community, schools, neighborhood organizations, and local governments, to create a more efficient transit network; and (4) to serve as a part of an overall progressive community strategy to reduce poverty in Asheville (in this case, by lowering transportation costs on low income families). Elements of a proposed pilot project include (1) a 12-month pilot project beginning July 2006; (2) 90-day fare-free promotion period at outset of the project, cost = $150,000; (3) unlimited access for employers/universities – revenue neutral or gain; (4) enhanced monthly/annual passes for individuals – assume a loss of $50,000, could be more or less; (5) extend hours of service in the evening – cost = $150,000 - $200,000; (6) assuming an increase of 25% in overall ridership – increases the fare box by $100,000; (7) total cost = approximately $250-300,000 (assuming there is a 25% increase in ridership, Asheville's future funding from the State of NC would increase by over $100,000 per year. So, this program could continue in subsequent years at a cost of $150-250,000 compared to Asheville's current system); and (8) provide increased security at the downtown transit center.

Regarding the creation of a new Transportation Demand Management Commission, they propose the creating of a new citizens commission that will advise the City Manager and City Council on public policy matters related to parking community transit, bike and pedestrian matters. Currently, the City has an official Transit Commission. There is also an ad hoc Bicycle and Pedestrian Task Force, although this group is not a commission of the City of Asheville. In order to create an effective multi-modal transportation strategy for the future of Asheville, we need to look at these issues in a holistic fashion.

During discussion, Mr. Black responded to various questions/comments from Council, some being, but are not limited to: explanation of the projected impact of reduced federal funding and increased operating costs; explanation of the projected annual deficit at current levels of service; and any proposals to make up the funding losses.

Upon inquiry of Councilman Mumpower, Mr. Black explained that some of the forces we are working against include topography, utility patterns, demographics, and the reclassification by the Census Bureau.

Councilman Mumpower felt that the facts presented say that this is a time for caution and we are about to see our level of subsidy to provide service be dramatically impaired by forces beyond our control. He was concerned that some of the goals presented come with the need for expensive dollars. He would be interested in seeing solid data from models of that have been successful. He also felt it would be a mistake to "raid" the Parking Fund which has had a lot of demonstrated success in this community. The way others have set the Parking Fund up was an enterprise fund where the people who park downtown pay for the parking facilities.

Councilman Davis agreed with Councilman Mumpower to some degree. He said this is the first time it's come before Council and he felt we need to move ahead with caution. He said we have made tremendous commitments to merchants who have invested lifetimes into making the downtown successful and he felt it would be a tragic mistake to make a transit system work

on the backs of taking parking away. He asked for the number of people who are currently riding the bus, how many we realistically expect to be riding if we increase the routes, and the amount we can realistically expect to grow these fares by proceeding with this proposal. Again, he would be interested in discussing the proposal presented, but with caution.

Councilwoman Cape was open to these ideas and how we move people around in the community. She thinks this is a good first step.

Vice-Mayor Jones spoke in support of the proposal and felt that the time is right to start thinking innovatively.

Councilman Freeborn spoke in support of the proposal and felt that there are ways that Council can look at this in a smart and economical way.

Mayor Bellamy said that this topic will be discussed further at the Council's annual retreat.

At 5:49 p.m., Mayor Bellamy announced a recess.

DOWNTOWN PARKING PLANNING

City Engineer Cathy Ball updated City Council on the status of the proposed garage, including the due diligence, the concerns about the proposed location, and costs.

She gave a brief overview of the costs as follows: Land – purchase price was $2.6 Million; Design, Project Management, Property Acquisition - $1.6 Million; and Opportunity Costs of resale of land, redevelopment of land, and public/private partnerships.

Transit Services Director Bruce Black then updated City Council on the downtown parking needs. By 2018, the study shows a deficit of 3700 spaces north of Hilliard. He explained that (1) growth of demand projected 138 spaces/year – daily growth; (2) growth of demand projected over 1998 to 2005 – 966 spaces (using a 20-year average); (3) growth of use from 1998 – 2005 – 2,664; and (4) growth of use from 2002 to 2005 – 1,105. Using charts, he then reviewed with Council the current conditions in the decks, current need added, affect of alternative modes, the year 2010, he year 2010 with alternate modes, controlling for permits, and addition of alternate modes.

Staff requested Council direction on (1) the Haywood Parking Garage; (2) to pursue and update feasibility of other alternatives; and (3) an exit strategy.

There was considerable discussion by City Council as Ms. Ball and Mr. Black responded to various questions/comments from Council, some being, but are not limited to: how many parking spaces would be lost to take off one layer of the proposed deck; what need has been shown for the parking south of Pack Square; do we have the ability to add onto the height of the Rankin Avenue Parking Garage; are there any private sector efforts regarding parking taking place; why are some of the alternative sites not feasible; has the City considered paring down the proposed parking garage in front of the Civic Center and creating satellite parking; is the City subsidizing the Parking Fund; is the City able to develop the property in that area that they have already bought; if we exit this project, how much will the City lose; and how many businesses have started up in the downtown area last year.

Councilwoman Cape suggested looking at alternative sites rather than the proposed Haywood Street Parking Garage. She would be interested in looking at utilizing the space in a way that would not be in competition with the Grove Arcade but will bring families downtown.

Councilman Davis, liaison to the Asheville Downtown Commission, said that the Commission is concerned about the lack of parking in the downtown area.

In response to Councilman Davis, City Attorney Oast briefed Council on the letter received from the Basilica regarding the purchase of the property across from the Civic Center.

Councilman Davis spoke in favor of looking at some of the parcels nearby the Civic Center.

Vice-Mayor Jones understands there is a parking need, but the community has many needs. She would like to pursue an update for other alternative parcels, with her first preference being the BellSouth lot.

Councilman Freeborn said that our downtown is striving and people are opening up businesses despite the parking need. He is supportive of moving forward with additional parking facilities downtown only if the City expands their other transportation modes as well.

Councilman Newman favors sitting down with the private sector and looking for partnership alternatives to build parking downtown. He didn't think we should stop our planning, but look at alternative sites. He felt awkward in giving direction on this issue without any public input. He did support moving forward and reiterated the need for a citizens commission to work on transportation demand issues.

Councilman Mumpower supported looking at alternative sites. He felt Council gave their word to the Grove Arcade merchants to provide additional parking and the City should continue to look in that direction.

At the request of Vice-Mayor Jones, City Attorney Oast said that he would provide Council with the contract the City entered into with the Grove Arcade regarding parking.

Mayor Bellamy this is the first opportunity this seated Council has had an opportunity to hear a report on the status of the parking garage, and after direction is given to staff, then the public will be involved. She said there was (1) not consensus for the Haywood Street Parking Deck to continue in its current form; (2) consensus to look at alternative sites; and (3) not consensus for an exit strategy.

SIGN ORDINANCE AMENDMENT

City Attorney Oast said that this is the consideration of an ordinance establishing a process for the removal of temporary illegal signs.

The proliferation of small, temporary advertising signs adjacent to or within the right-of-way of streets and roads – "snipe" signs – in addition to being an eyesore, affect the safety of persons using the roads, either by blocking line of sight or by distracting motorists.

The City's sign regulations are contained in the zoning ordinances. The enforcement provisions of the zoning ordinance are not effective to deal with transitory violations of the nature presented by snipe signs: by the time the notice of violation process is complete, the signs and the reasons for them are frequently gone. While Sec. 7-18-5 provides for the summary removal of nuisance signs, this requires a determination that the particular sign is a nuisance.

What the proposed ordinance does is make a legislative finding that a certain type of sign tends to distract or obstruct the vision of motorists and create visual clutter, affecting the public health and safety in a negative way, and is therefore a nuisance. The ordinance authorizes the

City's code enforcement officers to remove those signs, and provides a "post-removal" process for the responsible parties to challenge the notice of violation or citation, and retrieve their signs. The ordinance also allows the code enforcement officer to dispose of signs that are not retrieved.

This ordinance is somewhat consistent with Buncombe County's recently adopted ordinance providing for the removal of signs in the right-of-way. Since the width of a street or road right-of-way can vary unpredictably, the proposed ordinance for the City applies within 30 feet of the traveled portion of a road.

Considerations:

- Defines what a snipe sign is
- Declares such signs to be nuisances
- Establishes expedient process for removal
- Provides a process for challenging violation

If Council approves of the ordinance, adoption of it is recommended.

As discussion occurred, City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: would this apply to political signs; will a community education effort be undertaken; is the City planning on providing areas where flyers can be posted; and can flyers be put in business windows.

It was the consensus of Council to educate the public on what types of signs fall under this ordinance and to provide venues (billboards, kiosks, etc.) on where people can advertise.

Mayor Bellamy asked that the record show that City Council received this information and instructed the City Manager to place this item on an upcoming City Council agenda.

REVIEW OF CONDITIONAL ZONING PROCESS AND ITS APPLICATION TO THE SMOKY PARK HIGHWAY WAL-MART

City Attorney Oast highlighted some important differences in the processes of conditional use permits (which we use), conditional use zoning (which we used to use) and the conditional zoning (which we now use).

Planning & Development Director Scott Shuford explained the appropriate considerations for conditional zoning requests and how the public hearing should be handled as follow:

- Conditional zoning is a legislative process, not quasi-judicial like the conditional use permit process. As such, it does NOT require sworn testimony and ALLOWS outside-the-meeting communication.
- Conditions may be imposed but require agreement by developer; in the event that the developer does not agree, the proposal can be denied.
- Conditions must have some identifiable relationship to the impact created by the development, as identified in "an officially adopted comprehensive plan or other plan …[or to]… impacts reasonably expected to be generated by the development or use." (quoted language is from newly amended statute). The impacts identified should be based on factual rather than anecdotal information and should not be speculative, and they should be specific to the project. Acceptable areas of consideration for conditions on conditional zoning ordinances—primarily in connection with major developments but applicable to any scale depending on context-- include, but are not necessarily limited to:
    - Height and setback
    - Buffers, landscaping, and open space

- Traffic impact mitigation, such as turn lanes, traffic calming, and similar measures
- Operational issues that create noise, such as loading, dumpster service, etc.
- Economic impact on small business
- Stormwater management
- Building scale and appearance
- Provisions for demolition or reuse of the building after proposed occupant vacates
- Site lighting
- Retaining wall height and design
- Extent of grading
- Natural feature preservation
- Adequacy of support infrastructure like water or sewer services
- Multimodal access – pedestrian, bike and transit
- Any conditions set forth in the City's ordinances

Public Hearing Process

- Two public hearings are required – one before the Planning and Zoning Commission and on before the City Council
- The Planning and Zoning Commission public hearing is scheduled for February 1
- Typical public hearing procedures include the following steps in the listed order:
  - Staff presentation
  - Opening the public hearing
  - The developer is given a reasonable amount of time to present his/her case (the Planning and Zoning Commission has suggested a 30-minute limit)
  - Groups are given 10-minutes; individuals have 3-minutes; different times may be allowed in the Council's discretion
  - Closing the public hearing
  - Council questions and discussion
  - Motion and action
- In managing the public hearing, the goal is fairness. Council may:
  - Set some limit on the duration of public comment (Council rules provide for one hour exclusive of staff presentation and Council discussion, but this may be extended to ensure fairness)
  - Request speakers to not repeat information previously presented
  - Request speakers to confine remarks to issues associated with development impact
  - Limit applause or other outbursts
  - Ask questions of speakers or staff

Although this is not a quasi-judicial process, Council members should wait until all the information has been received before making a decision. In complex cases involving conditions that are technical or require careful wording, continuing the matter to allow for drafting to be completed is always an option.

Conditional zonings are adopted in the form and manner of zoning map amendments; the protest petition procedure contained in North Carolina statutes and in the City Code applies to most conditional zoning requests.

There was considerable discussion on what other type of considerations could be considered for a conditional zoning request, i.e. pollution, wages, impact on the local economy, is the business creating the quality of jobs our community wants, etc.

In response to Councilman Freeborn, Mr. Shuford felt that the appropriate time for City Council to request an economic impact statement would be soon so that staff could relay that concern to the developer who would have time to address that issue at the Planning & Zoning Commission hearing.

After discussion, it was the majority of Council's direction to have staff bring forward to Council some recommendations on requiring that developers provide an economic impact statement on small businesses on all future conditional use permit applications for projects.

Upon inquiry of Councilman Newman, Mr. Shuford said that his staff does not have the background to do an economic development analysis and would need to hire an outside consultant. Therefore, it was the majority of Council's direction to ask staff to prepare a report on the cost and scope of work needed for the City to have an economic development analysis performed. Council will then determine whether to move forward on that study or not.

Discussion then surrounded the rules for the public hearing on the Smoky Park Highway Wal-Mart. It was the majority of Council's direction City staff disseminate the following rules after the Planning & Zoning Commission hearing on February 1, 2006: (1) the developer and organized groups be allowed a total of one hour; (2) the public comment period be limited to two hours; (3) encouraging people to contact City Council with their comments via phone, e-mail, fax, letters, meetings, etc.; (4) sign-up sheet with people directly affected by the development be allowed to speak first and then City residents being allowed to speak next; and (5) single e-mail address for citizens to write their comments to entire Council.

UDO AMENDMENT REVIEWS

Setback Requirements for Outdoor Storage and the Temporary Outdoor Display of Products

Deletion of the Number of Seats "Cap" for Theaters in the Urban Village District

Deletion of Planned Unit Development Zoning Overlay District

Due to the lateness of the hour, it was the consensus of Council to forego the briefings and meet with staff prior to the public hearings if they need clarification before the scheduled public hearings on January 24, 2006.

REPORT ON FLOOD MANAGEMENT

Vice-Mayor Jones reported on the Asheville-Buncombe Flood Reduction Task Force. She said that she has been working with Buncombe County Commissioner David Gantt on this initiative, which purpose is to establish a regional approach in developing a long-range plan based on best practices models to protect our floodplains/floodways and manage our watershed. Such a plan should integrate objectives of flood control, transportation, economic development, land use and community planning, recreation and environmental preservation.

The objectives would be (1) to study strategies to reduce future flood levels in the Swannanoa Watershed during heavy rain episodes; (2) to study strategies to minimize the economic, environmental and social impacts and the risk to human life when floods occur in the future; (3) to analyze whether current development patters are affecting the severity of flooding during heavy rain events; (4) to review the current flood studies underway and access the feasibility of developing a dynamic and predictive capability to keep abreast of those variables that affect future flood potential; (5) to make recommendations to the local governments on these matters; and (6) to act as a citizen advisory board for stormwater utility issues, as needed.

She said the structure would be that this is a citizen task force, to be comprised of individuals with technical expertise in this topic. Buncombe County will appoint five members; Asheville City Council will appoint five members; and Black Mountain Town Council will appoint two members. Staff support will be made available to facilitate the work product, if necessary. And, staff will be available to present background information to the commission, if requested.

She said the timeline (which can be extended if needed) is six months to report back to the elective bodies – the Buncombe County Commissioners, Asheville City Council and Black Mountain Town Aldermen.

She said that a defined scope of work is being proposed to initiate the commission. A similar effort may follow for Hominy Valley.

After a short discussion, Vice-Mayor Jones said that she would meet with Commissioner Gantt and discuss Council's concerns and work with City Attorney on an ordinance to bring back to City Council for consideration.

APPOINTMENT OF METROPOLITAN PLANNING ORGANIZATION/TRANSPORTATION ADVISORY COMMITTEE MEMBERS

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, moved to waive the rules in order to take formal action at this meeting in order to facilitate the appointment of the Metropolitan Planning Organization/Transportation Advisory Committee (TAC) members. She explained that the current boards and commissions appointments are scheduled for the Council's retreat on January 20-21, 2006. Historically we have done the appointment process at a worksession. Unfortunately the first organizational meeting of the TAC occurs on January 19, 2006, and she feels we will serve the community best if we can have both our representatives at the table from the start. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Vice-Mayor Jones said that is one of the two members of City Council on the TAC, however, she will not be seeking reappointment in that others have expressed an interest to serve on that Committee. City Council will need to appoint two regular members and two alternate members to that Committee.

Councilman Mumpower said that historically people are removed from boards based on attendance or failure to perform in an effective manner. During his four years of service on the TAC, he worked hard to act in terms of balance and he felt this process is an effort to set up the committee for people who share a fixed agenda to tilt the participation of this very important board in their direction. He felt this was a political agenda and was uncomfortable in proceeding in this fashion. He stressed that this is changing policy without deliberation.

Councilman Davis spoke in support of Councilman Mumpower remaining on the TAC in that he has represented Asheville well and there is no reason to replace him.

Mayor Bellamy spoke in support of Councilman Mumpower's dedication to the TAC and would support his reappointment.

After Mayor Bellamy called for a vote, Councilman Newman received 6 votes; Councilman Freeborn received 4 votes; Councilman Davis received 3 votes; Councilwoman Cape received 3 votes; and Councilman Mumpower received 3 votes. Therefore, Councilman Newman and Councilman Freeborn were appointed as the City's regular representatives to the MPO/TAC. When asked who was interested in the alternate positions on the TAC, Councilwoman Cape and

Councilman Davis expressed an interest. Therefore, Councilwoman Cape and Councilman Davis were appointed as the City's alternate representatives to the MPO/TAC.

BOARDS AND COMMISSIONS:

Vice-Mayor Jones outlined a process in which she felt would streamline the process, in that they had received approximately 140 applications for 27 vacancies. Councilman Mumpower spoke against this process in that he felt it was too far away from the established process. After a brief discussion, Vice-Mayor Jones determined to proceed with the appointment process used in the past.

It was the consensus of City Council to (1) interview Jonathan Glover, James Sheeler and Cheryl Johnson for alternate positions; and (2) reappoint Richard Fort and Robert Middlemas as regular members on the Board of Adjustment.

It was the consensus of City Council to (1) interview Rev. Keith Ogden, Veronica Sotolongo and Martha Brown for a vacancy; and (2) reappoint Michael Burkhead to the Asheville-Buncombe Community Relations Council.

It was the consensus of City Council to (1) interview Guadalupe Chavarria, Michael McDonough, Kitty Brown, Sherry Luft, Larry Johnson and Daniel Sanders for a vacancy; and (2) reappoint Pat Whalen to the Asheville Downtown Commission.

It was the consensus of City Council to interview Becky Anderson, John Payne, Phillip Ray Gibson, Kenneth Brown, Matthew Raker, Neil Newberry, Smithson Mills, LaVoy Spooner, Lewis Lankford and Kimberly Hodges for vacancies on the Economic Development Advisory Committee.

It was the consensus of City Council to interview Paul Ford, Jeff McMickens, Mary Robertson, C. Joy Thigpen and Jessica Erwin Leaven for vacancies on the Asheville-Buncombe Fair Housing Commission.

It was the consensus of City Council to (1) interview Glen Locascio, Starr Silvis, Sarai Rightmyer, Dawa Clark and Marc Hunt; and (2) reappoint Linda Giltz and David Tuch to the Asheville Greenway Commission.

It was the consensus of City Council to delay appointment on the Metropolitan Sewerage District Board of Directors until City Council's annual retreat.

It was the consensus of City Council to appoint Barbara Hodgson to the Noise Ordinance Appeals Board.

It was the consensus of City Council to (1) interview Terry Taylor, Kenn Kotara, Kristin MacLeod, Janiece Meek and Bill Branyon; and (2) reappoint Bill Fishburne and Dana Irwin to the Public Art Board.

It was the consensus of City Council to (1) interview Richard Koerber, Hartwell Carson, Starr Silvis, Donna Clark, Bob Gale and Bill Branyon; and (2) reappoint Bill Jones to the Asheville Tree Commission.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:30 p.m.

Magdalen Bowleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Friday – January 20, 2006 – 11:30 a.m.
Saturday – January 21, 2006 – 8:00 a.m.
W.C. Reid Recreation Center

City Council Retreat

Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Friday, January 20, 2006 – 12:10 p.m.

City Council each identified what their expectations would be of this retreat.

Ms. Belinda Odom, Human Resources Director, and Mr. Lewis Isaac, Training Coordinator, reviewed with Council their Myers-Briggs profile, explaining how their managerial type is based on their personality type. Council discussed the implications of the Myers-Briggs information.

Discussion then surrounded ground rules for the meeting.

Mayor Bellamy then reviewed with Council the Committee structure, their rules and appointments. She said that Council committee are to be policy review and discussion arms of the City Council, providing an opportunity to explore the implications of policy alternatives and the policy development process; and to serve in ad advisory capacity to the Council as a whole on reviewing policy matters referred to them; informing and educating the Council on existing city programs and issues and other such matters as the committee deems appropriate. In reviewing issues, the committees are expected to anticipate the full range of considerations and concerns related to the various policy questions. When participating on committees, members are expected to temper their role as policy advocates in order to fully evaluate all the alternatives. The City Council committees shall not become involved in the administration of City government. Each committee has a chairperson and an agenda. Mayor will be an ex-officio member to each Committee.

- Budget and Finance Committee
  Purpose: The Budget and Finance Committee's area of interest includes Annual Budget Process, Capital Improvement Programming, Financial Reports, Taxes, Fees, Assessments, and Infrastructure Finance.

  Councilman Newman, Chairman
  Councilman Mumpower
  Councilman Freeborn

  Staff: Ben Durant

- Public Safety Committee
  Purpose: To recommend public safety policy direction in areas of interest including: police, fire, EMS, and emergency management services. Matters relating to the illegal use and possession of narcotics and drugs, intergovernmental relations, cooperation with law enforcement and fire and rescue, and emergency management agencies, as well as educational and research organizations, involved with control and prevention of illegal traffic in and use of narcotics and drugs.

Councilman Mumpower, Chairman
Councilman Davis
Councilman Freeborn

Staff: Jeff Richardson

- Land Use and Economic Development Committee
  Purpose: To recommend policies to support our long-range vision and comprehensive planning goals. Areas of focus include: develop policies to enhance the employability of Asheville residents, Planning, Land Use, Development Services, General Plan Amendments, Subdivisions, Engineering, Annexations, Building Code/Inspection, HUB strategies and Land Development Code.

  Examples of Work Plan:

  1. Development Process Improvements
     a. Development Application Process and Service Extension Requests
     b. Departmental Organization and Workflow Improvements
  2. Land Development Code Amendments
     a. Infill and Redevelopment Code Changes
     b. Smart Growth Zone Specific Incentives
     c. Environmental Recommendations
     d. Transportation Recommendations
  3. Master Planning Tools
     a. Master Planning Guidelines/Design Standards
     b. Smart Growth Map
     c. Smart Growth Incentive Matrix
     d. Neighborhood Planning Process Recommendations (in collaboration with Housing & Neighborhood Development Committee)
  4. Non-Substantive Revisions to Land Development Code ("Plain English" Version)

  Councilman Davis, Chairman
  Vice-Mayor Jones
  Councilwoman Cape

  Staff: Jeff Richardson

- Housing and Neighborhood Development
  Purpose: To enhance the quality of life in Asheville and the livability of neighborhoods by providing policy recommendations to Council on all matters relating to the creation and maintenance of housing within the City, including public housing and affordable private housing; all matters relating to the alleviation of homelessness and services provided to homeless individuals within the City.

  Vice-Mayor Holly Jones, Chairman
  Councilwoman Cape
  Councilman Newman

  Staff: Gary Jackson

Discussion surrounded the policy committee structure. Mayor Bellamy requesting Council's feedback by Friday, January 27, 2006. However, in general, Council expressed willingness to try this policy structure for one year after Mayor Bellamy clarifies some areas of concern.

As a result of Council concerns, City Attorney Oast said that he would review the duties and responsibilities of the ex-officio member.

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions.

Ms. Kim Hibbard, Associate General Counsel at the N.C. League of Municipalities, reviewed with Council the open meetings and public records laws.

As a result of discussion on public records, City Attorney Oast said that he would investigate the issue of e-mails under the public records law.

There was considerable discussion regarding Council worksessions, from holding another worksession, to the types of presentations given at worksessions. As a result of that discussion, it was the consensus of Council to (1) continue holding the worksessions on the third Tuesday of each month at 3:00 p.m. with no public comment being taken; (2) move the worksessions from the First Floor North Conference Room to the Council Chamber; (3) televise the worksessions live; and (4) brief powerpoint presentations by City staff with no hard copies being distributed. City staff will develop an informational sheet on how to make a presentation before City Council.

After discussion, it was the consensus of Council to limit public comments on public hearings to one hour with developers on conditional use permits and conditional use zonings being limited to 20-30 minutes (exclusive of the one hour).

Resulting from a discussion about Council adding items to the agenda, it was the consensus of Council that one Council member could add an item to an upcoming agenda by contacting the Mayor at least two weeks in advance (if possible) of the requested meeting agenda. It would also be a good idea to advise the City Clerk of the requested item and date as well.

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, explained how she will be reviewing the entire board and commission process, including, but not limited to, the interview process; looking at current boards for effectiveness and asking their recommendations for consolidation, etc.; reappointments; policy on County residents; etc.

At 5:35 p.m., Mayor Bellamy thanked City Council for their input and recessed the retreat until the following morning at 8:00 a.m.

Saturday, January 21, 2006 – 8:00 a.m.

Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Assistant City Manager Jeff Richardson outlined the community forum summary's top focus areas: development and growth; employment, local business and economic development opportunities; natural environment and public/alternative forms of transportation; public safety and drug issues; housing opportunities; and education and youth.

He then summarized the City department's operational objectives: enhanced citizen and customer service through improved processes and procedures; capital improvements; organizational development/professional training/performance-based compensation; and internal and external communications.

City Councils Strategic Operating Plan summary included: economic development; housing opportunities; planning; sense of place, heritage and arts; partnerships to improve critical services and infrastructure; natural and built environment; and community building.

Chief Financial Officer Ben Durant summarized the financial forecast for Council, noting that his forecast is without any shift in policies or priorities. Mr. Durant responded to various questions from Council regarding the impact of the dissolution of the water agreement. Discussion surrounding working on a relationship with our legislators to share our concerns.

With the assistance of Mayor Bellamy, facilitator Paul Godfrey led Council through a process to develop a set of goals. Each Council Member explained the following goals that were important to them:

Councilman Mumpower

- Strengthen our emphasis on enforcing existing laws and regulations over adding new ones
- Water – stay the course – request immediate open negotiations with County Commissioners and state legislators
- Remain revenue neutral during this reevaluation year
- Maintain our fund balance in terms of percentages and dollar amounts
- Give consideration to a cottage housing adjustment to the UDO for all residential zoning district
- One stop permitting and a continued balanced prioritization of serve over regulation
- Continued and strengthened drug intervention/prevention and public safety initiatives – we are making headway
- Public safety – salary adjustments to fit current market realities
- Stop the paper chase – development realistic plans that emphasize execution over fantasy
- Renew efforts to consolidate the County and City parks departments – search for other opportunities
- Initiate a "Keep It Clean – Take the Screen" drug screen program in the City – Council can start it
- Change our charter and discontinued non-partisan elections in the City – such no longer realistically exists
- Concentrate on our core service over benefits as we apply our limited resources
- Bring to embrace public safety as an economic impact tool – "Asheville – The safety city in America"
- Public and Film Artist of the Year
- Bathroom kiosks downtown
- Remain considerate of the historic indicators demonstrating that the free market is more adequate than planners, regulators and government intervention in affecting our future – a free market provides a self-correcting system that we cannot easily duplicate

Councilman Freeborn

- Riverfront Development
  - sequencing of infrastructure needs, e.g., water, roads. Etc.)

- Transportation
  - all transportation tools in one toolbox, e.g., parking, transit staff, MPO coordinator, transit planner, traffic planner, etc.
  - evaluate how we can use current budget to issues
  - improvement communication between transit staff
  - expand their scope
- More Planning & Development staff

Councilman Newman

- Asheville too expensive
  - water, taxes, etc.
- Find common ground with regional partners
- Share water services with Buncombe County under equitable outcome
  - fix infrastructure
  - fair rates
  - extension of lines
  - reimburse Asheville when applicable
- Regional cooperation agreement with Buncombe County
  - new tourism-based revenue sources to renovate Civic Center; build work-force housing consolidation of services
- Community transit
- Parking Fund conversion
- Broaden mission of Transit Commission

Councilman Davis

- Develop finite plan for Civic Center
- Begin working toward a more equitable pay plan for public safety
- Continue looking at UDO changes and development issues for Central Business District
  - to include emphasis on Eagle/Market Street area by trying to foster private/ public partnership.
  - emphasis on gateway corridors
- Stay on course on water issues
- Educational forum on what our development guidelines mean
- Presentation by City staff on the Joint Planning Area and what that means to the City in terms of the Water Agreement
- Basic City services
  - cleaning streets, sidewalks, litter
- Revisit the 2025 Plan

Councilwoman Cape

- Economic Development in Central Business District and Riverfront area
  - look at long-range development plans (30 years out with mixed use)
- Support HUB Plan
- Stay on course regarding water
- Energy efficiency (look at our own energy situation to find ways to conserve and save money
- Environmental impact
- Development Transportation Plan for DOT and look at transportation in a broad way

Vice-Mayor Jones

- Implementation of City-County Flood Task Force
- Remain revenue neutral
- Support revisions to the UDO that will produce more sustainable development and environmental stewardship and protection
- Balance building regional relationships while standing up for Asheville's needs
- Identify other sources of revenues for our Asheville's needs
- Facilitate a public/private partnership for affordable issues (housing, transit health insurance)
- Citizen involvement
- Let City Manager do his job
- Become a model of wellness

Mayor Bellamy

- Enhance basic City services
- Increase police presence in high crime neighborhoods
- Additional staff in the Planning & Development Department
- Develop a plan for completing neighborhood plans
- Support Civic Center Task Force recommendations
- Develop a workforce housing plan
- Develop new policies for Housing Trust Fund
- Implement the HUB project
- Improve water infrastructure and implement a uniformed rate
- Systematically address unfinished business, with the first being the Eagle/ Market Street Plan
- Implement the City's motto
- General obligation referendum for development needs

Mayor Bellamy then asked for Council to narrow down their goals:

Councilman Mumpower:

- public safety
- maintaining our current commitments

Vice-Mayor Jones:

- remain revenue neutral
- affordability initiatives with public/private partnerships (Affordable Housing Plan, Hope 6, cottage housing)

Councilman Davis:

- design forum for public and developers explaining the UDO
- Eagle/Market Street Development Plan
  (noting the Civic Center and pay for public safety is already in the process)

Councilwoman Cape:

- environmental energy advisory committee
- development model of neighborhood plans

Councilman Freeborn:

- transportation reorganization
- riverfront development

Councilman Newman:

- seek common ground on water and other common issues
- streamline planning

Mayor Bellamy:

- basic City services
- support of HUB project

Mayor Bellamy announced the following other topics:

- Reopen water discussions while staying on course
- Charter changes
  - Partisan/Non-Partisan Election
  - Filling 4th Council Seat
- Downtown
  - Update of the Downtown Social Issues Task Force
  - Public Toilets
  - Kiosks
- Survey youth services and additional opportunities

City Manager Jackson said that at the next worksession he would bring back to Council a 6-month plan on what City staff can realistically do.

Mayor Bellamy discussed the best way for Council to communicate with one another.

At the request of City Manager Jackson and after discussion, City Council reaffirmed their Strategic Operating Plan guidelines. Also resulting from the discussion, the following longer-term goals were established which will be discussed at Council worksessions:

- Departments Capital Improvement Plans
- Multi-year business plan
- Revisit the 2025 Comprehensive Plan
- Consider reaching underserved citizens in the downtown area
- TIF opportunities and how to use the full economic development tools

Additional topics discussed included:

- What opportunities are out there for revenue and feelings about re-hiring a lobbyist
- Strategy for the City to engage our state legislators
- City-owned properties issues
- Communication with our state delegation and other agencies in the community
- Open Meetings Law regarding policy committees
- Work hard to separate personal from philosophical differences
- Regular meeting with Buncombe County Commissioners and State legislators
- Visits with Congressman Taylor and Senator Burr and Senator Dole
- Regular updates from Buncombe County School Board

At 11:45 a.m., Mayor Bellamy adjourned the Council retreat.

Magdalen Bourbon
CITY CLERK

Jerry M. Bellamy
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 79

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Tuesday – January 24, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Air Force JROTC from Roberson High School led City Council in the Pledge of Allegiance.

INVOCATION

Ms. Sandra Smith from Holy Ground gave the invocation.

Mayor Bellamy asked for a moment of silence for Chief Warrant Officer 3 Mitch Carver who was recently killed in Mosul, Iraq, while serving his country.

CHANGES TO THE AGENDA

At the request of Councilman Davis, a report from the Civic Center Task Force will be added under New Business.

Mayor Bellamy announced that there will be no discussion at this meeting regarding board and commission appointments.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 10, 2006, AND THE WORKSESSION HELD ON JANUARY 17, 2006**

B. **RESOLUTION NO. 06-8- RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A SPECIAL WORKSESSION (FOCUSING ON GUIDING POLICIES AND GOALS FOR THE WATER SYSTEM) ON TUESDAY, JANUARY 31, 2006, AT 5:00 P.M. IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.**

RESOLUTION BOOK NO. 29 – PAGE 312

C. **RESOLUTION NO. 06-9- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE ORIGINAL AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER DATED APRIL 26, 2005, FOR A SUPPLEMENTAL GRANT TO UNDERTAKE STORMWATER IMPROVEMENTS IN THE BILTMORE VILLAGE AREA**

2

Summary: The consideration of a resolution authorizing the City Manager to amend the original agreement, dated 4/26/05 with the N.C. State Rural Economic Development Center, for a supplemental grant to undertake stormwater improvements in the Biltmore Village Area; and the accompanying budget amendment, in the amount of $80,000.

The City was successful in obtaining grant funds totaling $740,000 for planning and implementation of the River Redevelopment Plan. The Rural Center recently approached us with an additional grant opportunity that would enable the replacement of stormwater piping in Biltmore Village to alleviate street flooding during minor storm events (<10-year storm events), a high priority for area merchants. The current amendment is to accept a supplemental Phase III grant of $80,000 that will be used for these stormwater improvements in the Biltmore Village area.

Staff is continuing the public involvement process for the River Redevelopment Plan, most recently meeting with RiverLink's executive board. Future meetings to be scheduled include another, follow-up meeting with Biltmore Village merchants and a general meeting with River area stakeholders.

Pros:

- Provides a funding source for plan implementation of much need stormwater improvements that were indicated as a priority by the merchants in Biltmore Village.

Cons: None noted.

City staff recommends City Council adopt the resolution authorizing the City to amend the redevelopment planning grant agreement with the Rural Economic Development Center, and to also approve the budget amendment, in the amount of $80,000.

RESOLUTION BOOK NO. 29 – PAGE 313

D. ORDINANCE NO. 3321 - BUDGET AMENDMENT FOR A SUPPLEMENTAL GRANT TO UNDERTAKE STORMWATER IMPROVEMENTS IN THE BILTMORE VILLAGE AREA

Summary: See Consent Agenda "C" above.

ORDINANCE BOOK NO. 22 - PAGE 355

E. RESOLUTION NO. 06-10 - RESOLUTION APPOINTING A MEMBER TO THE NOISE ORDINANCE APPEALS BOARD

Summary: The consideration of appointing a member to the Noise Ordinance Appeals Board.

Ms. Sieglinde Anderson has resigned from the Noise Ordinance Appeals Board, thus leaving an unexpired term until July 1, 2006.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to arrange the proper paperwork to appoint Barbara Hodgson to serve the unexpired term of Ms. Anderson, term to expire July 1, 2006, and then to serve a full 3-year term, term to expire July 1, 2009, or until her successor has been appointed.

Staff recommends City Council appoint a member to the Noise Ordinance Appeals Board.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT NORTH MARKET AND WOODFIN STREETS, KNOWN AS 60 NORTH MARKET STREET, FOR A PROPOSED MIXED-USE RESIDENTIAL-CONDOMINIUM WITH STREET LEVEL COMMERCIAL DEVELOPMENT

ORDINANCE NO. 3322 - ORDINANCE TO GRANT A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT NORTH MARKET AND WOODFIN STREETS, KNOWN AS 60 NORTH MARKET STREET, FOR A PROPOSED MIXED-USE RESIDENTIAL-CONDOMINIUM WITH STREET LEVEL COMMERCIAL DEVELOPMENT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:08 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for property located at North Market and Woodfin Streets, known as 60 North Market Street, for a proposed mixed-use residential-condominium with street level commercial development (Attachment to City Exhibit 3 – Location Map).

The application seeks approval for a mixed-use building containing 75 residential units and 6,000 square feet of commercial space on an 'L-shaped' parking lot adjacent to the Thomas Wolfe House and the Renaissance Hotel (Attachment to City Exhibit 3 – Aerial Map). The project is somewhat complicated in that the proposed building has at least 4 public facades and no rear façade, making each façade unique and important. The project seeks to provide two storefront spaces along the two major street frontages. The façade facing the Thomas Wolfe House

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provides townhomes at the ground level that are accessed directly from the sidewalk provided along the property edge. To reduce the scale next to the Wolfe House historic site, the building is scaled back to two stories at this corner with the Spruce Street sidewalk. The building façade along Market Street is nine stories and the façade along Woodfin Street is seven stories (City Exhibit 4 – Building Elevations). The building edge along the Spruce Street sidewalk (facing the Renaissance Hotel) is also seven stories tall including the on-site parking structure. All parking needs of the building residents and employees of the commercial spaces will be provided in this garage. The elevations provided with the submittal illustrate the facades of the building. The perspective drawings and streetscape photos are also helpful in evaluating the scale of the structure and the relationship to the Thomas Wolfe House. The proposed building would not be the largest building in the vicinity since the Renaissance Hotel is 12 stories tall. The Altamont Hotel Apartments (at eight stories) are adjacent to the Woodfin Street façade. The proposed building would be built up to the sidewalks (0' setback) along the Market Street and Woodfin Street frontages. The building would also be built to the edge of the property line along the Spruce Street sidewalk. Along the property adjacent to the Wolfe House as noted before, the project provides townhome units. The building is setback at least 20 feet from this side property line. In addition, because the Wolfe House provides a setback from its property line, the building edge will be about 40 feet from the front of this side of the proposed building. There are no required side setbacks in the CBD. Having the town homes use along this side could provide activity along this edge and avoid undesirable nighttime activity in the vicinity of the Wolfe house.

The 2025 Center City Plan encourages and anticipates additional residential growth in the Central Business District. Over the past decade, many downtown buildings have been renovated into condominium residential units. The older stock of existing buildings is almost exhausted for renovation and now the construction of new buildings on infill lots will become more common. The use of infill lots for new development fulfills one of the goals of Smart Growth by encouraging this development where the infrastructure is already in place to serve the growth. As noted in the City Development plan, residential development in downtown is the cornerstone of downtown economic health and strengthens the vitality of the City Center. New construction must include high quality design as noted in the Downtown Design Guidelines and the Center City Plan. The proposed building was reviewed and approved by the Downtown Commission. They noted that the design reflected the context of the surrounding area and the design was sensitive to this relationship along each side. The Downtown Commission also noted that the project scale was appropriate for the area because of the surrounding land uses and the challenging context of the Thomas Wolfe House. The Downtown Commission requested that the project come back for review of building materials. This review and approval was completed on 1-13-06 at the regular meeting of the Downtown Commission.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. City Council must determine that the project meets the following conditions:

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project will meet applicable building codes. The project is not expected to endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site is a surface parking lot with some trees located in a previously developed area of downtown. The project may be considered to be compatible with the surrounding area.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is expected to add value to this area of downtown and is not expected to injure the value of adjoining properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This condition is probably the most talked about one regarding this proposal. The developer has worked to make the project fit with the character of the surrounding area by amending the layout of the building, design and materials used. The proposed building is not the largest building in the area or the tallest. The project is also in scale with the context of the Central Business District guidelines. The developer has reduced the height of the building to two stories at the corner it shares with the front of the Thomas Wolfe House. This is expected to improve the scale and compatibility with the Wolfe House. The neighborhood has never been a static place in time and this is witnessed by the large variety and scale of buildings covering a 120-year time period. With these ideas in mind, the project is thought to meet this standard.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** Redevelopment proposed for in-fill lots in the city center such as this one, is encouraged by the comprehensive plan and complies with smart growth plans adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project is appropriately located for infrastructure needs and services. None of these items are expected to be a problem for this proposal.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The project is not expected to create a traffic hazard or cause undue traffic congestion.

Pros

- Residential development in the CBD reinforces the vitality of the downtown area.
- The proposal supports the Smart Growth goals of the city.
- The project may provide more eyes on the Wolfe House and may protect it from future vandalism.
- The proposed building provides a setback from the property line shared with the Thomas Wolfe House and steps down in size to two stories at the corner closest to the Wolfe House.

Cons

- The proposal changes the face of the neighborhood surrounding the Thomas Wolfe House (possibly a pro).
- Some views to and from the Wolfe House may change depending on vantage point.

At their December 7, 2005, meeting, the Planning and Zoning Commission voted 6-0 to recommend approval of the proposal with TRC conditions added as conditions. Staff concur with this recommendation.

Mr. Gerald Green, representing the developer, spoke in support of the project. He said that (1) approximately 12 meetings have been held with Steve Hill, Manager of the Wolfe House Memorial, and Becca Johnson, with the State Historic Preservation Office, to discuss the proposed building and site design; (2) more than 12 meetngs have been held with the Asheville

Downtown Commission members, and Commission Design Committee to review and discuss the building design; (3) the developmetn team met with staff of the City of Asheville and Housing Authority to discuss the proposed dvelopment and its impact on the Authority's apartments in the Altamont Hotel. The development has been endorsed by Housing Authority Director Gene Bell; (4) the sidewalk located adjacent to the Wolfe Memorial and providing pedestrian access from Market Street to Spruce Street will be enhanced as part of the project. The sidewalk is located on the property of the developer and there is no requirement to maintain it. However, the develoepr understands the important of the sidewalk. It will be enhanced with additional landscaping and townhomes will front on it, giving it a residential edge and enlivening it; (5) the development will bring more people to this area of downtown, enhancing the existing business and residential uses in the area; (6) the residents of the proposed development will provide security for the Thomas Wolfe House Memorial; and (7) the proposed structure is in sacle with the buildings in the area (Altamont Hotel, Renaissance Hotel, Patla-Straus Legal Buildling) (Applicant Exhibit 1).

The following individuals spoke in support of the project:

The President of the Asheville Community Theatre
Mr. Scott Best, attorney for the Asheville Community Theatre
Mr. Alan Ditmore

After rebuttal, Mayor Bellamy closed the public hearing at 5:32 p.m.

Councilwoman Cape voiced her concern about the safety and pedestrian amenities along the parking areas.

Upon inquiry of Councilman Freeborn, Mr. Green stated that they would be open to rooftop gardens, but a green roof would be cost prohibitive.

Councilman Mumpower moved for the adoption of Ordinance No. 3322, granting a conditional use permit for a new building known as 60 North Market Street subject to the TRC conditions being met. This motion was seconded by Councilman Newman.

Councilman Freeborn suggested an amendment to the motion to icnlude a requirement for rooftop gardens. After a brief discussion, Councilman Freeborn felt if there was no support for the amendment, he would withdraw his suggestion.

Upon inquiry of Councilwoman Cape, Mr. Green explained the screening of the air conditioning.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTIES ON HUDSON AND RICH STREETS, IDENTIFIED AS HUDSON STREET COTTAGES, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED COURTYARD COTTAGE COMMUNITY CONSISTING OF SINGLE-FAMILY AND DUPLEX UNITS

ORDINANCE NO. 3323 - ORDINANCE TO CONDITIONALLY ZONE PROPERTIES ON HUDSON AND RICH STREETS, IDENTIFIED AS HUDSON STREET COTTAGES, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED COURTYARD COTTAGE COMMUNITY CONSISTING OF SINGLE-FAMILY AND DUPLEX UNITS

Mayor Bellamy opened the public hearing at 5:42 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone properties on Hudson and Rich Streets, identified as Hudson Street Cottages, from RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Multi-Family High Density District/Conditional Zoning for a proposed courtyard cottage community consisting of single-family and duplex units. This public hearing was advertised on January 13 and 20, 2006.

Mr. Esselstyn said that this review concerns two lots located near the corner of Hudson Street and Rich Street in West Asheville. The northern lot is currently zoned RM-16, while the southern lot is zoned RM-8. The applicant seeks conditional zoning for the both lots to RM-16 to enable the development of an infill housing project on both lots. If the conditional zoning is approved, the applicant would combine the two parcels into a single lot having a total area of approximately 0.6 acres. The most significant grade change on the property is near the southern edge where the land slopes down from Rich Street toward the central part of the lot.

The petition for a rezoning at the corner of Hudson and Rich streets was originally submitted as a straight rezoning, and came before the Planning & Zoning Commission as such on October 4, 2005. The Commission, at that meeting, recommended that the petition be resubmitted as a conditional zoning so that a concept plan could be considered. The applicants followed that recommendation, providing the concept plan to be considered today. He noted that the plans he presenting are plans which the applicant provided to him this morning. Council members may notice some small differences between these plans and the plans provided in their packets. He said he would describe each of these modifications in detail.

The proposed development would consist of six cottages and one duplex structure—a total of eight units. The applicant intends for the units to be sold individually as condominiums, with a requirement that at least six of the eight be owner-occupied. Parking would be provided with a combination of surface parking and garages underneath the duplex unit, accessed through three driveways connecting to Hudson Street.

The applicant, after discussion with the Engineering Department, is proposing construction of a sidewalk along the Hudson Street frontage, with a continued sidewalk connection extending north to State Street. This sidewalk extension would substitute for the construction of sidewalk along Rich Street.

Multi-family and single family dwellings are permitted uses in the RM-16 district. The proposed number of units conforms with the density standards for the district. The combined habitable area of the residences would be approximately 8,600 square feet. The cottages would each contain two habitable stories, while the duplex would provide one habitable story over garages.

A combination of vegetation and fence screening meeting type B buffer requirements is shown and appears to satisfy the standards.

Surrounding zoning is RM-16 (High Density Multi-Family) to the north and northeast, and RM-8 to the northwest, west, southwest, south, and southeast. The zoning to the east is a mix of RM-8 and RM-16. The adjacent residential areas are mostly single-family homes or vacant residential lots. The closest duplex appears to be at the corner of Hudson and State, about 350 feet away. The average lot size in the area is roughly 0.23 acres.

It appears this parcel was originally zoned RM-8 partly to be consistent with the zoning of the other parcels facing Rich Street. On the east (opposite) side of Hudson Street, Yale Avenue is the dividing line between the RM-8 and RM-16; an extension the center-line of Yale Avenue across Hudson Street intersects with the line dividing RM-8 from RM-16 on the west side.

At their November 21, 2005, meeting the Technical Review Committee, after concerns were expressed about the adequacy of the parking layout shown, made a decision to review revised plans at the December 5 informal meeting. At this December 5 meeting, the concept plan was approved with a few conditions added to the original staff report by the Engineering Department.

These revised plans were provided to the Planning and Zoning Commission ("Commission") for their review prior to their December 7, 2005, meeting. At that meeting, the Commission considered the concept plan including one small change to a driveway and voted unanimously to recommend approval of the conditional zoning. The plans seen by the Commission are the same as the ones Council received in their packets.

Prior to the *first* Commission meeting (considering the *straight* rezoning), Planning staff had received communications from multiple neighbors who were concerned about the rezoning. A number of neighbors spoke in opposition to the straight rezoning at the October Commission meeting. Since the concept plans have been submitted for the *conditional* zoning, he has heard from three neighbors who were mostly interested in more information about the conditional zoning process and the concept plans. Two neighbors spoke in opposition at the Technical Review Committee ("TRC") meeting, primarily concerned about traffic and compatibility. At the December 7, 2005, Commission meeting, one neighbor spoke in opposition to the project, and one in favor. In advance of that meeting, the applicant sent mailings to neighboring property owners, posted plans on a web site, and held a neighborhood meeting at the site. Since that meeting, he has received one email about the process, but no other communications expressing an opinion on the project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards. Staff's review indicates that all seven standards are met as proposed in the conceptual site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements (pending final approval from the TRC which will be decided before the P&Z meeting). The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use is compatible with the

surrounding natural features and topography. The garage parking takes advantage of a change in slope.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Staff does not expect that the proposed use would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction as negative.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed project would be in harmony with these characteristics of the area. While the layout differs from any existing residential development in the immediate area, staff feels that the cottages' design would be complementary to the neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** One of the adopted Smart Growth Land Use Policies in Asheville's City Development Plan 2025 states that compatible, higher density residential infill development should be encouraged. Another policy in this list states that traditional neighborhood development patterns should be recognized and encouraged. A conditional zoning to allow the proposed project would be in keeping with the Strategic Operating Plan's objective of encouraging higher density infill development. With the concept plan, it can be said that the proposed use would generally conform to these plans and policies.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location near State Street ensures access to transportation facilities and other services. Transit route 9 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Pros

- Proposed project would be compatible with the higher-density zoning to its north.
- Higher density infill development is consistent with both the City's Comprehensive Plan and Strategic Plan.
- Cottages' architecture, as shown in elevations, would be in harmony with older neighborhood structures.

Cons

- History of some neighborhood opposition to higher density.

Staff's review indicates that all seven standards for conditional use permits are met as proposed in the conceptual site plan.

Mr. Esselstyn then identified the differences in the plans being shown now and those received earlier by City Council. A number of these changes were prompted by the applicant's decision since early December to pursue the use of solar energy to heat hot water for the units. Solar water heating panels would be installed on the roofs of each of the building. The applicant explains that the following five modifications were made to optimize the capture of the sun's

energy: (1) The elevation drawings of the units now include depictions of solar hot water panels added to the roofs. These were not shown on the earlier plans. He noted that the drawings suggest that the panels would be flush with the roof and not visible from the side, but the applicant acknowledges that the exact angle of the panels has not yet been determined, and their surface may extend a small distance away from the roof surface; (2) The style of the roofs shown in the plans is a gable style, rather than the modified pyramid-hip style illustrated in the previous color plan. The gable allows a larger south-facing surface for the solar panels; (3) The orientation of the northwest and southwest units has been rotated to have the long axis pointing east-west, again for solar gain. Five trees (other than those on the patio) are no longer shown on the interior of the site. The applicant states that these are not shown because the optimal locations have not been determined. The applicant states that it is their desire and intent to include trees that would provide shade in the summer, lose their leaves to allow sun in the winter, and not interfere with the panels. They did not want to show them in a location that would turn out to hinder these goals; (4) The applicant also wishes to specify that the arrangement of the street trees may be modified from what is shown. Working within the requirements of the ordinance, they may shift the trees to concentrate the shade away from the solar panels, while still complying with planting requirements; and (5) The next change was prompted by the applicant's desire to protect the root structure of the 30" caliper tree at the north of the site: The northwest cottage unit has been shifted towards the western edge of the property, away from the trunk of the tree.

Mr. Esselstyn said that the remaining four changes are not related to tree preservation or facilitation of solar heating: (1) The plans given to Council included floor plans and elevations for 2-bedroom cottage units. The revised plans show all the cottages as the 3-bedroom variety; (2) One earlier elevation showing the carriage house indicated a split in the height of the ridge line. The revised elevations for this building do not include this split; (3) Similarly, earlier elevations for some buildings showed masonry chimneys on the exterior walls. The amended plans do not include any chimneys. The applicant states that they may still wish to add chimneys if a buyer desires a wood-burning stove, but that the units' default design is without one; and (4) The previous floor plans for the carriage-house included a shared "community space." The applicant has removed the community space from that floor plan, citing complications with access issues and drafting of condo association documents.

Staff feels that these modifications received today do not affect the fundamental character of the proposed project and stands by its recommendation. However, staff does recommend that the inclusion of five trees on the interior of the site (which has been stated as a desire of the applicant) be added as a *required* condition.

Staff recommends approval of the Conditional Zoning based on the submitted concept plan subject to the conditions listed in the TRC staff report.

Mr. Gerald Green, member of the project's development team, spoke in support of the project which he feels will compliment the growth in west Asheville.

Mayor Bellamy closed the public hearing at 6:04 p.m.

Mr. Green responded to Councilwoman Cape's concern about the materials for the parking surface.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3323 to conditionally zone properties located on Hudson and Rich Streets from RM-8 and RM-16 to RM-16/Conditional

Zoning based on the submitted conceptual plan and subject to (1) the Technical Review Committee's conditions being met and (2) the inclusion of five trees on the interior of the site. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 430 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Bellamy said that today she received a letter from Gerald Green, representing the applicant, which states "On behalf of the Asheville Day Nursery, we would like to request that City Council remand our project back to the Technical Review Committee in order to revise our application from a straight rezoning request to a conditional zoning request. A change in our application will allow us to gain input from the neighborhood and provide them with a project specific development and proposed use of the property." Therefore, Vice-Mayor Jones moved to remand this item back to the Technical Review Committee. This motion was seconded by Councilman Mumpower and carried unanimously.

City Attorney Oast said that a valid protest petition had been filed on this matter, however, since the applicant will be going back to the Technical Review Committee, the protest petition will need to be re-filed.

D. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED ON CHARLOTTE HIGHWAY (5 HEMPHILL STREET) FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3324 - ORDINANCE TO REZONE PROPERTIES LOCATED ON CHARLOTTE HIGHWAY (5 HEMPHILL STREET) FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Bellamy opened the public hearing at 6:06 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone properties located on Charlotte Highway (5 Hemphill Street) from Community Business I District to Community Business II District. This public hearing was advertised on January 13 and 20, 2006.

The subject properties are located on Alt US 74 (Charlotte Highway) east of the Blue Ridge Parkway and the interchange of US 74 with I-40 and I-240. The property at 5 Hemphill Road currently contains a residence (Buncombe County tax listings indicate three dwellings) and has a small pond located on the site. The portion of the other subject property is currently vacant and is moderate to steeply sloping.

The property is bordered on all sides by residentially zoned property, except to the south where the property along Charlotte Highway is unzoned as the City's extraterritorial jurisdiction terminates at this lot.

The land uses in the area are mostly single-family in nature in all directions. However, to the south, following a vacant parcel that is being cleared, there is a commercial use (a monument company) and across the Charlotte Highway is located the Fernwood Mobile Home Park.

The applicant, Kitzi Ruth Miller Bocook, is seeking the rezoning to afford potential developers greater flexibility in design. The major difference between the CBI and CBII zoning classifications is the size of structures that can be placed on site. There are a few differences, as well, in the uses allowed in the zoning districts. Developing the smaller parcel with a large structure would present many challenges without combining this property with additional land. The challenges would come in meeting all parking and landscaping required when developing with a large structure.

Community Business II zoning does allow for residences, so no nonconforming situation is created with this rezoning.

At a meeting on December 7, 2005 the Planning and Zoning Commission recommended the approval of this rezoning to City Council (5-1).

Pros

- The property is located on a major (five lane) thoroughfare very near to the intersection of this thoroughfare with the interstate highway system.
- The rezoning would allow greater development flexibility on the subject parcels.

Cons

- The property is bordered on all sides by residentially zoned and used properties, except to the south where there is no zoning. This rezoning would allow for a larger commercial development next to these residential properties.
- Meeting all development regulations for a larger structure would be challenging on the smaller parcel.

Mayor Bellamy closed the public hearing at 6:09 p.m.

Councilwoman Cape explained how she could not support this rezoning in that she didn't want to perpetuate another sprawl for a large scale development.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3324. This motion was seconded by Councilman Davis.

Upon inquiry of Councilman Mumpower, Ms. Kitzi Bocook, property owner, stated that she is requesting this rezoning to maximize the value of her property.

Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford explained the Planning Department's vision for this area. He would have preferred a project come through as conditional zoning, but is recommending approval given the development pattern in the area, topography of the property and the size of the parcels.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

E. PUBLIC HEARING TO CONSIDER REZONING SEVERAL PROPERTIES ALONG SMOKY PARK HIGHWAY AND RUTHERFORD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:22 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone several properties along Smoky Park Highway and Rutherford Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Highway Business District. This public hearing was advertised on January 13 and 20, 2006.

The subject properties are located in the City's extraterritorial jurisdiction (ETJ) and were zoned CB-II during the ETJ expansion that occurred in 2001. A property owner of two vacant parcels has requested that the City look into the zoning of this 27.5 acre area. The property would be very difficult to develop because the majority of the property is in the 100-year floodplain area. Any development of the property that is close up to the street, under the current zoning, would be expensive because of the need to elevate the buildings to get out of the 100-year floodplain. It is an area that has largely been previously developed, so the development that would occur there would be a redevelopment type of activity. He used a chart to show what the difference is in the CB-II District and the Highway Business District, noting the big differences are the parking requirements and the structure sizes. Because of the 100-year floodplain issue, the setback of the building is important to the redevelopment of the property. He would be more comfortable if there was an intervening zoning district that allowed parking to be located in the front of the zoning, than Highway Business District, but that is pretty much the one that would make sense for the area. Although the City doesn't have something that would limit the amount of development, but anything greater than 100,000 square feet will have to come to City Council for review and approval.

The Planning and Zoning Commission directed staff to perform an expedited zoning study for this area on September 7, 2005.

The property owner requested a rezoning from CB-II (Community Business II) to HB (Highway Business). Staff analysis indicates that HB is a better fit with the existing land uses in the area and with the existing zoning pattern of the area.

- The Community Business-II zoning district is established to provide areas for medium-to-high density business and service uses serving several neighborhoods. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets that serve multiple residential neighborhoods.

- The Highway Business district is established to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare.

Pros

- Corrects some non-conforming uses.
- Recognizes the properties' orientation to a major thoroughfare – Smoky Park Highway.

Cons

- Could increase traffic on Smoky Park Highway.
- HB is less compatible with surrounding residential development.

The Planning and Zoning Commission recommended approval of this request on December 7, 2005, by a vote of 6-0. Staff also recommends approval of this rezoning.

Mr. Alan Ditmore spoke in support of the rezoning.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Upon inquiry of Councilman Freeborn, Mr. Shuford explained that whatever use is allowed in the Highway Business District would be permitted.

Mr. Shuford responded to various questions from Council, some being, but are not limited to: why the developer would not seek a variance from the Board of Adjustment; what would the developer have to do to be able to build in the floodplain; what does a variance do for marketability of the property; is this rezoning short-sighted in terms of flooding;

Mr. Chad Pierce, Stormwater Services Manager, responded to Council's questions/ concerns regarding the floodway and flood fringe areas.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved to deny the rezoning of several properties along Smoky Park Highway and Rutherford Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Highway Business District given the floodplain issues and design constraints. This motion was seconded by Councilwoman Cape.

Councilman Newman said that if the property owner would like to propose a more intensive level of development, he would be open to consider that.

Councilman Davis said that the reality is that there are multiple properties involved and requesting variances is not the clean way to develop the property. He felt that this stretch of highway is a highway business type area and would support rezoning the property.

Councilman Mumpower felt the City is laying a heavy hand on this property owner and was concerned of the message this sends.

Councilwoman Cape felt Council's responsibility is for the overall planning and to have continued sprawl along that highway concerns her.

In response to Councilman Freeborn, Mr. Shuford said that if the property were developed, the buildings could front on Rutherford Road and parking would be allowed in the rear of the buildings.

Mayor Bellamy felt that since the study was performed at the request of the Planning & Zoning Commission and would support their recommendation.

The motion made by Councilman Newman and seconded by Councilwoman Cape to deny the rezoning request carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes."

F. **PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED AT 16 FORSYTHIA LANE FROM COMMUNITY BUSINESS II DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 3325 - ORDINANCE TO REZONE PROPERTIES LOCATED AT 16 FORSYTHIA LANE FROM COMMUNITY BUSINESS II DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:56 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone properties located at 16 Forsythia Lane from Community Business II District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on January 13 and 20, 2006.

16 Forsythia is a split-zoned parcel that was initially included in Smoky Park Highway/ Rutherford Road zoning study. As this property's access is from a residential street (as opposed to Rutherford Road or Smoky Park Highway), staff recommends deleting this parcel from the study area and rezoning it to RM-16, the same as the other residential property in this area. The aerial illustrates this situation; it shows the development of the parcel with a single manufactured home with access off Forsythia Lane.

- The Community Business-II zoning district is established to provide areas for medium-to-high density business and service uses serving several neighborhoods. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets that serve multiple residential neighborhoods.

- The RM-16 zoning district is intended to provide a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

Pros
- Corrects split-zoned situation.
- Recognizes the properties' orientation to a residential street.

Cons
- None noted.

The Planning and Zoning Commission recommended approval of this rezoning on December 7, 2005, by a vote of 6-0. Staff also recommends approval of this rezoning proposal.

Mayor Bellamy closed the public hearing at 6:58 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cape moved for the adoption of Ordinance No. 3325. This motion was seconded by Councilman Mumpower and carried unanimously.

G. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY SETBACK REQUIREMENTS FOR THE OUTDOOR STORAGE AND DISPLAY OF PRODUCTS

ORDINANCE NO. 3326- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY SETBACK REQUIREMENTS FOR THE OUTDOOR STORAGE AND DISPLAY OF PRODUCTS

Mayor Bellamy opened the public hearing at 6:58 p.m.

Director of Development Services Joe Heard said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) for the purpose of adding setback requirements for outdoor storage and the temporary outdoor display of products. This public hearing was advertised on January 13 and 20, 2006.

This proposed ordinance was drafted in response to numerous requests from local businesses and property owners about having standards that address outdoor storage and displays. In the past, the Planning & Development Department has used an interpretation similar to the proposed amendment to allow these types of activities. While evaluating these issues, staff determined that outdoor storage (materials, containers, outdoor displays) should be classified as a more permanent activity that is usually housed within a building. Therefore, staff felt that it was reasonable to use building setbacks as the most appropriate standard. However, temporary outdoor displays of merchandise were deemed to be more in keeping with promotional activities and could be located wherever parking or vehicular areas are allowed (behind the required landscaped areas).

Pros –

- This amendment creates enforceable allowances for businesses to provide outdoor storage and displays.
- This amendment takes a reasonable approach by allowing more permanent storage and displays to be consistent with building setbacks, but allowing the temporary display of products (which typically require greater visibility) to be located closer to the front of a property.

Cons –

- In the past, several citizens have voiced concerns about the appearance of outdoor displays.
- Certain businesses may not want to have any limitations placed on these activities.

The Planning and Zoning Commission recommended approval of these code amendments on November 2, 2005, by a unanimous vote of 6-0. Planning staff recommends approval of the proposed ordinance amendment as well.

Mayor Bellamy closed the public hearing at 7:00 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cape moved for the adoption of Ordinance No. 3326. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE NUMBER OF SEATS "CAP" FOR THEATERS IN THE URBAN VILLAGE DISTRICT

ORDINANCE NO. 3327- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE NUMBER OF SEATS "CAP" FOR THEATERS IN THE URBAN VILLAGE DISTRICT

Mayor Bellamy opened the public hearing at 7:01 p.m.

Planning & Zoning Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to delete the number of seats "cap" for theaters in the Urban Village zoning district. This public hearing was advertised on January 13 and 20, 2006.

This code amendment would delete the number of seats "cap" for theaters in the Urban Village zoning district. When the Urban Village District was first established, a 200 seat cap for theaters was established consistent with several other zoning districts. The Urban Village District may contain development intensity second only to the Central Business District so having this limitation for projects that receive master plan approval by City Council seems unnecessary.

The proposed ordinance would eliminate this cap and allow City Council to approve theaters of larger size as part of their overall approval of an Urban Village master plan.

On December 7, 2005, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment as well.

Mayor Bellamy closed the public hearing at 7:02 p.m.

Upon inquiry of Vice-Mayor Jones, Mr. Shuford explained that there is no Urban Village District in the City that has a theatre in it and if the developer wanted to add one, it would have to come back to City Council for review.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3327. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 7:04 p.m., Mayor Bellamy announced a short recess.

I. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT

ORDINANCE NO. 3328 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT

Mayor Bellamy opened the public hearing at 7:33 p.m.

Development Services Director Joe Heard said that this is the consideration of an amendment to the Unified Development Ordinance to delete the Planned Unit Development Zoning Overly District. This public hearing was advertised on January 13 and 20, 2006.

The City of Asheville's Unified Development Ordinance, when drafted in the 1990's, established a Planned Unit Development (PUD) Overlay District in order to "promote innovative design in development by providing for flexibility in site design that permits a mixture of housing types and the combination of housing with other uses such as neighborhood shopping centers and offices." This overlay district as a mechanism for promoting flexible development has only been applied for five (5) times in approximately eight (8) years. Largely, the lack of use of this planning tool, can be attributed to more recent additions to the UDO that also give flexibility to an applicant in the design and density of their project. These include conditional zoning (and conditional use zoning before it) and the conditional use of density bonuses for residential districts.

Due to the lack of use of this tool and the availability of less complicated mechanisms for flexible development in Asheville's jurisdiction, it is proposed in this ordinance that the PUD Overlay District be dropped from the UDO.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment deletes from the UDO a little used and complicated planning tool.
- Deleting this provision will clear up some conflicts between the PUD standards and those of other sections of the UDO, such as the hillside regulations.

Cons-

- The Planned Unit Development Overlay District has had application, although limited, in the past seven years. Deleting this takes away an available development option.

The Planning and Zoning Commission recommended approval of this code amendment on July 6, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Mayor Bellamy closed the public hearing at 7:35 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3328. This motion was seconded by Councilman Davis and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 06-11 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE NATIONAL WEATHER SERVICES TO ACCEPT A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM

ORDINANCE NO. 3329 - BUDGET AMENDMENT FROM THE NATIONAL WEATHER SERVICE FOR A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM

Mr. Chad Pierce, Stormwater Services Manager, said that this item was reviewed by Council on January 10, 2006, however, it was continued until the February 21, 2006, worksession in order to give Council an opportunity to better understand the system. That education has taken place and therefore the matter is being brought back to Council at this meeting.

He said that following the January 10, 2006, Council discussion, City staff was able to determine that the consultant for the reservoir study felt that the data collected from the rain gages would improve the accuracy of the inundation model. The sooner the gages are installed the more potential we have for collecting more data. Additionally, the Fire Chief has expressed strong support for having the gages installed prior to the hurricane season. Fire Chief Grayson said that similar gages on the French Broad River and at the Biltmore Avenue Bridge were extremely helpful during the September 2004 floods.

The grant includes 4 rain gages, 4 combination and stream gages and all the necessary software to support the real time monitoring process. The consultant for the reservoir study will make a recommendation for the location of these gages in March 2006. These gages will be on the Swannanoa River with the possibility of one being located on Hominy Creek. The cost to the City will be $46,335 for the installation of the gages and base station. This money will come from the Stormwater Enterprise. The total cost of the project is $103,955. The North Carolina Flood Mapping Program has agreed to maintain these gages.

City staff recommends City Council authorize the City to enter into an agreement with the National Weather Service for an automated flood warning system consisting of 4 rain gages and 4 combination rain and stream gages, and adopt the associated budget amendment.

Mayor Bellamy said that members of Council have been furnished with copies of the resolution and ordinance and they would not be read.

Councilman Mumpower felt this was in excess and the return doesn't justify this level of money. He felt this is more of a procedural problem than a technical problem.

Upon inquiry of Councilwoman Cape, Mr. Pierce said that the base station will be in the City's Emergency Response Center and staff will have immediate access to the information.

In response to Councilman Freeborn, Mr. Pierce said that if we don't proceed with this action, we will not be able to have the same level of accuracy in the inundation model. Additional our emergency planning during a flood event or dam breach will not be as accurate.

Mr. Pierce responded to Councilman Mumpower's question about how will this be different from what we have now, other than the automation.

Councilman Newman felt a simpler, less expensive option, might be better for the City.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-11. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Newman and Councilman Mumpower voting "no".

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Vice-Mayor Jones moved for the adoption of Ordinance No. 3329. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Newman and Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 22 – PAGE 373

V. NEW BUSINESS:

A. MERRIMON AVENUE ZONING STUDY PROCESS AND SCHEDULE

Planning & Development Director Scott Shuford said that due to concerns about development patterns and developer interest, the Planning and Zoning Commission and City Council have directed staff to perform a zoning study of Merrimon Avenue. A citizens' group, the Merrimon Avenue Study Group, has formed and held a meeting on January 17 to get community ideas. Staff feels the work of this group is very important in generating public input and ideas and applauded their efforts.

Staff has been requested to expedite the zoning study, making the work of the Study Group even more critical. We are proposing to disseminate a survey to Merrimon property owners and to property owners in the immediate (walking distance) vicinity of Merrimon Avenue. The information we receive from the survey and from the Study Group will enable staff to rapidly develop a zoning proposal for community consideration. We are interested in Council's ideas about the survey questions and whether you feel we need to add anything. Our suggested timeline is provided below.

Survey Mail-Out:	February 1, 2006
Survey Responses:	By February 15, 2006
Survey Results:	February 22, 2006
Draft Zoning Proposal:	February 28, 2006
Review Draft Proposal:	March 1 – Planning and Zoning Commission Meeting – Informal discussion
	By March 15 – Merrimon Avenue Study Group
	By March 31 – Merrimon community meeting
Public Hearings:	April 6 – Planning and Zoning Commission (tentative)
	April 25 – City Council (tentative)

Mr. Shuford said that Ms. Hedy Fischer, from the Merrimon Avenue Study Group, used a somewhat different survey than the one he sent to Council. The main differences include an added question about walking and more examples for types of development. He said that he was entirely comfortable in modifying the survey his Department produced to include the information in Ms. Fischer's survey. An advantage to using the same survey as used at the community meeting is that the basis for comparison between the Study Group's survey and ours will be the same.

Mr. Shuford asked for Council's direction on the following: (1) Does the survey appear to provide Council with the relevant information they need to identify public concerns and issues regarding Merrimon Avenue zoning?; and (2) With the understanding that the above timeline dates for public hearings are tentative depending on community response to the zoning proposal, is Council comfortable with the timeline and process proposed by staff?

Ms. Hedy Fisher explained who the Merrimon Avenue Corridor Study Group consists of and why they formed. She reviewed with Council survey results from 63 people that showed why

people use Merrimon Avenue, with 56% surveyed showing they used it as access to their residence and 4% using the transit stops. The Study Group met and there was considerable discussion about transportation issues, including roadway cross-section (possible widening, possible 3-lane configuration), sidewalks, multimodal issues like bike lanes, potential for park and ride, signal coordination, and congestion management. They requested Council to consider a temporary (6-month) conditional use overlay on Merrimon Avenue until the zoning study could be completed.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: might this type of survey be a potential model for other areas to use;

With regard to a temporary conditional overlay use, City Attorney Oast said that the law on conditional zoning, and conditional use permits and districts say that those may only be applied to property upon petition of the property owner. City Council using that tool unilaterally is not an option.

Councilman Davis felt the survey needed to include property and business owners along the whole length of the corridor.

Councilwoman Cape questioned if there are other tools City Council can use to achieve the same goals requested by the Study Group. City Attorney Oast responded that the law does contain a process for a moratorium, but that in itself would take close to 3 months because of the fairly lengthy process. It also may be possible to put the property under some sort of transition overlay that would provide that only projects of a certain size can only be built with a conditional use permit and that size could be something less than the Level III sizes that we have now. He's not sure that either of these tools would be satisfactory for Council on this. He would investigate other tools available.

Councilman Mumpower voiced concerns about stopping people from developing their property.

Mayor Bellamy felt the survey area should be expanded because Merrimon Avenue is a major corridor and many people use it. Therefore, Mr. Shuford said that the survey will be put online, but people will have to download the survey and mail it back.

In response to Mayor Bellamy's concern and suggestion about adding a statement regarding the possible road configuration, Mr. Shuford suggested a cover letter be included with the survey explaining the scope of the survey, with a disclaimer that Merrimon Avenue is a N.C. Dept. of Transportation road.

Vice-Mayor Jones moved to approve the timeline and process of the Merrimon Avenue Zoning Study as proposed by City staff. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Mumpower, Mr. Shuford felt it would take approximately $1,500 for a study of this sort.

Mr. Shuford responded to Councilman Mumpower by saying that even though Merrimon Avenue has not changed significantly in the past ten years, he feels that there will be an increased interest for redevelopment of that corridor in the future.

In response to Councilman Newman, Mr. Shuford explained Planning staff will utilize the information compiled.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

It was the consensus of City Council to allow the City Attorney an opportunity to look for available tools to achieve the goal requested by the Study Group.

B. ORDINANCE NO. 3330 - BUDGET AMENDMENT TO COVER EXPENSES IN THE FESTIVALS FUND FOR THE REMAINDER OF FISCAL YEAR 2005-06

Parks & Recreation Director Irby Brinson said that this is the consideration of a budget amendment, in the amount of $120,000 from the fund balance of the General Fund to cover expenses in the Festivals Fund for the reminder of Fiscal Year 2005-06.

During production of the 2005 Bele Chere, staff encountered dramatic cost increases in entertainment expenses that were not anticipated when the Fiscal Year 2005-06 budget was developed for the Festivals Fund. Entertainment expenses were approximately $100,000 higher than they were for the 2004 Bele Chere. Staff also anticipates that entertainment expenses for the 2006 Bele Chere will be higher than in earlier years.

In order to offset the $100,000 in higher cost from the 2005 Bele Chere and provide funding for 2006 Bele Chere expenses that will be incurred prior to the end of the 2005-06 Fiscal Year, the Festivals Fund budget needs to be increased by $120,000. Based on prior year revenue collections in the Festivals Fund, staff does not anticipate that Festivals revenue in the current year will be sufficient to fund this budget increase. Therefore, staff is recommending that $120,000 in fund balance be appropriated from the General Fund and transferred to the Festival Fund to cover these expenses. As a result of this amendment, projected year-end Fund Balance will drop a nominal amount, from 22.8% of general fund expenditures to 22.6%.

This funding would directly correlate to City Council's goals of livability and vibrancy as related to the strategic plan.

Pros:

- Information was shared with Council at the 1/17/06 worksession in the quarterly report and the Bele Chere report regarding issues surrounding this request.
- Amendment will prevent an over-expenditure of the festivals fund (which is a violation of state statue), as well as provide sufficient funding to secure entertainment for future gated events.

Cons:

- The city must contribute $120,000 from its fund balance to support a non-emergency use.

City staff requests City Council adopt a budget amendment appropriating $120,000 to the Bele Chere expense line items.

Throughout discussion and noted concern, Mr. Brinson answered various questions/comments from Council, some being, but are not limited to: the City needs to be more cost effective in what they pay for entertainment; what was the entertainment costs last year; is this the first year Council had to appropriate additional funds mid-year; and are there better ways for the City to book events.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3330, appropriating $100,000 to the Bele Chere expense line items. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE 375

CIVIC CENTER TASK FORCE REPORT

Councilman Davis, Chair of the Civic Center Task Force, updated City Council on the Task Force's progress and some obstacles facing them. In summary, he explained to Council the need for an economic impact study, which will be a useful tool in moving forward. If Council supports the study, the Task Force would contact with Western Carolina University for $12,000.

Councilman Davis moved to appropriate $12,000 from the Civic Center funds for an economic impact study on the Civic Center. This motion was seconded by Mayor Bellamy.

Considerable discussion surrounded the scope of the study, the need for another study on the Civic Center, other studies performed regarding the Civic Center, the mechanism to continue to access that data, and the results showing the regional aspect of the Civic Center.

The motion made by Councilman Davis and seconded by Mayor Bellamy carried on a 6-1 vote, with Councilman Mumpower voting "no."

In response to Councilman Newman, Councilman Davis said the Task Force will bring forward to Council a series of options for City Council to consider.

VI. OTHER BUSINESS:

Councilman Mumpower announced a For Our Kids event on Saturday, January 28, 2006, at Deaverview Apartments.

The following claims were received by the City of Asheville during the period of December 16, 2005 – January 12, 2006: Stacey Ferguson (Police), Bill Sprouse (Water), Adam Wells (Water), Henry Loewer (Sanitation), Bob Rhea (Police), Judy Johnson (Water) and Allstate Insurance Company (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Leslee Kulba briefly commented about Council's board appointment process.

Mr. James Judd showed Council an analysis of Maxwell Street with regard to Greenlife Grocery's use of that residential Maxwell Street.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:09 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – January 31, 2006 - 5:00 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower (was excused from the meeting at 6:59 p.m.); Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy asked for a moment of silence to recognize the passing of Mrs. Coretta Scott King.

Mayor Bellamy announced that the purpose of this special meeting is to review the water system policies and begin discussing guidelines for the operating of the water system. Council will discuss policy areas including capital improvements, rates, growth and development, and other important issues linked to the water system; and to obtain citizen input on the water system and how it should be operated. The process will start, but not end, tonight. She urged citizens to contact Council via e-mail, fax, phone, meetings, etc. to voice their opinions. Council will also be discussing policy guidelines within the framework of the current state law, including Sullivan Acts I, II and III. Asheville has filed a lawsuit against the State of North Carolina because City Council believes that the State overstepped their constitutional authority. The State has bound Asheville with laws that do not apply to any city across this state. Council believes it is the City's right and obligation to challenge that constitutionality of those laws. In addition, those laws have a tremendous impact on Asheville citizens with a $3.5 Million burden on our citizens. As the lawsuit moves forward, Council will involve the citizens in an open environment as to the status of the legal actions. City Council is open, willing, and looking forward to working with Buncombe County for a win/win approach to issues related to the water system. The type of policy decisions Council is considering tonight are principles that ensure the soundness of the system, and the healthy and affordable delivery of water, regardless of the lawsuit that is filed against the State or negotiations of Buncombe County.

City Manager Jackson reiterated Council's guiding principle being to provide reliable, safe and affordable water to all customers throughout the region. He explained the following policy areas which guidance is sought: capital investment; rate structure, growth & development, financial policy, and governance models.

City Manager Jackson supported Mayor Bellamy's statement in that the following Sullivan Acts considerations are not being discussed at this meter: water service as a condition of annexation; rate differentials (based on location or use); equity value of assets; inter-fund transfers/tax equity payments; regional Parks & Recreation Authority; or the Civic Center.

City Manager Jackson said the first policy area of capital investment. He explained that infrastructure reinvestment is needed to assure sustainability, noting that reinvestment is a critical need. He said the water system is well managed and financially stable. The funding for short- and long-term infrastructure needs must include compliance issues at the water plants. He used a chart, which showed $57 Million needed over the next seven years.

He said that options presented to Council include (1) a capital improvements fee ("CIP fee") which would be dedicated specifically toward addressing that $57 Million need; (2) an overall rate increase; or (3) revenue bonds for large projects. He reviewed with Council a chart on the impact of the CIP fee on current water bills for single-family residential, multi-family apartments; small businesses; commercial/hotels; and industrial (all depending on the meter

size). The increase for single-family residential customers, which make up 94% on the water system, with the CIP fee would be $3.50 per month.

City staff's recommendation on how we should fund reinvestment to support Council's objective of assuring system sustainability would be to direct City staff to proceed with developing a plan to implement a CIP fee in the Fiscal Year 2006-07 budget; and to develop a public education campaign to launch between now and June 2006.

Another policy area needing guidance surrounds the rate structure. City Manager Jackson explained the following options for rate structures: declining block (which Asheville uses), uniform rate, flat rate minimum usage, and inclining block. Using a chart, he explained that the uniform rate is more widely used. He reviewed with Council a chart showing the current water bill vs. proposed water bill under the uniform rate. Residential customers currently pay $39.84 bi-monthly and under the proposed uniform rate they would pay $31.80 bi-monthly.

City staff's recommendation on what rate structure would result in Council's objective of achieving affordable and equity across customer classes would be to direct City staff to develop a plan for implementing a uniform rate structure where customers pay the same rate based on usage in the Fiscal Year 2006-07 budget; and to include a public education campaign to inform customers.

The policy guidance sought in the area of growth and development includes the water line extension policy. He said line extension policies can promote quality, compatible growth. The policy should include defining parameters for where lines are extended and what size lines are installed. It should also include a long-range master plan for water system growth. He explained the sustainable growth policy and how successful growth management takes a commitment to good planning and a commitment to high standards. He explained how economic development incentives can play a key role in growth and development.

City staff's recommendation on how can we structure policies to promote sustainable development independent of annexation would be to direct City staff to research and develop a Water Line Extension/Incentives Policy and Water Line Standards and Specifications consistent with the City's Smart Growth Policies in order to encourage sustainable development; and to schedule these documents for Committee review in March, 2006.

Regarding the financial policy, he reviewed with Council what policies we should establish to support sound financial management and best practices. With regard to policies for appropriate financial margins, City staff recommends Council direct staff to develop specific priorities for debt service coverage ratios and operating reserve levels; and to have staff bring recommendations to the Committee in March, 2006. With regard to policies for debt issuance, City staff recommends using debt financing for major improvement projects and pay-as-you-go funding for smaller repairs and refurbishment. Regarding policies for regular financial reporting, City staff recommends providing Council with enhanced detail on the Water Fund in the quarterly financial reporting report.

City Manager Jackson explained the governance models for the top 20 North Carolina water producers, those being 17 having municipal systems (Charlotte-Mecklenburg Utilities is operated by the City of Charlotte – largest in the state); 2 have a city council appointed commission; and one (in Orange County in Chapel Hill) has a regional water/sewer authority.

He reviewed with Council what governance model is most likely to support City Council's priorities. The more likely model is a municipal system with regional advisory board; or a new regional water and/or sewer authority with a major role for Asheville. The less likely model would

be a municipal system; or a new regional water and/or sewer authority with a minor role for Asheville.

The following individuals spoke on various water issues, some being, but are not limited to: what is the status of the CH2M Hill study done several years ago; system should be run like a regular business; money should be put aside for maintenance; a portion of the stormwater run-off money should be invested into the water system; water system needs to pay for itself; water bills are currently too high; additional fees or raising fees will cause a hardship on fixed income persons; there should be incentives for people who conserve; with the newest water treatment plan being 50% under-utilized, has anyone considered selling water to the surrounding municipalities; need for a true regional water authority; cost to repair pipes is high because of age of pipes; need for a sound and healthy water system; Asheville taxpayer has paid for entire water system; City receives no room tax and has to pay for all non-betterment costs; revenues are low and costs are high; elements should be reviewed from previous Council proposal; assess rates fairly for all; need a fair rate cap; get rid of the declining block rate structure; City should own it's own system; need to control growth; City needs a paradigm shift; make water fund a top priority; the MSD sewer system is a successful model; municipal system is a good model; hospitals would take a big hit, but they don't pay property taxes; encourage conservation by a water-saving rate structure, which will increase revenues for the City; option on bill to round up to the nearest dollar and that money go to a fund to help supplement low income residents; stop subsidizing commercial users; look at using wastewater to supply industrial users; develop and implement a comprehensive water program; consideration of a surcharge for homes that are above a certain elevation; need maintenance and repair of system and all revenues should be put back into fixing the system; wrong to use water in a political way (annexation); need to fix existing system before talking about extending the water lines; consider water as a basic service; every winter customers have water interruptions; how is serving people in the Black Mountain area more expensive since the large lines come from Black Mountain and Bee Tree area; will any written comments be available for public review; Asheville's finest hour was to terminate the water agreement; and will there be additional public hearings on this matter:

Mr. Fred English
Mr. Bob Smith
Mr. Walter Plaue
Ms. Hazel Fobes
Ms. Leni Sitnick
Mr. Steve Aceto
Mr. Kevin Hogan
Ms. Gracia O'Neill
Mr. Sam O'Rourke
Ms. Leah Karpen
Mr. Colin Robertson
Ms. Leslee Kulba

Capital Investment – Rate Structure

During discussion, Water Resources Director David Hanks responded to various questions/comments from Council, some being, but are not limited to: is the CIP fee more or less progressive compared to a uniform rate structure; if we institute the CIP fee recommended by City staff, how much would that generate and would that adequately address our capital improvement needs on an annual basis or would we have to institute annual increases to meet future demands; would the revenue generated from this CIP fee adequately service debt on a bond for capital improvements; what percentage do most utilities use for bond debt vs. pay-as-you-go debt; has the City researched the basic rights to water base rate and how would that affect our overall revenue; if we had raised rates annually as recommended in the early 90's

Brown & Caldwell study, we would not be faced with this CIP fee; have we given thought to what effect the CIP fee would have on existing commercial accounts and the large water users from an economic standpoint; had we had a different rate structure during the drought, we wouldn't be in this position; need to look for ways to utilize water as an economic development tool to create jobs, but we tweak our rate structure without caution, we will place some of the eroding manufacturing jobs at risk; need to develop a rate structure that gives people some ability to control their water rate through utilization; has staff researched any pressure zone rate structures with a surcharge to higher elevation customers; creation of a policy, regardless of how the Sullivan Act process turns out, that the City will not divert money from the water system; have only water charges on our water bills and let MSD collect their own sewer charge; and does MSD reimburse the City for their sewer charges on our water bill.

City Manager Jackson said that he would investigate what the possibilities are about segregating the water and sewer charges.

Councilman Mumpower asked to be excused from the meeting due to illness. Prior to leaving, he said that it makes sense not to divert money from the water system, but the City taxpayers have paid for the water infrastructure, watersheds, and other components, and the reason why some of the money is diverted is because we own the assets. The City taxpayer continues to pay double the tax rate of the county water users and others. He could support keeping the diversion to a minimum or to limit it or to set some fair equitable payment for that ownership of the water asset. In addition, he hoped Council will enter, or attempt to enter, into open, public negotiations with Buncombe County and the State representatives on a near-term basis to see if we can work out a compromise that is fair to all parties.

After each Council member spoke about their thoughts on capital investment and the rate structure and after a brief discussion, it was the majority of Council's direction to direct City staff to proceed with developing a plan to implement a CIP fee in the Fiscal Year 2006-07 budget; to develop a public education campaign to launch between now and June 2006; to further explore a plan for implementing a uniform rate structure where customers pay the same rate based on usage in the Fiscal Year 2006-07 budget and to include a public education campaign to inform customers; to further explore ways to address the component of people who conserve water, and the basic right to water issue; look at balancing the CIP fee regarding industry as it relates to jobs; research the cost of a surcharge for higher elevation customers and how that would be factored into the uniform rate; research a plan for transitioning the manufacturing sector; and provide additional research on a policy where 100% of the water funds are used to fix the water system.

City Manager Jackson said that he would report back to Council in March with a set of financial management criteria that will help guide in developing the next budget.

At 6:59 p.m., Councilman Freeborn moved to excuse Councilman Mumpower from the meeting due to illness. This motion was seconded by Councilman Davis and carried unanimously.

At 6:59 p.m. Mayor Bellamy announced a short recess.

Growth and Development

Councilman Mumpower cautioned City Council to be very careful about the language we use when we approach people outside our boundaries regarding infrastructure planning issues to create the kind of growth that Asheville believes is best.

After each Council member spoke about their thoughts on growth and development and after a brief discussion, it was the consensus of City Council to direct City staff to research and

develop a Water Line Extension/Incentives Policy and Water Line Standards and Specifications consistent with the City's Smart Growth Policies in order to encourage sustainable development.

Financial Policy

After a brief discussion, it was the consensus of Council to direct City staff to develop an educational program surrounding the City's financial policy, to include, but not be limited to: fund balance information, how the enterprise funds work, bonds, etc. Vice-Mayor Jones noted that the educational component on the stormwater fee should continue even though the City has implemented that fee. Councilman Freeborn felt that our government channel is an excellent tool to be used in educating the public.

It was the consensus of Council to direct City staff to use debt financing for major improvement projects and pay-as-you-go funding for smaller repairs and refurbishment.

It was the consensus of Council to direct City staff to provide Council with enhanced detail on the Water Fund in the quarterly financial reporting report.

Governance

Councilman Newman hoped Council would be open to looking at the municipal system, as well as the potential for a more regional form of governance, probably not scenarios that would include transfer of ownership of assets, but maybe regional forms of government that may include lease of assets and things like that.

Councilman Freeborn favored the municipal system with a regional advisory board. He felt we need to include a cross-section of users.

Vice-Mayor Jones was open to either the municipal system with a regional advisory board or a new regional water and/or sewer authority with a major role for Asheville, but she would like to be able to present options in a dialogue with the Buncombe County Commissioners and our State legislators.

Councilman Davis supported Vice-Mayor Jones' idea to sit down with the Buncombe County Commissioners and our State legislators, because it is important that they recognize the City of Asheville is part of Buncombe County and Buncombe County is part of the districts they represent. He explained why he felt the water system should remain a municipal system. However, he would also support a municipal system with a regional advisory board.

Councilwoman Cape also supported the municipal system. However, she liked the idea of a regional advisory board. She is not opposed to working towards an authority with a major role for Asheville, but would have to be some compelling reason for her to support that.

Councilman Newman said that when we talk about the water system as part of our discussions with Buncombe County, we should say that Council's first choice would be to run the system as a municipal system, but that we are also open to the possibility of having a regional water system. We also need to explore the costs and benefits of merging water and sewer and having an objective non-political process to study whether or not that makes sense.

There was a discussion how the City can disagree with the County on the water system, but still work them on other opportunities, such as the Civic Center, parks & recreation facilities, the HUB Project, etc.

In response to Mayor Bellamy, Vice-Mayor Jones explained the aspects of rates, governance and growth management that she would be open to discuss during negotiations.

Vice-Mayor Jones and Councilman Newman felt it was important to meet with the Buncombe County Commissioners and State legislators to seek a fair, out-of-court settlement regarding the Sullivan Acts that all parties can live with. Councilman Newman suggested letting the County know that it is Council's preference to have a municipal run water system, but that we would be open to exploring ideas around regional water governance system with a major role for Asheville, respecting the fact that we own the assets and that we are the majority of the customers.

After each Council member spoke about their thoughts on the different governance models, City Manager Jackson said that he has a reading on where the Council is and how to represent their policy direction. In addition, those that we would negotiate with now have a better reading on what opportunities there might be to re-open discussions.

At 8:17 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Bampson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – February 14, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Jan B. Davis

PLEDGE OF ALLEGIANCE

The JROTC Cadets from Enka High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn asked for 2 minutes of silence.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2006 AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February 2006 as "Black History Month" in the City of Asheville.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "A" was removed from the Consent Agenda for discussion.

Mayor Bellamy asked that Consent Agenda Items "K" and "M" be removed from the Consent Agenda for individual votes.

At the request of Councilman Mumpower, Consent Agenda Items "L," "N," and "O" were removed from the Consent Agenda for discussion and/or a separate vote.

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 20-21, 2006; THE FORMAL MEETING HELD ON JANUARY 24, 2006; AND THE SPECIAL MEETING HELD ON JANUARY 31, 2006

This item was removed from the Consent Agenda for an individual vote.

B. RESOLUTION NO. 06-12 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO REFLECT THE CITY COUNCIL WORKSESSIONS, WHICH ARE THE THIRD TUESDAY OF EACH MONTH AT 3:00 P.M., WILL BE HELD IN THE COUNCIL CHAMBER ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 29 – PAGE 316

C. RESOLUTION NO. 06-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING CONTRACT WITH GREEN LIGHT ELECTRIC INC. FOR TRAFFIC SIGNAL MAINTENANCE

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue maintenance of traffic control devices through September 20, 2007, in the amount of $69,000.

In 2001, City staff determined that maintenance activities for traffic signals including preventative maintenance could be more efficiently accomplished through a combination of in-house activities and work contracted to the private sector.

The contract for traffic signal maintenance includes:

- Preventative maintenance consisting of annual inspection of all traffic signals and replacement or repair of deficient components;
- Maintenance activities to ensure compliance with federal and state requirements, and to protect public safety with the provision of a safe, dependable traffic signal infrastructure;
- Periodic replacement of signal components including poles, span wire, and signal heads;
- Upgrades to existing signals such as replacement of signals with LED technology to reduce burned out bulbs and power consumption, or the addition of pedestrian signals;
- Emergency response and timely repairs in cases of equipment damaged by crashes, weather, or other unforeseen occurrence.

Bids were solicited in 2002 for the contract. Green Light Electric, Inc.'s bid was the lowest, with the 2nd lowest bidder approximately 67% higher. Green Light Electric, Inc. was authorized for the work in 2003, and reauthorized in 2004 and 2005, and has performed acceptably during each contract period.

Ongoing maintenance of traffic signals is required to comply with State and federal standards and to maintain a safe and efficient infrastructure. Annual preventative maintenance identifies issues before they become problems and endanger the traveling public.

Pros:

- Maintenance of traffic signals is necessary to ensure public safety.
- Green Light Electric, Inc.'s fees are very competitive.

Cons: None noted.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

RESOLUTION BOOK NO. 29 – PAGE 317

D. ORDINANCE NO. 3331 - ORDINANCE AMENDING THE TERMS OF SERVICE ON THE PUBLIC ART BOARD FROM 4-YEAR TERMS TO 3-YEAR TERMS

ORDINANCE BOOK NO. 22 - PAGE 377

E. RESOLUTION NO. 06-14 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Councilman Joe Dunn is no longer a member of the Asheville City Council and therefore, a vacancy exists for an ex-officio non-voting City Council member. Therefore, Councilwoman Robin Cape is hereby appointed to serve as the non-voting City Council member on the Citizens/Police Advisory Committee.

RESOLUTION BOOK NO. 29 – PAGE 318

F. RESOLUTION NO. 06-15 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE CRIMESTOPPERS BOARD OF DIRECTORS

Summary: Mayor Terry Bellamy has resigned as a member of the Asheville-Buncombe Crime Stoppers Board, thus leaving an unexpired term until June 30, 2008. Therefore, Councilman Carl Mumpower is hereby appointed as the City Council representative on the Asheville-Buncombe Crimestoppers Board, to serve the unexpired term of Mayor Bellamy, term to expire on June 30, 2008, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 319

G. RESOLUTION NO. 06-16 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE FILM COMMISSION

Summary: Councilman Carl Mumpower has resigned as a member of the Asheville Film Commission, thus leaving an unexpired term until November 1, 2007. The vacancy left by Councilman Mumpower must be filled by a member of the Asheville City Council, and Councilwoman Robin Cape is currently a member of the City Council.

Therefore, Councilwoman Robin Cape is hereby appointed, as a member of the Asheville Film Commission, to serve the unexpired term of Councilman Mumpower, term to expire November 1, 2007, or until her term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 320

H. RESOLUTION NO. 06-17 - RESOLUTION APPOINTMENT A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Cathy Ball, as a member of the Metropolitan Sewerage District Board of Directors, expired on January 19, 2006. City Council wishes to appoint a member of the City Council to the Metropolitan Sewerage District Board of Directors to ensure that the City's interests, as expressed through the Council, are represented on the Board Therefore, Councilman Brownie Newman, 4 Arborvale Road, Asheville, N.C., be and he is hereby appointed, as a member of the Metropolitan Sewerage District Board of Directors, to serve a three year term, term to expire January 19, 2009, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 321

I. RESOLUTION NO. 06-18 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: Mayor Terry Bellamy has resigned from the ex-officio non-voting member on the Buncombe County Tourism Development Authority, thus creating a vacancy for a City Council representative. Therefore, Vice-Mayor Holly Jones is hereby appointed as the ex-officio non-voting City Council representative on the Buncombe County Tourism Development Authority to serve a term according to the length of her Council term of office.

RESOLUTION BOOK NO. 29 – PAGE 322

J. RESOLUTION NO. 06-19 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: Ms. Gerry Kovach, representative of the Buncombe County Schools on the Educational Access Channel Commission, resigned, thus leaving an unexpired term until June 1, 2008. The Superintendent of Buncombe County Schools has requested Mr. Stan Alleyne, Director of Communications, replace Ms. Kovach.

Therefore, Mr. Stan Alleyne, Director of Communications, is hereby appointed as a representative of Buncombe County Schools, to serve the unexpired term of Ms. Kovach, term to expire June 1, 2008, or until his successor has been duly appointed.

RESOLUTION BOOK NO. 29 – PAGE 323

K. RESOLUTIONS MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 3RD ANNUAL EARTH DAY FESTIVAL; THE MOUNTAIN SPORTS FESTIVAL; THE FIRST ANNUAL ASHEVILLE JAZZ FESTIVAL; THE 4TH OF JULY CELEBRATION AND FIREWORKS; THE CITY OF ASHEVILLE TENNIS TOURNAMENT; THE BELE CHERE FESTIVAL; THE ASHEVILLE GOOMBAY FESTIVAL; THE FIESTA LATINA FESTIVAL; THE ASHEVILLE GREEK FESTIVAL; THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS; THE 10TH ANNUAL BREWGRASS FESTIVAL; AND THE ASHEVILLE GRIZZLIES HOME GAMES

This item was removed from the consent agenda for an individual vote.

L. RESOLUTION URGING THE 2006 GENERAL ASSEMBLY TO ENACT LEGISLATION AUTHORIZING A BOND REFERENDUM TO INCREASE CONSERVATION SPENDING IN NORTH CAROLINA BY $200 MILLION PER YEAR

This item was removed from the consent agenda for discussion and/or a separate vote.

M. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN GRANT AGREEMENTS WITH MOUNTAIN HOUSING OPPORTUNITIES INC.

This item was removed from the consent agenda for discussion and/or a separate vote.

N. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO WHOLESALE WATER AGREEMENTS WITH THE TOWN OF BILTMORE FOREST, TOWN OF BLACK MOUNTAIN AND THE WOODFIN WATER AND SEWER DISTRICT

This item was removed from the consent agenda for discussion and/or a separate vote.

O. RESOLUTION APPROVING A LIST OF CO-SPONSORED EVENTS FOR 2006

This item was removed from the consent agenda for discussion and/or a separate vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES AND/OR DISCUSSION

APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 20-21, 2006; THE FORMAL MEETING HELD ON JANUARY 24, 2006; AND THE SPECIAL MEETING HELD ON JANUARY 31, 2006

Councilwoman Cape noted an error in the January 20, 2006, City Council retreat minutes. The correct Committee make-up for the Land Use and Economic Development Committee is Councilman Davis, Chair, Vice-Mayor Jones and Councilwoman Cape. The correct Committee make-up for the Housing and Neighborhood Development Committee is Vice-Mayor Jones, Councilwoman Cape and Councilman Newman.

Vice-Mayor Jones moved for the adoption of the minutes of the retreat held on January 20-21, 2006, as amended, the formal meeting held on January 24, 2006, and the special meeting held on January 31, 2006. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION NO. 06-20 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 3RD ANNUAL EARTH DAY FESTIVAL

RESOLUTION NO. 06-21 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

RESOLUTION NO. 06-22 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FIRST ANNUAL ASHEVILLE JAZZ FESTIVAL

RESOLUTION NO. 06-23 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 06-24 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT

RESOLUTION NO. 06-25 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

RESOLUTION NO. 06-26 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY FESTIVAL

RESOLUTION NO. 06-27 - RESOLUTION ALLOW FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND/OR UNFORTIFIED WINE AT THE FIESTA LATINA FESTIVAL

RESOLUTION NO. 06-28 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION NO. 06-29 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS

RESOLUTION NO. 06-30 - RESOLUTION ALLOW FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL

RESOLUTION NO. 06-31 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at several 2006 Special Events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events:

- 3rd Annual Earth Day Festival, scheduled for April 15, 2006, at Martin Luther King, Jr. Park, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.
- The Mountain Sports Festival, scheduled for May 5-7, 2006, at Carrier Park, is an event to draw attention to the vast opportunities in Asheville as a destination for adventure sports.
- The 1st Annual Asheville Jazz Festival will be a live concert, and will showcase several local jazz talents. It is scheduled for June 10, 2006, at Martin Luther King, Jr. Park.
- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area. This event will be held at Martin Luther King, Jr. Park in 2006.
- The City of Asheville Tennis Tournament Picnic, scheduled for July 20 & 21, 2006, at Aston Park, is a hospitality picnic for the spectators and players.
- For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 28-29, 2006.
- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 26-28, 2006, in the Eagle/Market Street area of downtown Asheville.
- Fiesta Latina is fundraiser for the Hispanic traditions in Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held on September 16, 2006, at Martin Luther King, Jr. Park.
- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 22-24, 2006, at Martin Luther King, Jr. Park.
- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation the Downtown After Five series to bring both citizens and visitors to the downtown area. This year Downtown After 5 will be held on May 19, 2006, June 16, 2006, July 21, 2006, August 18, 2006, and September 15, 2006, with the stage located at Battery Park Ave. and O.Henry Street.

- The 10th Annual Brewgrass Festival, which is a benefit for the Big Brothers/Big Sisters program, has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on September 30, 2006, at Martin Luther King, Jr. Park.

- The Asheville Grizzles are a semi-professional sports team that seek to serve alcohol at their home games throughout the summer at Memorial Stadium.

City staff recommends City Council adopt the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: 3rd Annual Earth Day Festival on April 15, 2006; Mountain Sports Festival on May 5-7, 2006; Downtown After 5 events on May 19, June 16, July 21, August 18, and September 15, 2006; 1st Annual Asheville Urban Jazz Festival on June 10, 2006; Fourth of July Celebration on July 4, 2006; 75th Annual City of Asheville Open Tennis Championships on July 20-21, 2006; 29th Bele Chere Festival on July 28-20, 2006; GoomBay! Festival on August 26-28, 2006; Fiesta Latina Festival on September 16, 2006; Asheville Greek Festival on September 22-24, 2006; 10th Annual Brewgrass Festival on September 30, 2006; and the Asheville Grizzlies home games at various dates throughout the summer.

Councilman Newman moved for the adoption of the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at several 2006 Special Events. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

Resolution No. 06-20 - **RESOLUTION BOOK NO. 29 – PAGE 324**
Resolution No. 06-21 - **RESOLUTION BOOK NO. 29 – PAGE 327**
Resolution No. 06-22 - **RESOLUTION BOOK NO. 29 – PAGE 330**
Resolution No. 06-23 - **RESOLUTION BOOK NO. 29 – PAGE 333**
Resolution No. 06-24 - **RESOLUTION BOOK NO. 29 – PAGE 336**
Resolution No. 06-25 - **RESOLUTION BOOK NO. 29 – PAGE 339**
Resolution No. 06-26 - **RESOLUTION BOOK NO. 29 – PAGE 343**
Resolution No. 06-27 - **RESOLUTION BOOK NO. 29 – PAGE 345**
Resolution No. 06-28 - **RESOLUTION BOOK NO. 29 – PAGE 348**
Resolution No. 06-29 - **RESOLUTION BOOK NO. 29 – PAGE 351**
Resolution No. 06-30 - **RESOLUTION BOOK NO. 29 – PAGE 354**
Resolution No. 06-31 - **RESOLUTION BOOK NO. 29 – PAGE 357**

RESOLUTION URGING THE 2006 GENERAL ASSEMBLY TO ENACT LEGISLATION AUTHORIZING A BOND REFERENDUM TO INCREASE CONSERVATION SPENDING IN NORTH CAROLINA BY $200 MILLION PER YEAR

Summary: The Land For Tomorrow Coalition is seeking approval of a resolution of support to place a $200 Million bond referendum on the ballot for November, 2006, for the purpose of protecting land for the future of North Carolina.

The Land for Tomorrow Coalition was founded by a number of non-profit organizations including American Farmland Trust, Conservation Fund, North Carolina Public Interest Group, North Carolina Recreation and Park Association, and Trust for Public Land. Additional partners continue to sign on for this initiative. The goal of the Coalition is to increase public awareness of the need to protect additional land and historic places that are critical to the quality of life in North Carolina. According to information provided by this Coalition, North Carolina lost 2.8 million acres of open space over the last 20 years and is projected to lose an additional 2.4 million in the next 15 years. A few years ago, the North Carolina General Assembly passed its million-acre initiative to strive to protect as much open space as possible. In order to meet this initiative, this Coalition

estimates that it will take an additional $200 million annually over the next five years. This money would be spent in a number of different areas including stream bank and flood plain protection, working farms, urban forests, local and state parks, and historic places.

Currently, the Coalition is working towards developing contacts and committees in each of the hundred counties in North Carolina. Lou Bissette has been appointed as the lead chairperson for the Buncombe County Committee, and his committee is dedicated to educating our local delegation on the value of this program, getting the Bill introduced and approved to place on the referendum, showcasing local needs, and building support for the bond referendum in November if approved. Staff with the Parks and Recreation Department has been involved in this process for the past several months, and our North Carolina association is taking an active role in the Coalition. The desire of the Coalition is to have each local governing board approve a resolution supporting the introduction of this Bill and to ultimately approve the bond referendum.

PROS:

- Protection of valuable land for future generations
- Improve water and air quality
- Assist in control of property damage due to flooding
- Protection of historic property and scenic vistas

CONS:

- Tremendous amount of funds necessary to make this initiative successful
- Requires approval by State legislators to place on ballot in November

This initiative addresses many issues established by the Natural and Built Environment Focus Area in the Strategic Plan.

Staff recommends City Council approve the resolution in support of the Land For Tomorrow initiative.

Councilman Mumpower was resistant for the City of Asheville getting involved in investing our efforts where we have little control. Since Asheville doesn't have direct responsibility for this, he would not be supporting the resolution.

Councilman Newman said that he is enthusiastic about this initiative, however, this resolution does fall outside the policy scope of agenda items Council considers on national/state/regional issues.

Councilwoman Cape moved for the adoption of this resolution. This motion was seconded by Councilman Freeborn.

There was a brief discussion about Council's policy not to address policy issues if they don't have a unique relevance to Asheville.

Councilwoman Cape was not aware that a policy of that type existed, however, she felt this will affect Asheville directly. There is a lot of land around our community that is very important to our economic and health of our community and trying to find the money in our community alone to do it will be difficult. There is a movement across the state to recognize the importance in the overall health and felt it would be fair to lend a voice of support to that effort.

Mayor Bellamy said that traditionally Council has expressed their individual support to these type efforts through their own council position by writing letters, talking with people, etc.

After Mayor Bellamy said that the federal legislative agenda item is scheduled for the February 21, 2006, worksession, Councilman Newman suggested a final decision on this matter be deferred until we can look at it within the context of what our legislative agenda will be and what we want our representatives to support for us.

Councilwoman Cape withdrew her motion and Councilman Freeborn withdrew his second, with the understanding that the issue will be discussed in a manner.

Councilman Mumpower moved to postpone the matter indefinitely. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilwoman Cape voting "no."

RESOLUTION NO. 06-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN GRANT AGREEMENTS WITH MOUNTAIN HOUSING OPPORTUNITIES INC.

Carl Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Jones and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones

Summary: The consideration of a resolution authorizing the City Manager to execute certain grant agreements with Mountain Housing Opportunities, on behalf of the Mayor.

The City's Action Plan for using Community Development Block Grant and HOME funds in Fiscal Year 2006 included allocations for several programs operated by Mountain Housing Opportunities, Inc (MHO). Grant agreements for such funding are normally executed by the Mayor. However, Mayor Bellamy is an employee of MHO and, to avoid any appearance of a conflict of interest, it is preferable for such grant agreements with MHO as have not already been executed by the former Mayor, to be executed by the City Manager.

A full disclosure statement for Mayor Bellamy was published at the January 10, 2006, Council meeting.

Advantages:

- Avoids any appearance of conflict of interest due to Mayor Bellamy's employment with MHO.
- Allows MHO to continue to use CDBG and HOME funds for its affordable housing programs.

Disadvantages: None

Staff recommend approval of the resolution authorizing the City Manager to execute certain grant agreements with Mountain Housing Opportunities, on behalf of the Mayor.

Councilman Freeborn moved for the adoption of Resolution No. 06-32. This motion was seconded by Councilwoman Cape and carried unanimously.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

RESOLUTION BOOK NO. 29 – PAGE 360

RESOLUTION NO. 06-33 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO WHOLESALE WATER AGREEMENTS WITH THE TOWN OF BILTMORE FOREST, TOWN OF BLACK MOUNTAIN AND THE WOODFIN WATER AND SEWER DISTRICT

Summary: The consideration of a resolution authorizing the Mayor to enter into wholesale water agreements with the Town of Biltmore Forest, Town of Black Mountain and the Woodfin Water and Sewer District.

The Water Resources Department has provided wholesale water to these government agencies through contracts executed by the Towns and District with the former Regional Water Authority of Asheville, Buncombe and Henderson. The new contracts change the name of the water provider from the Regional Water Authority to the City of Asheville. Other aspects of the contracts are the same for each governing board. These contracts were developed and designed to meet the water needs of each local government entity. The current wholesale consumption rate is $0.81 per CCF (748 gallons of water) and $184.00 per 10,000 gallons of capacity required by each government.

PROS:

- These wholesale contracts provide revenue to the City water system while providing a human right need of water to area governments that currently do not have adequate water supplies for their customers.
- This is regional cooperation to provide water to adjoining municipalities and water district.

CONS:

- There are no cons, these contracts have been in place for many years and are proof of good intergovernmental relationships and regional cooperation.

Staff recommends City Council approve the request for the Mayor to enter into wholesale water contracts with the Town of Biltmore Forest, Town of Black Mountain, and Woodfin Water and Sewer District.

Upon inquiry of Councilman Mumpower, Water Resources Director David Hanks said that most of these wholesale agreements have been in effect for sometime and through these agreements it was built in that any overall rate increases that the City had, as far as their rate structure, would apply also to these wholesale customers. During the budget, as Council goes through all the rate structures, is the time that we look at the rates for the wholesale agreements.

When Councilman Newman asked what would happen if Council changes to a uniform rate structure, Mr. Hanks said that when they started looking at the uniform rate structure, they did not include the wholesale customers because basically they started out at a negotiated rate with that class of customer. He personally felt the City should continue to do that.

Mayor Bellamy said that Council will go into detail about this when the Water budget is discussed.

Councilman Mumpower moved for the adoption of Resolution No. 06-33, with the understanding that City Council will be re-visiting this issue sometime during our budget deliberations. This motion was seconded by Councilman Freeborn and carried unanimously.

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RESOLUTION NO. 06-34 - RESOLUTION APPROVING A LIST OF CO-SPONSORED EVENTS FOR 2006

Summary: The consideration of a resolution approving a list of co-sponsored events, which will provide authorization for in-kind support by the City.

Several years ago, the Parks and Recreation Department developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 34 events were approved last year resulting in a cost of approximately $100,000. This year the number has been reduced to 27 and the cost to the city is approximately $80,000.

Pros:

- Generates in excess of $10 million dollars for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities
- Expands and enhances special events and festivals to the City

Cons:

- The city's financial contribution is $80,000.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Asheville Parks and Recreation Department recommends City Council approval of the list for co-sponsored events in 2006.

Councilman Mumpower complimented staff on making a good faith effort to pare down the number of co-sponsorships, however, he didn't think that the City should be investing tax dollars for these types of activities.

Councilman Newman suggested that going forward the City review the matrix used to evaluate potential co-sponsored events. He felt that the community development criteria is strong and feels appropriate for the City to be involved in. However, he didn't think this was the best place to spend the City's limited funds for economic development.

Mayor Bellamy recommended the Fees & Charges Committee and the Parks & Recreation Department look at developing a policy to define our criteria addressing why Asheville is involved with co-sponsorships. In addition, when that policy is reviewed, she recommended staff have the true costs of providing in-kind services, and then Council can use this year to benchmark to see where we are so that we make good policy going forward.

Councilwoman Cape moved for the adoption of Resolution No. 06-34. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 362

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

Mayor Bellamy said that this public hearing was originally scheduled for January 10, 2006; however, City staff and the property owner asked that the public hearing be continued until this date. That request was granted. However, on February 14, 2006, City staff, along with the concurrence of the applicant, requested the public hearing be continued until March 14, 2006. Therefore, Councilman Freeborn moved to continue this public hearing until March 14, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT OAK PARK ROAD AND SKYVIEW ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING TO PERMIT CONSTRUCTION OF TWO DUPLEX BUILDINGS AND THREE SINGLE-FAMILY HOMES

Mayor Bellamy announced that this public hearing was originally scheduled on January 10, 2006, however, the developer had requested a continuance to this date. Mr. Gerald Green, representing the developer, stated that they had recently been informed that a valid protest petition had been filed and they wish for additional time within which to meet with the neighborhood to understand and possibly address their concerns. That request was granted.

Mayor Bellamy opened the public hearing at 5:44 p.m.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property and since Councilman Davis is not at the meeting, it will require a unanimous vote.

Ms. Shannon Tuch, Urban Planner, said that this is the consideration of conditionally zoning property located at Oak Park Road and Skyview Road from RS-2 Residential Single-Family Low Density District and RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Zoning to permit construction of two duplex buildings and three single-family homes. This public hearing was advertised on December 30, 2005, and January 6, 2006.

She said this is a request to conditionally rezone 3 lots located off of Oak Park Road and Sky View Place. The subject properties total almost 1 ½ acres, of which approximately 1/3 is zoned RS-2 with 2/3 of the property being zoned RS-4. There is also a small sliver of RS-8 zoned property located here along the frontage of Oak Park Road.

The subject property is surrounded by RS-2, RS-4, and RS-8 zoned property supporting a mix of single and multi-family uses with the majority of multi-family uses located down-slope of the subject property and the majority of the single family uses being located upslope. The one glaring exception is a 3-story apartment building that currently exists just north of the property on the high end of the site.

The site currently supports a non-conforming garage that will be removed to make way for new construction of a mix of housing types. The proposed mix and number of units has gone through a variety of iterations over the course of the last 18 months, in truth, it's gone through a variety of iterations in the last few hours. There have been many changes to the project and there has also been significant discussion over the natural steep nature and the topography of the property and our hillside development standards, and how those standards apply to that property.

She then reviewed with Council how staff calculates the hillside development standards. First, the hillside standards apply to Level 1, 2, and 3 projects so for residential projects this generally includes multi-family developments and subdivisions. It does not get applied to single family and two family dwellings. As the property currently exists, they could build two single-family homes or two duplexes and not be subject to the hillside development standards. This property may also be able to be subdivided and the subdivision would examine hillside standards, so, maybe you could subdivide the lower property and get one single-family home, one duplex, and one duplex at the top of the property. This proposal, however, is for a multi-family development so the entirety of the property would be subject to hillside standards. As of late afternoon today, it appears as though the average natural slope information (just about 30%) provided to her by the applicant supports five units. She said the average natural slope information is critical. The neighborhood had hired an independent engineer to review that and came up with an average natural slope of 40%, which comes out at a much lower density of 1.4 units per acre – resulting in two units. There would be no point in rezoning the property because you can get more than two units under the current zoning. She said that she did sit down with a scale and measured it and it does appear that the property, just measuring it by hand, is somewhere between 30-40%.

She said if the project is approved for five units, it will be reviewed by the Technical Review Committee (TRC) and at that final TRC meeting, City staff will need to see detailed hillside calculations. It is City staff's recommendation that those calculations be done by a certified professional and be stamped and sealed. The figures she received had not been stamped and sealed.

She said the original application showed 2 duplex units on the lower part of the property to be accessed off Oak Park Road and the 3 single-family units to be accessed off of Sky View Park. Understanding that there had been an error made in the hillside calculations did submit a revised plan earlier today. That revised plan showed six units instead of seven units – removed one of the single-family homes at the top. Later today, after calculating, staff realized the hillside standards did not support six units. Again, if five units are approved, the project will have to go back to the TRC to be evaluated in a more detailed form for compliance with all the technical standards.

The duplex unit will be 2 stories and approximately 2000 square feet per unit with a similar footprint. The single-family structures will be 3 stories and also approximately 2000 square feet with a comparatively smaller footprint, between 700-800 square feet. Also associated with the project is additional landscaping required for parking lot, street buffer, street tree, and landscape buffers along with tree preservation shown on the proposed Master Plan.

There has been some discussion on the on-street parking proposed for the 3 single-family homes. The on-street parking is shown to be on private property. The applicant had expressed an interest in creating these on-street parking spaces because it is what results in a lower impact to the property. However, all on-street parking spaces are deemed public spaces. The Planning & Zoning Commission recommended that the on-street parking be built to City standards but that 2 spaces per unit be dedicated for private use for the proposed single-family homes. Staff remains concerned over the dedication of on-street parking for private use, both from a precedent standpoint but also from a maintenance and enforceability standpoint. Being concerned that this would set a difficult precedent and create maintenance and enforceability problems, she spoke with the City's Traffic Engineer and the Director of Engineering over the possibility of creating a new standard for hillside properties that would allow the creation of private on-street spaces under certain circumstances and under certain standards. Although willing to consider an alternative, both the Traffic Engineer and Director of Engineering felt that the creation of an alternative would be extremely problematic and they were very concerned over what this kind of standard would result in. As such, staff must respectfully disagree with the Planning &

Zoning Commission's recommendation and asks that the Council consider the on-street parking to remain and recommend that a condition be added that all 11 on-street parking spaces be dedicated for public use.

The Technical Review Committee (TRC) reviewed this project at their November 7, 2005, public meeting and approved the project with conditions. A revised plan has been submitted addressing a number of those technical comments.

The Planning & Zoning Commission also reviewed this project at their December 7, 2005. It was approved for seven units, but it was approved under RM-6 -- because at that time it was staff's understanding was that RM-6 would support the seven units. At that public hearing where there was substantial public comment in opposition of the proposed project. Public concern focused primarily on existing problems with stormwater runoff and traffic congestion due to narrow streets and a proliferation of on-street parking. Additional concerns over an increase in density and the size and character of the duplexes were also raised. After all public comment was heard and deliberation ended, the Commission made a positive recommendation (6-1) that the project be approved with the following conditions:

- All outstanding TRC conditions must be addressed.
- Development on the site will achieve zero stormwater runoff.
- All trees with a caliper size of 8" and larger must be preserved.
- The on-street parking shown on Sky View Place shall be designed to City of Asheville standards; however, 6 of the proposed 11 spaces will be dedicated for private use by the residents of the proposed single-family homes.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site area is an unusual combination of very mild and easily developed property with an equivalent amount of very steep terrain that is significantly more challenging to develop. The applicant has responded appropriately with the larger buildings and parking lot being located in the mildly sloped areas where less grading would be required. The steeper portions of the property are being developed with single-family structures that have a comparatively small footprint that will accommodate the existing terrain more sensitively and require less disturbance than the average single family home. The use of retaining walls is also shown to help minimize the total disturbed area.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development will be in character with the development patterns already existing on the hillside and will also be

architecturally attractive and consistent with the older Craftsman style homes of the area. The applicant has also stated that they intend to utilize 'green building' techniques for appropriateness and energy efficiency. This development is not expected to negatively affect adjacent property values.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** It is a relatively typical scenario to find the size of single-family home sites increase with the rise in terrain and an increase in grade; as slopes become steeper, lots become larger. The larger lots perched higher on the hillside are typically developed at a low density due to physical challenges and development costs. Understandably, lower lying properties are commonly developed at a higher density where development costs are not as restrictive. Oftentimes, between the relatively flat low lying properties and the relatively steep hillside properties are pockets of "transition" properties. The subject area appears to be located in just such a transition zone with a proposed density classified as Medium Density. The existing development on the hillside currently supports several similar pockets of medium density development as well as individual lots that would be classified as high density and low density. The scale of the larger duplexes is not out of scale with many of the larger single-family homes in the area as well as the existing multi-family structures. The proposed single family homes are taller (3 stories) than many of the single family homes in the more traditional lower lying neighborhood but are not out of place with many of the homes perched on the hillside designed to be sensitive to the terrain while still providing ample living space. Lastly, the character of all the proposed structures would be compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing zoning (by limiting density and a sufficient return given the market for the property's development). The *ACDP 2025* proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditonal Use Rezoning is one such tool that would allow this property to be developed at a higher density than the current zoning would allow. In addition, the same section of the comprehensive plan that discusses the need for residential infill development also outlines the need for this new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing hillside neighborhood.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240 only ¼ mile away and within walking distance. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed use splits access to the project area on two road frontages and will safely distribute traffic to roads with a higher capacity. The heaviest use to the site, 4 multi-family units, will be able to utilize an existing driveway (that will be improved) that empties onto Oak Park Road, a very short distance from the intersection of Baird Street which is part of the City's gridded road system. The 3 single family home lots located on Sky View Road are easily accessed from Town Mountain Road. In addition, all units will have the maximum number of off-street parking spaces allowed to prevent the need for any on-street parking. Lastly, the proposed use has been reviewed by the City's traffic engineer who has determined that the number of units and their access does not pose an undue or dangerous traffic hazard.

In summary, staff has determined that, with revision to the site plan – reducing the project to five units - that the project does meet those minimal standards and recommends approval with the following conditions: (1) all outstanding TRC conditions being met; (2) development on the site will achieve zero stormwater runoff (for the 2 and 10 year rain events); (3) all trees with a caliper size of 8" and larger must be preserved; (4) Changes to the proposed site plan be reviewed at final TRC to comply with all applicable City technical standards; and (5) a complete and comprehensive set of detailed hillside calculations be submitted for review at TRC and that these calculations be prepared by a licensed professional and be stamped and sealed.

Mr. Alan Laibson, property owner, said that the current information shows that the property will support five units. His preference for those units would be one duplex and the three single-family units (one single-family unit he will actually be living in). Or, he would propose two duplexes and one single-family home (which he would live in). But, he would proceed with whatever Council feels the best. Since the last meeting, he retained an engineer who developed a plan for zero water run-off. All surfaces will be pervious and they will proceed with green construction. One thing that might be problematic with building 5 units, instead of 6 units, is the photo-voltaic roofs because it may not be cost effective. He does understand that final approval it is subject an independent evaluation as far as the actual slope. If that is greater than they anticipated, then they will have to go back to the drawing board.

Mr. Daryl Rantis, architect, spoke in support of the conditional zoning and explained why he felt the hillside ordinance should be reviewed for change.

The following residents spoke in opposition to the conditional zoning for various reasons, some being, but are not limited to: green-building should not overshadow other aspects of responsible development; if rezoned, it will set a precedent for development of properties to which the hillside ordinance is applicable and will condone increased density on steep slopes and in areas above 2200 feet; providing City services is disproportionately expensive and increased density will exacerbate the financial strain on the City; Brooks & Medlock Engineering has concluded that the parcels are extremely steep with a natural slope of approximately 40.8%; narrow steep winding roads do not lend themselves to increased density nor can they be efficiently and effectively navigated by service vehicles or emergency vehicles; entrance to Sky View Place is dangerous due to site distance and speed; a portion of PIN No. ...2232 is owned by a different property owner and as a result of that, the calculations may change; lots are zoned appropriately due to their steepness and adjacency to single-family dwellings; traffic will be increased on narrow existing roads that contain a lot of pedestrian traffic; density should be decreased due to the topography of the site; run-off will be increased by impermeable surfaces of paving and buildings; excessive trees will be removed if developed as currently proposed; duplexes are almost double of most of the houses in the area; building more is not an argument for smart growth; cars and garbage trucks will have difficulty navigating around the site; and area is very unstable:

Ms. Elizabeth Ann Wyndelts, resident on Oak Park Road
Mr. Mark Ellison, resident on Furman Avenue
Mr. Bill Chase, resident on Oak Park Road
A resident on Furman Avenue
Ms. Barbara Hiller read a letter from Mary Parker
A resident on Oak Park Road
Mr. Shannon Fields resident on Oak Park Road (submitted petition containing 58 signatures)

Ms. Patsy Brison, attorney representing some members of the Oak Park/Charlotte Street neighbors, submitted to Council an e-mail from the neighborhood's engineer, Norman Divers from Brooks & Medlock Engineering, showing that 40.8% is the slope calculation. She has still not seen a report from the engineer for the applicant. The other calculation not mentioned to Council is that the acreage shown is improper. Part of the application acreage is owned by Ms. Wyndelts. In addition, there is the right-of-way for Sky View that is part of this upper track shown on a recorded plat that should not be included in the density calculations. That further reduces any acreage subject to any type of development. We think you should deny this request and let whatever is allowed under the current zoning to prevail. We also believe that it would be inappropriate to delegate to TRC the decision on the number of units allowed under conditional zoning. In addition, with so many changes and so many questions about what can be allowed under the conditional zoning request, she didn't think Council can approve this. The applicant has had months to make this decision and to submit proper calculations. This matter should be decided tonight and be denied.

At 6:25 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Councilwoman Cape about what the property owner can do on the property under the hillside standards, Ms. Tuch said that there are essentially two major lots -- one zoned RS-4 and one zoned RS-2, both appear questionably to be subject to the hillside development standards. As each lot exists now, they can be developed for single-family and possibly two-family dwellings. In theory, the bottom lot could be subdivided in half. Based on the information provided to her late today, the bottom lot would support 2 units. For a single-family and if a two-family dwelling were allowed, they would not have to comply with the hillside standards and we don't have very strict stormwater standards.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: explanation of the hillside calculation formula; is the hillside formula used in other projects; how much would it cost for the licensed engineer to stamp and seal their document; and what will happen if the two engineering documents come back different.

There was discussion concerning the time necessary to obtain the pivotal information on the natural slope calculations.

Councilwoman Cape questioned what the vision is for our community and what the best choice is for this piece of property.

Mr. Lalbson responded to a comment about a portion of PIN No. ... 2232 being owned by a different person. He stated that the portion of property was actually surveyed and is part of his property.

Regarding the question about the right-of-way, Ms. Tuch said that it is unusual to have a property line, which encompasses the road; however, it has been our department's. interpretation that that is private property and it considered part of the lot if it is not a dedicated right-of-way.

Councilman Mumpower moved to continue this matter until February 28, 2006, to allow City staff the opportunity to review the signed and sealed engineering reports on the natural slope calculations so a definite decision could be made on the number of units allowed for this project. This motion was seconded by Vice-Mayor Jones.

Ms. Brison said that UDO states that there are requirements for every application that fits within the hillside regulations. This applicant has known since last year that this did fall within hillside regulations and that when the application is made, not months later, that the average natural slope calculations be included. The neighborhood has made many trips to City Council and the Planning & Zoning Commission on this issue and felt that a decision should be made tonight.

Mr. Chase urged City Council to not continue this matter again and to leave the zoning as it currently stands.

Mr. John Ingle, resident on Weaverville Highway, questioned whether City Council would invalidate the Brooks & Medlock Engineering report, after it was sealed and stamped, just because of the method he used to calculate them.

Ms. Wyndelts urged City Council to proceed with taking action at this meeting. She didn't think it was wise for a City staff member to validate the engineering reports.

Mr. Laibson said that up to now, it was his understanding that the engineering report was not required to be certified. He said that they have had the report for the last 18 months, but it is being challenged now and they are willing to get an independent source in to get it resolved.

The motion to continue made by Councilman Mumpower and seconded by Vice-Mayor Jones carried on a 5-1 vote, with Councilman Freeborn voting "no."

At 6:58 p.m., Mayor Bellamy announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR B.B. BARNS, LOCATED AT 3377 SWEETEN CREEK ROAD

ORDINANCE NO. 3332 - ORDINANCE TO AMEND THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR B.B. BARNS, LOCATED AT 3377 SWEETEN CREEK ROAD

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:07 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Director of Development Services Joe Heard submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of an amendment to a conditional use permit and Master Plan for B.B. Barns, located at 3377 Sweeten Creek Road (Attachments to City Exhibit 1 – Location Map and Aerial Map).

The applicant is requesting an amendment to the Conditional Use Permit associated with the Conditional Use Rezoning from RM-16 to CB-II for the B.B. Barns Retail Center located on Sweeten Creek Road. The rezoning and site plan approval for a mixed-use type development was approved by City Council in October of 2000.

This request involves changes to the design and layout of buildings proposed for Phase II and Phase III of the master plan. The site plan presented to Council in October 2000 portrayed a mixed use development with one large building designated for the garden center with several smaller scale buildings that would consist of complimentary type uses (offices, artist studios, retail sales, café, deli's) and possibly multi-family uses. (Attachment to City Exhibit 3 – Conceptual Master Plan). The site plan was approved by City Council with the direction that detailed building elevations and site design be reviewed and approved by the Technical Review Committee (TRC).

On February 17, 2003, the TRC approved a detailed master plan, building elevations for the site and issued a permit to begin Phase One. (Attachment to City Exhibit 3 – Site Plan Approved by TRC and Elevations Approved by TRC) Staff felt that the plans presented, although slightly different than what Council had approved, clearly met the intent of the approval of a "neighborhood friendly" mixed-use development. The master plan includes a total of four buildings; the largest building is located in the center of the site and is reserved for the predominant use of the development including the B. B. Barns greenhouse and retail center. Three smaller-scale buildings similar in size with the B.B. Barns center are located along Rosscraggon Road with parking internal to the site. A greenway path, in lieu of the standard sidewalks, was constructed along both Rathfarnham Road and Rosscraggon Road, along with enhanced landscape buffers and display gardens.

The building elevations that TRC approved for the development illustrate unique architectural design elements that visibly reduce the overall scale and mass of the structures allowing the development to be more in context with the neighborhood. Such features include varied rooflines with decorative gable treatments, the prominent use of windows and doors, and a stair tower element centered around an attractive courtyard.

The revised master plan proposes the following changes to the building(s) layout and design. (Attachments to City Exhibit 3 – Proposal Amendment to Site Plan; Phase II – Ace Hardware; Phase III elevations) (City Exhibit 4 – Colored Photo of Phase I).

- Phase II includes construction of a 13,500 square foot Ace Hardware store that will connect to the existing B.B. Barns retail center. This building will replace the mixed use building of approximately 10,500 square feet that was approved for retail sales, a cafe and office space; and the 3,912 square foot, 3 tenant retail building.

- The elevation of the Ace Hardware building (Attachment to City Exhibit 3 – Phase II – Ace Hardware) illustrates a box-type structure with a single entrance point and covered storage area. This area is shown on the site plan to be enclosed with chain link fencing.
- Site work will include the paving of the existing gravel parking area, parking lot landscaping, and placement of a dumpster along side of the Ace Hardware building adjacent to Rosscraggon Road. Additional landscaping is proposed alongside the Ace Hardware store and dumpster area.
- Phase III includes construction of a two-story building with a footprint of approximately 7,800 square feet with parking located on the corner of Sweeten Creek Road and Rosscraggon Road. This building replaces a one –story retail center with a footprint of 7,820 square feet that was to be located at the corner of Sweeten Creek Road and Rosscraggon Road with parking to the side of the building. The change in the location of the building and parking results from the discovery of underground utilities.
- The elevation presented for the construction of the Phase III building (Attachment to City Exhibit 3 – Phase III elevations) illustrates a two-story multi-tenant building with varied rooflines and gable treatments, multiple window and door openings on each level of the facade, and use of higher quality building materials.

On January 18, 2006, the TRC approved the revised master site plan with conditions.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO) and must find that all seven (7) standards for approval of the conditional use are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site is currently developed. Some minor grading may be necessary for the placement of the building foundation(s) and construction of the parking area necessary for this phase of the development. This however, should not disturb the existing perimeter landscaping or other site related features that were required during the permitting of Phase I. In addition, a separate grading, drainage, and erosion control plan will be required before additional site work can begin.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This site is already being used for commercial purposes and was approved as a mixed-use development that would integrate with the surrounding area. It is not expected that further development of the site would substantially injure the value of adjoining or abutting properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This project was approved as a small-scale, mixed-use development. The

uses proposed under this application are limited to lower impact uses that would be complimentary to the primary use (garden center).

Staff is mainly concerned with the proposed building elevations presented for Phase II-Ace Hardware Store. The original application provided aesthetically pleasing buildings that, although similar in size (square footage) to what is proposed, incorporated distinct architectural elements that visibly reduced the overall appearance of the development making it more compatible and in context with the size of structures found within the neighborhood.

The elevation presented for Phase II, does not appear to meet the intent of Council's original approval of an aesthetically pleasing small-scale, retail development. The proposed elevation displays a box type structure charecteristic of the type of development found primarily along commercial corridors.

The new building (Ace Hardware store) when attached to the existing B. B. Barns retail center and greenhouse will have a total footprint of more than 28,000 square feet. Once constructed, this building will block the view of the distinct architectural characteristics of the B. B. Barns façade when viewed from Rosscraggon Road.

Although the application proposes the use of additional landscaping to soften the scale of the building, staff feels that the exterior building façade should be architecturally enhanced to be more compatible and sensitive to the surrounding neighborhood and to also preserve the "neighborhood-friendly" quality of the development.

Simple architectural elements such as the inclusion of window and door openings, varied rooflines or treatments, or a mix of building materials could assist in visiably reducing the overall mass of the structure.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** This project was initially reviewed under the City's 2010 plan which called for low density residential development, mainly in the areas outside of the City Limit. Existing development patterns, however, included high density residential development in the area.

The ***Asheville City Development Plan 2025*** plan projects Sweeten Creek Road as a Gateway Boulevard where a mix of residential and commercial uses would be suitable for development. The plan emphasizes the need for "compatible" infill development that enhances, protects and preserves the character of existing neighborhoods.

The elevation presented for Phase II, does not appear to meet the intent of Council's original approval of an aesthetically pleasing small-scale retail development. The proposed elevation displays a box type structure charecteristic of the type of development found primarily along commercial corridors. Staff feels that the elevation could be architecturally enhanced to be more compatible with and sensitive to the surrounding neighborhood.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been

reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** As required by City Council, a Traffic Impact Analysis (TIA) is being reviewed for this Phase of the development. It is not expected that the TIA will call for major improvements to the site.

Pros

- Further development on the site will provide additional shopping venues that will contribute to the area.

Cons

- Proposed elevation is not in character with the neighborhood.
- Proposed building does not relate to the street.
- Additional landscaping proposed to soften the view of the building from adjoining residential uses could be viewed as isolating the development from the neighborhood.

Staff continues to be in support of the concept of this project and feels that the development can be a positive contribution to the neighborhood and surrounding area. We, however, feel that the building elevation proposed for Phase II (Ace Hardware store) of the project is likely to detract from the character of the neighborhood.

Staff would recommend that the master site plan be approved with the condition that the building elevation be revised to include enhancements such as window and door openings, landscaping applied to the walls of the structure, a deck surrounding the exterior of the building, etc. The intent is to disquise the plain appearance of the proposed metal building, making it more in keeping with the original approval and more compatible with surrounding development.

Mr. John Fisher, architect, spoke in support of the amendment to the conditional use permit and Master Plan outlining in detail the project timeline from October 2000 – January 2006 (Applicant Exhibit 1).

Mr. Ned Gibson, property owner, spoke in support noting how B.B. Barnes has tried to be sensitive to the neighborhood, in addition to building a public greenway on their property. He urged Council to approve the request with limited conditions.

Mr. Barney Bryant, property owner, spoke in support of the project in that they are a small business that will employ up to 30 people.

After rebuttal, Mayor Bellamy closed the public hearing at 7:36 p.m.

Mr. Heard responded to various questions/comments from Council, some being, but are not limited to: where is the buffering on the north side of the property; should Sweeten Creek Road be described as a commercial corridor and what does Planning staff foresee for that Road in the future.

Councilwoman Cape felt this is a very residential area and felt the City needs to be sensitive when we insert commercial into a residential area. She encouraged B.B. Barnes to be residentially-friendly.

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Councilman Freeborn felt this was the type of commercial project needed in our neighborhoods.

Councilman Newman moved for the adoption of Ordinance No. 3332, amending the conditional use permit and Master Plan for property located at 3377 Sweeten Creek Road. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 378

D. PUBLIC HEARING RELATIVE TO AMEND THE CITY'S 2005 CONSOLIDATED ACTION PLAN

RESOLUTION NO. 06-35 - RESOLUTION AMENDING THE CITY'S 2005 CONSOLIDATED ACTION PLAN

Mayor Bellamy opened the public hearing at 7:45 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a grant request from the Affordable Housing Coalition of Asheville-Buncombe County (AHC) for $15,000 in Community Development Block Grant (CDBG) funds to coordinate implementation to the 10-year Plan to End Homelessness. This public hearing was advertised on February 3 and 10, 2006.

The 10-year Plan to End Homelessness in Asheville and Buncombe County was adopted by both City Council and the County Commission in January 2005. It sets out guiding principles and implementing steps to end chronic homelessness by 2015 and greatly reduce the numbers of other homeless people. The Plan is at www.ashevillenc.gov/planning/homelessness.pdf

The Plan's first recommendation is to designate a lead entity which "will coordinate implementation of the plan and be accountable to the community, homeless service providers, and local government." It identifies AHC as the most suitable agency to take on this role.

Progress under the 10-year plan is being made on several fronts by different agencies, e.g. implementation of the HMIS, construction of new units for the homeless, and grant applications for supportive services. However, other implementing steps have lagged, particularly in the area of linking people to housing and supportive services when they leave institutions, a key to preventing homelessness.

AHC is requesting $15,000 from the City to hire, train, and supervise an appropriately qualified project coordinator to work with service providers on the implementation of the Plan. The County has already committed $15,000 to this project.

AHC's projected outcomes for the first six months would include:

- Local implementation of the HMIS system (currently being rolled out statewide);
- Creation of an Advisory Committee representing key stakeholders;
- Constructing the shared protocols necessary to ensure integration of services;
- Creating relationships with foundations, churches and businesses to help with continued funding;
- Planning future implementation steps, identifying barriers to progress and solutions;
- Reporting progress to the City, County and community.

These steps appear to provide a realistic program of work and AHC has submitted an appropriate budget for the program.

Funds are available to meet this request from unanticipated CDBG loan pay-offs.

A public hearing is required before Council approves a new CDBG program and has been duly advertised to take place at this Council Meeting.

Pro's

- Provides resources and impetus for continuing implementation of the 10-year Plan
- Will lead to creation of new coordinating mechanisms
- Emphasizes City's continued commitment to ending homelessness
- Leverages matching County funds

Con's

- Continued funding in 2006-07 will be more difficult, due to federal CDBG cuts

The Housing and Community Development Committee reviewed the application at its meeting on January 23, 2006, and recommended approval of the grant. Staff concurs in this recommendation.

Mr. Fred English spoke against the action in that foreclosures are happening more frequently.

Mayor Bellamy closed the public hearing at 7:47 p.m.,

Councilman Mumpower agreed that Council needs to do something with our homelessness issue, but we are behaving in a less than responsible manner in reacting to that situation, instead of trying to make meaningful change. He acknowledges that we need a plan, but doesn't think this is the plan. There are better plans out there and we definitely need an intervention facility in this community. He thinks this plan will distract us for some meaningful opportunities to make a difference for the homeless. It will provide housing, but you cannot provide housing for chronic substance abusers without being in great danger of creating an entitlement initiative unless there is some substantial structure to help them address those addictions, and the structure does not realistically exist in this plan.

Councilman Newman said that this concept is taking some of the cutting edge ideas that are effective around the county to meaningfully reduce chronic homelessness. He felt this is a good business model and has the potential to make a real positive reduction in chronic homelessness in Asheville.

Councilman Freeborn asked if we use this money for this particular project, will it impair us for providing other areas that could be significantly more of an investment for us. Ms. Caplan said that the allocation of CDBG funds for the following year will come before Council and you will have the opportunity to approve or amend that plan. At this point we do have money in contingency and it is available for this mid-year request.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-35. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF WAIVER OF ONE-YEAR WAITING PERIOD FOR ZONING ACTION ON PROPERTY AT 109 N. LIBERTY STREET

An e-mail has been received by the City Clerk from the property owner on February 14, 2006, requesting continuance of this matter until the February 28, 2006, formal meeting.

Mr. Joe Heard, Development Services Director, said that the owner is attempting to provide documentation to City staff that there were seven units on the property since 1970. If that is the case, then there would be no need to pursue the rezoning because they would be grandfathered in, and there would be no need for Council to consider waiving the one-year waiting period.

Upon inquiry of Councilwoman Cape, Mr. Heard said that the owner was aware of the restriction on the property when it was purchased.

Councilman Mumpower moved to continue this matter until February 28, 2006. This motion was seconded by Councilman Newman and carried on a 4-2, with Vice-Mayor Jones and Councilman Freeborn voting "no".

B. RESOLUTION NO. 06-36 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE JOINDER TO DEED OF TRUST FOR PACK PLACE REFINANCING

City Attorney Bob Oast said that this is the consideration of a resolution authorizing execution of a Ground Lessor's Estoppel Certificate and Amendment to Ground Lease related to refinancing of Pack Place.

The complex of buildings known as Pack Place is the result of redevelopment efforts undertaken by the City in the early 1980's. Part of the complex is occupied by various public or quasi-public uses (Diana Wortham Theatre; Art Museum); some of it is occupied by private interests, including the parking deck garage and the retail uses along Eagle Street. The City owns the land underlying the parking deck and retail uses, and leases it to a developer who, pursuant to a Master Agreement and Master Lease entered into in 1988 (herein "Lease"), is to construct the improvements on the property. Under the Lease, the permanent improvements become the property of the City at the end of the Lease term, which is 99 years. The Lease is non-renewable. During this term, the lessee operates the project and receives the income from it. The City is the "Ground Lessor" or "Lessor," and the developer is the "Tenant" or "Lessee."

It was contemplated from the beginning of this project that the Tenant would require substantial financing for the improvements, and would pledge the improvements (and its interest in the Lease) as security for the financing. Accordingly, the Master Lease contains provisions that require the City, as Lessor, to execute certain documents and provide certain assurances to enable the Tenant to secure financing or refinancing. This is applicable to the garage / retail part of the project.

As noted above, the underlying property belongs to the City, and at the end of the Lease, so will the improvements. With this in mind, the Lease provides that any refinancing will not subject the City to "personal liability" in case of the Tenant's default on the loan (i.e., the City's

assets are not at risk). Since the "security" for the financing in such situations is the leasehold interest (including the right to operate the project), the documents the Landlord typically executes in such situations give the Lender certain substantive rights in the leased premises, such as the right to step in and operate the project, make or complete improvements, market and re-lease the premises, and dispose of insurance proceeds in case of property damage (or compensation in case of condemnation). These documents amount to a third-party agreement, bringing the Lender into the transaction. Such documents also typically include an estoppel certificate, which is essentially a statement that the Tenant is not in default under the lease. In 1988, in order to facilitate the initial financing for the project, the City entered into a "Ground Lessor's Consent and Lease Modification," similar to the documents now under consideration, that implemented many of the third-party rights and considerations described above. These were expressly made as amendments to the Master Lease. The financing at that time was through the Bank of Scotland.

In connection with a proposed refinancing of the project, with Delaware-based Column Financial, Inc. as the Lender, the Tenant, Pack Square Investors II, LLC, has requested the City to enter into a "Ground Lessor's Estoppel Certificate and Amendment to Ground Lease" (herein "Proposed Amendment"). This Proposed Amendment is not substantially different from the document that the Council agreed to in 1988, and is normal in commercial real estate financing transactions of this nature. Essentially, the Lease has already been amended to incorporate most, if not all, of the terms contained in the Proposed Amendment, and Council's agreement to the Proposed Amendment will amount to little, if any, more than allowing a new lender to step into the transaction. Some Council members may remember that this project was refinanced in December of 2004 in connection with its sale to the current owner, and the City joined in the deed of trust in order to facilitate that transaction. Because that financing was not anticipated to be long-term, no documentation other than the deed of trust and estoppel certificate was required. The proposed refinancing with Column Financial is anticipated to be more permanent, and a more comprehensive form of the estoppel from the City is now being requested.

The Proposed Amendment that the City is being asked to enter into will, among other things: (1) require the City to provide notice to the Lender in case of a default by the Tenant, or some other failure to perform obligations under the Lease; (2) allow the Lender to step into the shoes of the Tenant in case of a default; (3) allow the Lender to enter into a new lease with the City in case of a pre-term termination of the Lease; (4) permit the lender to apply the proceeds of any insurance (resulting from damage to the premises) to paying off the loan (this does not relieve the tenant of its responsibility to repair and maintain the premises). The City has the option under the Lease, whenever there is a refinancing, to purchase the premises (buy out the remainder of the Lease by purchasing the improvements). The Proposed Amendment expresses the City's waiver of that option, and I am aware of no interest in exercising it. The Proposed Amendment also contains an estoppel certificate, which is straightforward and similar to the ones that have been issued in the past; by themselves, estoppel certificates do not usually require approval by the Council.

It is important to note again that the revisions to the Lease contained in the Proposed Amendment were already made, in very similar form, in connection with the initial financing in 1988, and do not represent a material change in the City's position with respect to the transaction or the project. In essence, the Proposed Amendment allows a new lender to enter the transaction on the same terms as the previous lender.

Considerations.

- Proposed Amendment does not materially change the City's position from previous financing.
- Proposed amendment is not unusual in transactions of this nature.
- Lease requires City to execute documents as reasonably required to facilitate financing.
- City's assets are not at risk.

- Proposed Amendment gives lender some substantive rights in the transaction.
- Proposed amendment creates some affirmative responsibilities to City to provide notices to Lender.

If Council consents to the estoppel certificate and amendment, adoption of the resolution is recommended.

At the request of Mayor Bellamy, City Attorney Oast said that he would provide Council information on how much is the City paying on debt service on Pack Place and when will it be complete.

When Councilwoman Cape asked if Pack Place pays property tax, City Attorney Oast said that he believed they do pay taxes for the non-public parts.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-36. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 365

C. RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

RESOLUTION APPOINTING MEMBERS TO THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

RESOLUTION APPOINTMENT MEMBERS TO THE PUBLIC ART BOARD

RESOLUTION APPOINTMENT MEMBERS TO THE ASHEVILLE TREE COMMISSION

Due to the absence of Councilman Davis, and at the request of Vice-Mayor Jones, Councilman Mumpower moved to continue all "New Business" appointments until Tuesday, February 28, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of January 13-26, 2006: Neil Dubois (Transit Services), BellSouth (Water), Shirley Fox (Sanitation), Timothy Cheek (Streets), Kathy Kelley (Streets), Norfolk Southern (Water) and Judy Martin (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English briefly commented about benefits for domestic partners.

Closed Session

At 8:07 p.m., Councilman Mumpower moved to go into closed session for the following reasons:: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The location of the property is Amboy Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, and to consider and give instructions to the attorney concerning the handling or settlement of a claim. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 8:34 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:34 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – February 21, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

FOLLOW-UP FROM CITY COUNCIL'S RETREAT

Review Draft Action Plan for Council's 6-Month Goals

Assistant City Manager Jeff Richardson reviewed with Council the draft 6-month strategic goals, action items and timeframes as follows: support and move HUB Plan forward; Eagle-Market redevelopment; Riverfront redevelopment; development comprehensive housing opportunities plan; launch Unified Development Ordinance education series; development neighborhood & corridor plans with citizen participation; streamline planning services to spend more time on top priorities; review 2025 Comprehensive Plan, review and implement Downtown Social Issues Task Force recommendations; downtown public restrooms; downtown kiosks; improve/enhance basic City services and customer service; work with regional partners on water service and other regional issues; continue commitment to public safety priorities; create an Environment & Energy Conservation Advisory Committee; reorganize and integrate transportation staff from various City departments; and development public outreach strategy to communicate City Council's strategic goals.

Upon inquiry of Councilman Mumpower, Mr. Richardson said that complaint procedures are a part of the action item under improving/enhancing basic city services and customer service. He said that he would add it as an individual action item.

Councilman Mumpower suggested combining the following three action items, under "continue commitment to public safety priorities" into one: (1) first police academy graduates; (2) second police academy graduates; and (3) third police academy begins. In addition, other general policy discussion was the Police Chief's continued efforts toward community policing and his officers interfacing with neighborhoods in a very intentional way trying to create lines of relationship. Also, our Drug Suppression Unit is operating at less strength now than it was a year ago and the Police Chief has a strong desire to get the Unit up to the level it is funded to where they can maximize their impact on our hard drug interdiction. He wondered if supporting our hard drug interdiction effort should be highlighted in this document.

City Manager Jackson said that this is a specific effort to hit those efforts that the Council wanted to see measurable, visible change in a 6-months period. There is a longer list of longer-term items from Council. Some of the Police Chief's desires call into the longer-term vision category. City staff is preparing to bring the longer-term list to Council at their March worksession.

Councilwoman Cape said that the Economic Development Advisory Committee want to be involved in the riverfront redevelopment dialogue and want to make sure that staff is well aware of the NC DOT Parkway Project that is surfacing around Amboy Road.

When Councilman Newman expressed concern of the amount of staff time involved to address the revisions to the 2025 Plan, Planning & Development Director Scott Shuford said that

he will provide Council with some written background that may be enough to get a more comprehensive direction from Council.

Vice-Mayor Jones suggested rephrasing item no. 2 under "Housing Opportunities" to include accessory apartment funding for the Housing Trust Fund.

Councilman Newman felt that some time urgency items include some of the transportation issues and about how we move forward with some kind of parking project in the downtown.

Upon inquiry of Councilman Newman, City Manager Jackson said that the Civic Center will be added to the 6-month strategic goals.

Community & Education Efforts

Public Information Officer Lauren Bradley said that the purpose of this briefing is to outline action items associated with an outreach plan for increasing citizen awareness and understanding of City Council's Strategic Operating Plan. The intent of the city's outreach is to educate citizens about Asheville's goals and priorities while also involving them in ongoing opportunities for citizen involvement and participation. The plan also addresses communications efforts internal to the organization.

She described the following action items, along with the timeframes for completion: update report and develop campaign message; newspaper insert; web site; cable channel program; bus signs; posters; quarterly updates; group presentations including breakfasts with the Mayor; targeted efforts; boards & commissions assembly; feedback forums and focus groups; citizen academy; intranet posting; and employee orientation and training.

She explained while most action items are low or no cost efforts, some items (including developing a newspaper insert, hosting a boards and commissions assembly and posting bus signs), represent additional, unplanned outreach costs. Two action items, group presentations and the boards and commissions assembly, require the Mayor's and Coty Council's participation. With these considerations in mind, Asheville can achieve greater citizen awareness and opportunities for involvement in the City's Strategic Plan with this organized and enhanced effort. As such, staff recommends that City Council direct staff to work with the City Manager to secure funding in the current budget to proceed with the outreach plan this spring.

Review of Council Committee Structure & Process

Mayor Bellamy said that Council Committees are to be policy review and discussion arms of the City Council, providing an opportunity to explore the implications of policy alternatives and the policy development process; and to serve in an advisory capacity to the Council as a whole in reviewing policy matters referred to them; informing and educating the Council on existing City programs and issues, and other such matters as the committee deems appropriate. In reviewing issues, the committees are expected to anticipate the full range of considerations and concerns related to the various policy questions. When participating on committees, members are expected to temper their role as policy advocates in order to fully evaluate all the alternatives. The City Council Committees shall not become involved in the administration of City government. Each committee has a chairperson and an agenda. She then reviewed the following:

Revenue and Finance Committee

- Fees & Charges
- Debt issues

- Alternative revenue sources

Chair Councilman Newman, Councilman Mumpower and Councilman Freeborn.
Staff is Chief Financial Officer Ben Durant.

►The Revenue and Finance Committee's area of interest includes the annual budget process, capital improvement programming, financial reports, taxes, fees, assessments and infrastructure finance.

Public Safety

- Community relations & accountability
- Intergovernmental Relations
- Performance standards & professionalism, innovation/best practices
- Diversity

Chair Councilman Mumpower, Councilman Davis and Councilman Freeborn.
Staff is Assistant City Manager Jeff Richardson

►To recommend public safety policy direction in areas of interest including: police, fire, EMS, and emergency management services. Matters relating to the illegal use and possession of narcotics and drugs, intergovernmental relations, cooperation with law enforcement and fire and rescue, and emergency management agencies, as well as educational and research organizations, involved with control and prevention of illegal traffic in and use of narcotics and drugs.

Housing & Neighborhood Development

- Programs & incentives
- CDBG
- Outside agency grants

Chair Vice-Mayor Jones, Councilwoman Cape and Councilman Newman
Staff is Assistant City Manager Jeff Richardson.

►To enhance the quality of life in Asheville and the livability of neighborhoods by providing policy recommendations to Council on all matters relating to the creation and maintenance of housing within the City, including public housing and affordable private housing; all matters relating to the alleviation of homelessness and services provided to homeless individuals within the City.

Planning & Economic Development

- Planning & land use
- Annexation
- Design Standards
- Public/private partnerships
- Transportation

Chair is Councilman Davis, Vice-Mayor Jones and Councilwoman Cape
Staff is City Manager Gary Jackson

►To recommend policies to support our long-range vision and comprehensive planning goals. Areas of focus include: develop policies to enhance employability of Asheville residents, master planning of land uses, transportation, etc., development policies and processes, building codes

and development standards, annexation policies/goals/ objectives, economic development strategies and incentive policies (HUB).

Discussion occurred regarding topics slated for each Committee, resulting that the outside agency grants will be moved from the Housing & Neighborhood Development Committee to the Revenue & Finance Committee. Councilwoman Jones felt it might be good to explore outside agency grants under the Revenue & Finance Committee this year and then revisit it to see if it should go to the Housing & Neighborhood Development Committee next year.

After discussion, Mayor Bellamy removed neighborhood plans from the Housing & Neighborhood Development Committee into the Planning & Economic Development Committee.

Mayor Bellamy's recommendation was that the committees establish a regular meeting time and place and meet once a month. The monthly worksessions will include a standing item for committee chairs to report on their activities and plans. This will allow Council members who are not on a committee to receive periodic updates and to provide input about timing and other process concerns. In addition, minutes of the meetings will need to be prepared and distributed following each meeting. Her preference would be for the committees to establish a six to twelve month work plan at their initial meetings. This would establish a plan of action and schedule for addressing key issues. The work plans could then be reported at the subsequent full Council worksession, and all Council members may offer input.

Upon inquiry of Councilman Mumpower about intergovernmental relations, Mayor Bellamy explained she envisioned that in terms of how we can best make sure that we are working with other organizations to ensure our community is safe. It is specifically from a public safety standpoint.

Councilwoman Cape was interested in getting a more managed sense of our emergency planning.

At the request of Vice Mayor Jones, it was the consensus of Council to rename the Housing & Neighborhood Development Committee to the Housing & Community Development Committee.

Review Process for Council Additions to Agenda

Discussion surrounded ways to let Council know of upcoming agenda items prior to the Friday before the Tuesday meeting and the process for Council to add items to the agendas. As a result of that discussion, Mayor Bellamy asked Council members to notify her when they wanted to add an item to an agenda, but to leave it to her discretion on which agenda the item would be placed.

2006-07 BUDGET PLANNING

Update on the Financial Forecast

Chief Financial Officer Ben Durant updated City Council on the current status of the budget and financial forecast.

***Budget Status*:** Based on departmental revenue and expenditure estimates, the Fiscal Year 2006-2007 projected budget is currently out of balance by **$2.43 million,** which reflects a structural imbalance between revenues & expenditures created by termination of the water agreement. This figure represents staff's estimates of the cost to continue existing programs and services. It does not include any new or enhanced services related to new strategic initiatives.

Revenue Assumptions: Overall, general fund revenues are projected to grow by less than one percent. This lack of growth in the overall revenue base is the result of the following factors:

1) Removal of $1.2 million in one-time land sale proceeds from next year's revenue base.

2) Net loss of $952,300 in intergovernmental revenue due to General Assembly actions prohibiting the transfer of water fund revenue to the general fund.

3) Removal of $707,132 in appropriated fund balance from the revenue base.

The projected budget also assumes adoption of a revenue neutral property tax rate. This means that the tax rate will be adjusted downward to produce the same revenue (plus normal growth) on higher valued property as was generated by the higher tax rate on lower values prior to revaluation. An exact revenue tax rate will be determined once final revaluation numbers are provided by Buncombe County. Staff is analyzing the impact of revaluation on different parts of the City and will bring that information to Council in the upcoming weeks.

Sales Tax Revenue. Sales tax revenues are distributed in Buncombe County using the *property tax formula*. The dollar amounts of property taxes levied by the County and each city in the county are added together. The proportion of the total levy that each unit bears in relation to the total amount establishes the proportion of total countywide sales tax revenue that is distributed to each unit.

In 1994, Asheville's proportion of the total county-wide property tax levy was **22.12%.** Thus, Asheville at that time received 22.12% of the total count-wide sales tax revenue.

Over the 12-year period, the County's tax base growth has outpaced the City's. As a result, Asheville now makes up **21.47%** of the total countywide property tax levy, (less than in 1994) and consequently receives 21.47% of the total countywide sales tax revenue. If Asheville were currently receiving the same percentage of the levy that it received in 1994, the city would receive an estimated **$450,000** in additional sales tax revenue in FY 2006.

The City's property tax base relative to the County's and its impact on sales tax revenue has important implications for growth and tax rate policies that should be considered in evaluating the overall City budget.

Expenditure Assumptions: The projected budget includes an average three percent merit increase for all employees, plus a one-percent cost of living adjustment. Salaries are currently budgeted at 100% of cost, with no allowances made for attrition savings. Overall, salaries are projected to grow by **4.26%** due to the merit and cost of living package and other salary adjustments.

The overall operating budget for the general fund is projected to increase by **6.68%** due primarily to normal inflationary increase plus unavoidable cost increases in the area of fuel, natural gas and construction materials.

Debt Service costs are decreasing slightly due to the retirement of some debt and capital reserve costs are showing a **2.95%** increase due to funding several planned capital projects and vehicle replacements.

City staff recommends City Council review key financial trend information to serve as a guide in the upcoming policy discussions regarding the property tax rate and the budget. Ben –

In response to Mayor Bellamy's question about a tax rate for City residents that include the recycling fee, stormwater fee and water CIP fee, Mr. Durant said that that will be part of the internal management review. Staff will be looking at various options, e.g., ways to enhance revenues and ways to restructure the budget so that the beneficiaries of the service are paying for the cost as opposed to the general public that may not be receiving those services.

Councilwoman Cape noted that at least property taxes can be deducted, but extra fees cannot.

Mr. Durant responded to a question from Councilwoman Cape about sales tax.

Status of Compensation Study

Human Resources Director Belinda Odom said that per City Council direction, the Human Resources Department has been working over the last several months in conjunction with Fox Lawson and Associates, a compensation consulting firm. This work will culminate in the presentation of a compensation policy analysis and recommendations to City Council on March 21, 2006. Specifically: Salary surveys and analysis has been compiled; City of Asheville current compensation policies and practices have been studied by the consulting firm; Department Director's have communicated their specific compensation challenges directly to the consulting firm; Employee focus groups were conducted, gathering input from employees across all departments and levels in the organization. This information was shared with the consulting firm; Draft organizational recommendations are currently being reviewed by Human Resources and the City Manager's office; and additional work is being completed by the consulting firm currently in preparation for their presentation to Council on March 21, 2006.

In response to Vice-Mayor Jones, Ms. Odom said that the consultant will have recommendations that are non-monetary and will also give Council some options and within each option will be associated fees.

Upon inquiry of Mayor Bellamy, Ms. Odom said that this study will take into consideration the request from the Police and Fire Departments.

Direction for Additional Budget Worksession Topics

Chief Financial Officer Ben Durant said that he recommends that during worksessions in March and April, Council consider and include the following key issues on their agenda: March - Overview of the current Compensation Plan; and Transit/Parking Fund. April - Growth Issues; Planning Department Staffing; Parks & Recreation (financial status of new facilities); and Festivals Fund.

FURTHER CONSIDERATION OF WATER UTILITY ISSUES

Financial Management Policies

Chief Financial Officer Ben Durant said that the purpose of this report is to recommend key financial management policies to guide the financial management of the City's Water System.

1) Financial Position: It the City of Asheville's goal to improve the financial position of the Water System in order to meet or exceed the average financial performance of water systems in North Carolina cities with populations over 50,000. He showed a chart showing currently, Asheville's financial performance and how it compares with its peer cities in the areas of current ratio; net income as percent of revenue; days cash on hand; and debt to equity ratio.

2) Debt Issuance: The City of Asheville will use debt financing for major improvements projects and pay-as-you-go funding for smaller repairs and refurbishment.

3) Cash Reserve Policy: The City of Asheville will have a target cash reserve range between $11.8 and $16 million over the next six years. This range is based on having reserves equivalent to three months of estimated maintenance and operating costs, plus one-year's worth of annual pay-as-you-go capital funding.

City staff recommends City Council adopt the aforementioned policies with adoption of the Fiscal Year 2006-2007 annual operating budget and capital improvements program.

Mr. Durant responded to several questions/comments from Council, some being, but are not limited to: what is meant by current ratio; is cash on hand different from cash revenue; does debt to equity ratio include the recent refunding and how will that impact the ratio; do you anticipate bonds being issued; how much cash on hand and investments does the Water Enterprise Fund contain; what is the amount we need to maintain in the Enterprise Fund; and what criteria does the Local Government Commission use in determining how much we should have in the Enterprise Fund.

Upon inquiry of Mayor Bellamy, Mr. Durant said that he would provide Council with information on the recent refunding of bonds.

Mayor Bellamy would like to see some policies created around cost-sharing maybe over a 5-year period with developers when they develop within the City limits.

Discuss Next Steps for Rate Analysis

Water Resources Director David Hanks said that City staff continues to review and refine water rate analysis in an effort to advise city council on all relevant variables pertaining to rate structure and CIP needs, so as to provide for the long term viability of the water system.

Based on City Council's January 31, 2006, special public meeting to further discuss the future of the water system, city staff continues to work on the following items:

- Analysis of residential and commercial water rate structure
- Analysis of CIP needs and set aside CIP fee
- Analysis of wholesale water contracts
- Analysis of rate policies and incentives to encourage smart growth and economic development
- Analysis of minimum usage rate (water as a basic human right)
- Analysis of water line extension policies

Staff recommends City Council consider directing City staff to take water rate analysis through the City Council's Revenue and Finance Committee at the March, 2006 regularly scheduled meeting.

Councilman Mumpower said that there is some indication that under the proposed rate structure that there might be some potential to reduce water rates for some customers. One discussion is about the minimum usage rate that encourage conservation, but more importantly provides fixed income people an opportunity to control their water rate by controlling usage. He personally feels strongly about that. However, he does have a concern about going to a new rate structure to increase rates for commercial customers. There was some hint that we might be able to, if we went to that system, reduce rates broadly for City residences. At a time when our system

is struggling for dollars and infrastructure, that this might be a great time to say that we want to find ways to hold the line and certainly address the fairness issue and rate differential issue between the County and the City. But, to set up a policy that provides for dramatic rate reductions across the board for a large percentage of City residents at this time, with the weaknesses in our infrastructure and the need for regular dollars, he would discourage that. The new rate structure may make sense, but this is not a time to create false hopes or illusions or to step back from our revenue picture.

There was discussion from Council about the uniform rate structure, an analysis of the Water Department's operational fund for an emergency situation, and an analysis of the MSD charge being separated from the City's water bill.

At the request of Mayor Bellamy, Mr. Hanks said that he would obtain information on MSD's rate structure from when they first took over the system to the present. Vice-Mayor Jones said that she is open to taking the MSD charge off of the City's water bill.

At 4:53 p.m., Mayor Bellamy announced a short recess.

FEDERAL LEGISLATIVE PROGRAM

Review Priorities & Discuss Lobbying Effort

Economic Development Director Sam Powers said that this report provides a summary of six potential federal funding requests for submittal to congressional staff for possible inclusion in Fiscal Year 2007 appropriations bills, as well as a request for federal legislation dealing with federal appropriations to the city's transit system.

Over the past three years Congressman Taylor, Senator Burr, and Senator Dole have been successful in helping the City receive over $5 million in appropriations to fund city transit bus acquisition, drug interdiction, parks improvements, river redevelopment, and pedestrian improvements. The City had utilized a Washington, DC firm, Ball Janik LLP, to assist the city in providing the necessary project information to congressional staffers to include in the many federal appropriations bills. Ball Janik also provided advice and counsel in matters of federal legislation affecting the City. The city did not renew its contract with Ball Janik when it expired in 2005. Fiscal Year 2007 appropriations/legislative requests are currently being developed and the City needs to submit any requests for potential federal assistance to congressional staff by March 1, 2006. Additionally the WNC Caucus, a coalition of local governments, educational institutions, and COG's submit collective funding requests on behalf of regional entities in the 25 counties of the caucus service area.

City staff has identified seven projects as potential submissions for assistance: Bus Acquisition Pilot Project, Green Building Fire Station, Traffic Signal Preemption, Driving & Firearms Simulator and Driving Range Upgrade, Thomas Wolfe Project, Reid Center, and Public Service Radio Improvements. Additionally, staff has indicated a desire to have current legislation affecting transit funding allocations to the city changed from its current status. He reviewed the project descriptions for each of the seven projects.

Staff is seeking policy recommendations on the seven projects and potential legislation, to be in position to submit to congressional staff and the WNC Caucus by March 1st. Additionally, staff recommends reconsideration of the contract with Ball Janik LLP, to provide representation to the City on the appropriations/legislative requests selected by Council.

Councilman Newman was not supportive of the Thomas Wolfe Cabin restoration. He felt the project budget was too high. Superintendent of Parks Jim Orr explained what is included in the Thomas Wolfe Project.

When Councilman Newman inquired about detailed plans for the "green" building fire station enhancements, City Manager Jackson responded that as we move forward staff will provide Council with a more detailed fact sheet.

Upon inquiry of Councilman Newman, Superintendent of Parks Jim Orr said that there was some interest from the original grouping of people they spoke with from the state and federal government that the Reid Center was a possible option.

Councilman Mumpower raised several concerns about our legislative requests. At a time of extraordinary deficits at our federal level, he had a hard time with asking for federal appropriations. He said the Reid Center does need some improvements, but questioned the high project budget. He has a concern about the need for two hybrid buses. He felt this would be a time for core enhancements, not things that would be nice, good or desirable. A green building for our fire station would be nice. He personally would feel comfortable with the firing range upgrade, but he has questions about the driving & firearms simulator. He believes an upgrade to our public safety radio system makes sense, but is the project budget is extraordinarily high. No doubt the Thomas Wolfe Cabin needs work, but again, with our unprecedented federal deficits he could not support that request. He would support the transit system classification.

Councilwoman Cape felt that if you look at the list of federal appropriations, Asheville is pretty low in list of money coming back to our community. She felt it is crucial that we ask for some of these things as a unified body. To ask for some of the federal money that we spend in federal taxes to come back to our community is really reasonable to do. She didn't want Council to see this as a hand-out but as a hand-back for some of the things that we are trying to do for our community and that is very broad. In terms of the green fire station, we have to start building more energy efficiently in order that we can save costs in the future.

Vice-Mayor Jones was overall supportive of most of the requests, except for the Thomas Wolfe Cabin. She felt this is not really asking for any dollars, but a fairness issue. She did hope that Council will do some prioritization of these requests. Her first priority would be the transit system classification.

Councilman Newman explained why he felt that the transit system classification should be the number one priority of Council.

Councilman Davis spoke in support of keeping the Thomas Wolfe Cabin restoration as a legislative request. He felt Council would be making a terrible mistake to not at least try to save the house as it is a significant piece of our community.

Upon inquiry of Councilwoman Cape, Mr. Powers said that staff has identified projects that they believe will fit into one of the different appropriation bills and it would be a policy decision on how many projects should be submitted.

Discussion then surrounded reconsideration of the contract with Ball Janik LLP, to provide representation to the City on the appropriations/legislative requests selected by Council. Mr. Powers felt this is not a replacement for interaction with our elected officials, but gives us the ability to add value to what the Ball-Janik staff does.

When Councilwoman Cape asked how much money came back to our community that was directly related to Ball Janik's efforts, Mr. Powers said over the past three years, it was over $5 Million, of which $4 Million was for Pack Square.

Councilman Mumpower felt it was deceptive to give Ball Janik accountability for the $5 Million. Four million was developed by Congressman Taylor and his staff very intentionally. They went after that without any involvement in substance from our lobbyists. In addition, the $350,000 for Memorial Stadium was pushed by Congressman Taylor and Senator Burr. He could not support spending $60,000 for a buffer between Council and the elected officials.

Vice-Mayor Jones and Councilman Newman both supported contracting with Ball Janik, but on a very focused outcome for the transit legislation.

Upon inquiry of Councilman Davis, Mr. Powers said that he would contact Ball Janik to see what the contract price would be for a limited scope contract and/or for other legislative items.

Mayor Bellamy said that this matter will be brought forward to Council at their next formal meeting to decide which, if any, items should go forward on the legislative agenda, along with consideration of a contract with Ball Janik for legal representation.

ASHEVILLE DRUG COMMISSION HIGHLIGHTS

Councilman Mumpower reported to Council the progress of the Asheville Drug Commission. Their priorities are learning, focusing, acting together on our hard drug issues. They have active action committees on education, treatment, enforcement, judicial reform and other issues. He explained some of their current activities, including: (1) a "Judicial Reform" Seminar on March 28, which will allow leaders an opportunity to see the difficulties faced by our judicial system; (2) a "Best Drug Interdiction Practices" Seminar also on March 28; (3) the Drug Reward Program intended to go after middle and upper level hard drug dealers. The Reward Program has been modified to now include a $500 reward for the arrest of a dealer with 2 oz. or more and a $2,000 reward for the arrest of a dealer with 1 or more lbs. of crack or meth; and (4) the Find a Better Way Monthly Poster Series, which is an education effort to say Asheville and Buncombe County are fighting back against our hard drug problem and to limit the number of new recruits as dealers and users. He showed Council the 3 posters for this year noting they will be distributed in convenient stores, public housing, restaurants, schools, etc. He thanked the Jeff Goss Agency for assisting with the posters and for the Citizen-Times for printing the posters. They will be persistent and tenacious in fighting hard drugs in Asheville and Buncombe County, and try to help our neighbors across the state do the same thing.

Councilman Mumpower responded to various questions/comments from Council, some being but are not limited to: how successful has the Reward Program been to date; what safety measures are there for people who turn in dealers; and how is this Commission tied into other efforts of Council, e.g., panhandling, graffiti, chronic homeless.

Mayor Bellamy suggested one way Council can partner with the Drug Commission's endeavor is through the Council's Public Safety Committee. She also suggested smaller hand posters that would enable her to hand out when she visits schools.

At 5:52 p.m., Mayor Bellamy announced a short recess.

RESOLUTION NO. 06-37 – RESOLUTION AMENDING POLICY GOVERNING CITY COUNCIL APPOINTMENTS

Vice-Mayor Jones said that Boards and Commissions Committee reviewed the rules on boards and commissions. They basically made the rules reflect what Council is already doing, with some expansions. She reaffirmed (1) the rule that appointees to boards and commissions shall be residents of the City of Asheville, unless otherwise specified or provided for by law, ordinance, or Council action establishing said board or commission ...; (2) that efforts are made to represent the diversity that we have in our community ....; and (3) reappointment to a second term is not automatic and will be based on circumstances to be determined by City Council in each individual case. The Committee brought forward a new qualification (which Committee members have differing opinions) which is "In matters where a board has independent governing authority (by law, by agreement, or other enabling authority), and where not prohibited by law, at least one of the City's appointees shall be a current member of the City Council. Such an appointment allows Council to be a part of deliberation and decision-making on matters of regional importance that impact the City of Asheville." She asked that Council waive the rules and take action at this meeting.

Councilman Mumpower spoke against waiving the rules and taking action at this meeting. Since some of the changes do have substance, he felt action should be taken at a formal meeting allowing for public comment. He questioned how crucial it is to have a City Council member on some of the boards and commissions; however, he doesn't have a strong resistance to the new amendment. He is concerned though about adopting the new language and applying it to existing members of our boards and commissions. Those existing members came in with an effort to serve and to use this component to remove them and put a Council member on is discourteous and disrespectful.

Councilwoman Cape has reviewed the minutes of June 15, 2004, and felt it was clear that it was the consensus of Council to have a City Council member on the Airport Authority.

Vice-Mayor Jones said that the ABC Board appointment of former Mayor Worley is different than the appointment of former Councilman Dunn to the Airport Authority, in that Council knew Mayor Worley was not going to be on Council anymore.

Councilman Davis had no problem with the new amendment, but takes exception with making it retroactive.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved to waive the rules and take formal action on amending the Rules on Boards and Commissions. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilwoman Cape moved to adopt Resolution No. 06-37. This motion was seconded by Councilman Newman.

After discussion initiated by Mayor Bellamy about which boards the amendment would apply, Mayor Bellamy suggested an amendment to the new language to read as follows: "in matters where a governmental board has independent governing authority ...).

Councilwoman Cape and Councilman Newman accepted the amendment.

Ms. Leslee Kulba encouraged City Council to not make this action apply to existing members.

The amended motion made by Councilwoman Cape and seconded by Councilman Newman carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

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RESOLUTION NO. 06-38 – RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Vice-Mayor Jones said that in Resolution No. 04-142 appointing former Councilman Joe Dunn to the Airport Authority, it specifically states that "City Council wishes to appoint a member of the City Council to the Airport Authority to ensure that the City's interests, as expressed through the Council, are represented on the Authority, and Councilman Dunn is currently a member of the City Council." She felt that at the time the resolution was adopted, former Councilman Dunn was aware of Council's wishes.

Councilman Newman moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Cape.

Councilman Mumpower disagreed in that the minutes do not reflect a policy decision change. In terms of the resolution, it does not state anything about removing the Council member. He urged Council not to remove former Councilman Dunn from the Airport Authority, noting that Council has never removed a Council member in the past.

Councilman Newman moved that in order to be consistent with our past and current policies that we replace former Councilman Joe Dunn with a current member of City Council on the Airport Authority. This motion was seconded by Councilwoman Cape.

Ms. Leslee Kulba urged City Council to not take formal action at a worksession and to allow public comment at a formal meeting.

Vice-Mayor Jones said it was unfortunate that Council is focusing this issue on former Councilman Joe Dunn. She stated the action now is to have a Council voice on the Airport Authority, not so much as removing someone.

Mayor Bellamy was interesting in serving on the Airport Authority, but asked for Council to delay action until June 30, 2006, when there will be two opportunities for appointment.

Councilman Dunn supported the delay in appointment.

The motion made by Councilman Newman and seconded by Councilwoman Cape to replace former Councilman Dunn with a current member of City Council on the Airport Authority, and seconded by Councilwoman Cape carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn, Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

When Councilman Newman moved to appoint Mayor Bellamy to the Airport Authority, she declined and he withdrew his motion.

Councilman Newman moved to appoint Councilman Freeborn to the Airport Authority. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor

Jones, Councilwoman Cape, Councilman Freeborn, Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

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GREEN-BUILDING & GREEN ENERGY ISSUES

Public Works Director Mark Combs said that in a February 7th email to the Mayor, Councilwoman Cape provided six key questions related to green building and energy issues for discussion at this worksession.

To facilitate the upcoming Council discussion, staff listed each question and provided historic, background or discussion points for your review.

Question 1: What activities has the City implemented, or is planning to implement, to encourage energy savings in municipal buildings?

- In 1996 an energy audit was conducted by reviewing the City's electrical billing rate and adjusting the structure (to save money).
  - The audit found that the City was paying a very high commercial rate
  - The City successfully negotiated a lower corporate rate which resulted in an annual savings of $20,000.

- In 1999, the City collaborated with Land of Sky Regional Council (Waste Reduction Partners) to produce an environmental sustainability report for City buildings such as City Hall, Municipal Building, Public Works, Fleet and many smaller facilities. Staff implemented:
  - Fluorescent lighting with electron ballasts and T8 lamps were installed for an annual savings of $12,000;
  - Uniform temperature settings were established for buildings;
  - Regular HVAC maintenance (filter replacements, etc) for higher efficiency; which resulted in $10,000 annual savings
  - Flush-valve adjustments on routine basis for $1,000 in annual savings;
  - Replacement of thermostats which more efficiently control heating and cooling
  - Fleet Management spent $26,000 on high efficiency lighting.

  Other recommendations from Waste Reduction Partners will require capital resources. $185,000 has been proposed in the FY 06-07 budget to fund these projects.

Question 2: What has the City implemented, or is planning to implement, regarding clean vehicles and use of cleaner fuels?

- In 2000, City Council adopted an Alternative Fueled Vehicle (AFV) Policy "...to consider and alternative fuel vehicle program for public fleets... in promoting cleaner air..."

- With the co-sponsorship from Missions Hospitals, Inc. and Buncombe County, in December 2000 the City applied for a mobile source emission grant to construct a fast-fill compressed natural gas (CNG) fueling station.

- In 2003 the State awarded $400,000 for the construction of the CNG Station (completed in November, 2005).
  - There will be eight (8) CNG vehicles in operation by March 2006.

- Other AFV's include:
  - 5 GEM Electric vehicles
  - 5 Ford Escape Hybrids
  - 3 electric (replaced gas units) service equipment
  - Since the implementation of the policy, City Departments have to date downsized 70 vehicles with smaller vehicles

- Administrative Policy (July, 2004) "New and Replacement of Fleet Vehicles and Equipment states:

  1.3 The Fleet should be sized for optimal use;
  1.7 The City is committed to the use of alternative fuel vehicles and will evaluate their use for vehicle replacement.

- Since the implementation of the Policy, to date City Departments have 'down-sized' 70 vehicles in the fleet.

- For the FY 06-07 Capital Improvement budget, staff has identified 16 AFC's for potential purchase. Incremental costs for such vehicles will be approximately $135,000 more than conventional vehicles.

Fuels

- The City currently purchases low-sulphur diesel and gasoline via State Contract.

- Ultra-low-sulphur diesel fuel will be mandated for all users in January, 2007.

- The City currently owns and operates a fast-fill CNG Station
  - CNG is "...the pathway to hydrogen technology" and fuel cells
  - Natural gas is produced domestically, is less expensive than gasoline (currently) and is ultra-clean

- Bio-diesel was evaluated in 2004 for potential use
  - Higher costs were the primary consideration (for not implementing)
    - Additional costs (Transit only): $39,000/yr.
    - Outside Agencies (MSJ, others): $14,500/yr.
    - Other City Departments: $42,700/yr.
  - Staff has focused financial resources for CNG and hybrid vehicles (incremental costs = 25%)
  - 35% of City and 53% of outside vehicles are 1993 and older. Bio-diesel fuel can cause seal failures in older engines.

- Staff continually evaluates new and emerging AFV technology developments for feasibility in emergency/service-based fleet operations.

Question 3: How can Asheville follow-up on the Mayor's resolution regarding global warming?

- Former Mayor Charles Worley signed a "Mayors Climate Protection Agreement" at a U.S. Conference of Mayors event in October 2005. The resolution is related to the 'Kyoto Protocol' which is a February 2005 international agreement to address climate disruption. The goal is to reduce emissions 7% below 1990 levels by 2012.

  The resolution listed the following measures to reduce warming pollutants:

- Reduced energy bills
- Green space preservation
- Air quality improvements
- Reduced traffic congestion
- Improved transportation choices
- Economic development/job creation through new energy technologies

The resolution is based on the International Council for Local Environmental Initiatives (ICLEA) 'Cities for Climate Protection Campaign' (CCP). The term 'Cool Cities' is used by the Sierra Club to describe this initiative.

Initiating a comprehensive CCP campaign would require the cooperative efforts of surrounding local governments, clean air agencies, and allied organization, industry and the public at-large. The ICLEA provides extensive detailed implementation strategies.

Question 4: What are policy options to assure future municipal buildings are constructed or renovated using green building and energy saving practices?

- City Council has the authority to adopt such policies as long as they do not conflict with applicable building code standards on any of the General Statutes regarding building construction or renovations.

Question 5: Are the City's policies regarding purchase of clean vehicles and clean fuels up to date?

- Yes. City Staff is an active member of the Clean Air Campaign and stay up to date on current and emerging technology. Because the City provides crucial public safety and sanitary services to the community, new and emerging technology must be ultra-reliable, be repairable in a short time, have a redundant fuel source and be cost effective.

Question 6: Are there opportunities to incentivize green building in the private sector?

- Yes. The Planning Department identified four strategies which might work in this community.
  1. Promote public education through:
  a) Architects, builders, developers, contractors and general public about benefits of green building;
  b) Recognition process to celebrate green building successes;
  c) The City's website; and,
  d) Brochures and printed materials.
  2. Educate and train Building Safety and plan reviewer staff to be "ambassadors" to green building.
  3. Eliminate disincentives for green building materials and practices via City codes and development review processes.
  4. Promote green building concepts via smart growth planning practices.

Councilman Newman asked if there any analysis that looks at if we spend the money now to implement the energy saving things, how that will affect our future utility bills. Mr. Combs said that he would provide that information to Council.

Councilman Newman would be supportive of the City investing more in the near-term and in a more comprehensive way to implement energy saving retrofits for our City buildings. In addition, attention should be given to construction of new City buildings as well.

Councilwoman Cape questioned if there are some partnerships we can make that help us make the decision about what kind of savings we can realize with implementing energy saving measures.

Councilman Newman felt the City should take a leadership role in green building and would support adopting a policy that says if the City is constructing a new building that we will make it a priority to use green building practices.

City Manager Jackson agreed that the City should be a leader in that area. If we have the opportunity, it's affordable and the Council funds it, we should hire qualified architects that have the experience and skills to lead us in that direction.

Mayor Bellamy said it was important for her to get a comprehensive package on the costs associated with green building.

Councilwoman Cape would like a range of opportunities for green buildings as well. There are a lot of incremental things we can do that will allow us to be more responsible energy users. She asked for information on how we can step in this progressively and how do we make adjustments that are realistic to our budget.

Councilman Mumpower said that there are times when green building can make sense, but it is extremely expensive and hoped that Council is very measured about exploring ideas.

Councilman Newman felt that another public policy aspect is how Asheville can follow-up on former Mayor Worley's resolution on climate protection. He questioned how Asheville can continue to be a voice for that solution.

City Manager Jackson said that Asheville has begun planning for some sort of environmental management plan. Asheville has been involved with the Regional Council of Government in promoting cleaner vehicles and promoting the CNG fueling station. It is those kinds of projects that will make our region and our community a leader in what is a real international threat. He felt that participating in an intergovernmental solution is the ultimate answer.

Councilman Freeborn felt this was a good direction for Council to proceed, noting that green building isn't necessarily cost prohibitive.

CLOSED SESSION

At 7:12 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and the State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Freeborn and carried unanimously.

At 10:02 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

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ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:02 p.m.

Magdalen Bourisson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – February 28, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Color Guard from Charles D. Owen High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 14, 2006, AND THE WORKSESSION HELD ON FEBRUARY 21, 2006**

B. **RESOLUTION NO. 06-40 - RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE AND ASSOCIATED MANHOLES WITHIN ROGER FARMER PARK IN WEST ASHEVILLE AND GRANTING A PERMANENT ASSOCIATED EASEMENT**

Summary: The consideration of a resolution authorizing the Metropolitan Sewerage District ("MSD") to make improvements on a sanitary sewer line and associated manholes within Roger Farmer Park in West Asheville and granting a permanent associated easement.

During the past six months the MSD has been working with the City of Asheville regarding a sanitary sewer project within Roger Farmer Park. The current line is located in the left field portion of the middle baseball field within this park. MSD would like to improve this line that is in disrepair with minimum impact to the property and its programmed activities. Staff is in accord with the improvements and the construction timeframe prior to the baseball season.

Pros:

- The development of this project would greatly benefit the health and well being of the community the system serves.

Cons

- A portion of the ballfield will be temporarily unavailable during the winter months.

The Parks and Recreation Department staff recommends the approval of the improvements as proposed by the Metropolitan Sewerage District in Roger Farmer Park along with the associated permanent easement.

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C. RESOLUTION NO. 06-41 - RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE AND ASSOCIATED MANHOLES WITHIN WEST ASHEVILLE PARK AND GRANTING A PERMANENT ASSOCIATED EASEMENT

Summary: The consideration of a resolution authorizing the Metropolitan Sewerage District ("MSD") to make improvements on a sanitary sewer line and associated manholes at West Asheville Park and granting a permanent associated easement.

During the past six months the MSD has been working with the City of Asheville regarding a sanitary sewer project within West Asheville Park. The current line is located in the right field portion of the baseball field within this park and within lawn areas to the south. MSD would like to improve this line that is in disrepair with minimum impact to the property and its programmed activities. Staff is in accord with the improvements and the construction timeframe prior to the baseball season.

Pros:

- The development of this project would greatly benefit the health and well being of the community the system serves.

Cons

- A portion of the ballfield will be temporarily unavailable during the winter months.

The Parks and Recreation Department staff recommends the approval of the improvements as proposed by the Metropolitan Sewerage District in West Asheville Park along with the associated permanent easement.

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D. ORDINANCE NO. 3333 - BUDGET AMENDMENT TO ACCOMMODATE CONTRIBUTIONS TO THE TOP-A-STOP PROGRAM

Summary: The consideration of a budget amendment, in the amount of $3,025, to accommodate contributions to the Top-a-Stop program.

The Asheville Transit System has received contributions from the Committee to Re-Elect Dr. Carl Mumpower for the Top-a-Stop program. The program consists of creating topped stops such as the one below for the benefit of transit riders. Although the labor is voluntary, some materials may need to be purchased and a contribution has been made to the city to help defray any costs that might be incurred in the implementation of this program. These might also include modifications to plans or contracting for footers. A budget amendment is sought in order to receive these funds.

This action complies with the City Council Strategic Operating Plan in Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

Pros:

- Increased shelter for citizens and riders
- Increased number of shelters at no significant expense to the city.

Cons:

- None

City staff recommends City Council amend the budget to accept the tendered contribution.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT OAK PARK ROAD AND SKYVIEW ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING TO PERMIT CONSTRUCTION OF TWO DUPLEX BUILDINGS AND THREE SINGLE-FAMILY HOMES

Urban Planner Shannon Tuch said that on February 14, 2006, the Asheville City Council voted to continue consideration of the Oak Park residential development project due to some conflicting calculations required for the appropriate application of the Hillside Development Standards. Consideration of this proposal was continued to the February 28, 2006, meeting, allowing the applicant due time to:

- Obtain more detailed and accurate digital survey information
- Allow a licensed civil engineer to re-calculate the average natural slope (using digital information)
- Have staff verify the calculations provided by the civil engineer

In the intervening week, the engineer for the project, Mr. Mike Lovoy, P.E., was able to obtain an electronic version of the most up-to-date survey information for the properties in questions and did re-calculate the average natural slope. The results of this analysis revealed an average natural slope of 30.6%. The chart used to calculate density is very sensitive and even a very small difference in average natural slope can make a significant difference in allowable density. Although this number is very close to the previously considered 30% discussed at the February 14th public hearing, it is not sufficient to support the 5 units proposed and results in a total of 4.44 units, rounded down to 4 units maximum. In comparison, an average natural slope of 30% results in a maximum of 4.59 units, rounded up to 5 units maximum. Staff has not had the opportunity to review this new information; however, given the information provided by the civil engineer, the applicant, Mr. Alan Laibson, has submitted a letter requesting to withdraw this application from consideration.

Lastly, staff was able to confer with Mr. Norman Divers P.E. who had performed the calculations on behalf of the neighbors in opposition of the project and confirmed that he had only the hard copy site plan to use when performing his calculations. Mr. Divers did say that he did not have issue with certifying the work he had done but wanted to emphasize that this certification would be relative to the information that had been provided to him, and would expect that another professional who had access to electronic survey information would result in numbers different from his own. Mr. Divers' lack of digital survey information is likely to be the most significant cause for the difference between the two calculations. There also appears to have been some differences in lot area calculations where in one instance, a road and/or driveway was excluded and in another it was included in the total area calculations, this would result in a smaller deviation but, when combined with the other factors, would have contributed to the overall variation.

She said that staff is working toward a procedure where staff will be responsible for hillside calculations to avoid problems of this sort in the future.

On February 21, 2006, an e-mail was received from Mr. Alan Laibson which read as follows: "At this point I would appreciate it if you could withdraw us from the next City Council meeting on February 28th. After the final hillside calculations were completed the density available to us would have been a little shy of what would be needed for 5 units. So, based on that we are going to resubmit to P & Z our application for consideration for a change to RM 8 (which was our original application) which along with the new hillside calculations would insure us of the 5 units we would like to build. We wish to thank both you, the Tech review members, P & Z and City Council for your help and consideration in this interesting journey. My wife and I still believe deeply in the project as one that the city could be proud of and other builders can consider in further green and energy efficient construction."

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED 84-UNIT RENTAL COMMUNITY WITH DENSITY BONUS FOR AFFORDABLE HOUSING PROVISION

ORDINANCE NO. 3334 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED 84-UNIT RENTAL COMMUNITY WITH DENSITY BONUS FOR AFFORDABLE HOUSING PROVISION

Mayor Bellamy opened the public hearing at 5:02 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed 84-unit rental community with density bonus for affordable housing provision. This public hearing was advertised on February 14 and 24, 2006.

She said the project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within one mile of transit service along Hendersonville

Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs

This project utilizes the Conditional Zoning process and the Density Bonus provision as an incentive in providing a higher density infill development as outlined under Housing Opportunities, Goal #3.

In December 2005, the petitioner, Shelter Development, LLC, submitted an application for the review of a Conditional Zoning for a 3.02 acre parcel from INST (Institutional District) to RM-16 CZ (Residential Multi-family High Density/Conditional Zoning) and for a master plan approval subject to a 200% density bonus for the construction of an 84-unit senior housing development and it's related parking and other site features.

The project site is located within the City limits just off of Springside Road. Two single-family residences, one vacant and one occupied, currently exist on the site. Properties surrounding the property include: Buncombe County Schools, specifically TC Roberson, zoned Institutional to the south and west; a high density multi-family apartment complex, zoned Institutional to the east; single family dwellings zoned RS-4 and RM-6, and Cedar Forest Condominiums, zoned RM-6 to the north.

The applicant is requesting a rezoning to RM-16 CZ in order to qualify for a density bonus that would allow 84 units. Under the current Institutional zoning district, at 16 units per acre, a total of 48 units would be permitted. With a rezoning to the RM-16 zoning district and with an added 200% density bonus, a total of 106 units would be permitted. The applicant is proposing 84 units, at a density of approximately 28 units/acre.

The development on the site proposes a 4-story building with a 21, 486 square foot footprint. The project will consist of 49 one-bedroom apartments, and 35 two-bedroom apartments. The building is oriented towards the street with pedestrian connections to the proposed sidewalk along Springside Road and to the walking trail provided as an amenity to the residents. A 70-space parking lot and required bicycle parking is located behind the building towards the rear of the lot. Landscape buffers, parking lot landscaping and open space is being provided to meet the City's standards.

The building elevation illustrates traditional design with exterior features reminiscent of arts and crafts style architecture. Details include: an open porch area, gabled rooflines with moderate to deep overhangs, changes in building materials between floors, and double-hung windows. The exterior building materials and colors shown on the elevation (brick veneer and vinyl siding) may be enhanced to include stonework detailing in place of brick materials.

Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for a 200% density bonus by providing an exceptional development through:

- Affordable housing: <u>all</u> units within the development are proposed at a rate *below* the City's maximum affordable rental rate, meeting the needs of those (specifically seniors) with a household income of less than 60% of median income.

- Higher quality building design (see elevation details above)
- Enhanced landscaping: additional landscape materials and an increase in the size of plant materials above the City's Standard requirement will be provided.
- Project amenities: walking trails, benches, garden area with gazebo

On Wednesday, January 18, 2006, the Asheville Technical Review Committee (TRC) reviewed the proposed master plan and recommended approval of the project subject to the conditions outlined in the staff report. These conditions will be addressed upon submittal of detailed site plans to the TRC.

On Wednesday, February 1, 2006, the Asheville Planning and Zoning Commission reviewed the project and voted unanimously to recommend approval of the project subject to the TRC conditions and conditions recommended by staff.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The project site consists of two single-family dwellings that will be demolished in order to construct the proposed development. Although the property in its current state is relatively flat, grading of the site and removal of existing vegetation will be necessary in order to meet the stormwater and erosion control requirements and overall development of the site, as proposed.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development is reasonably compatible with the surrounding uses and is not expected to injure the value of adjoining or abutting property.

   The building is to be designed with enhanced architectural features and is likely to have a positive affect on adjoining and abutting properties. In addition, landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** Although the proposed development is of greater scale and (to a degree) of greater density than the existing development in the area, the project proposed is no larger than what would be allowed under the current Institutional zoning. The proposed use appears to be reasonably compatible with the uses surrounding the site and with the established zoning in the area. (A rezoning to RM-16 is considered a "down-zoning" from Institutional district.)

Additionally, the building is to be designed with enhanced architectural features that are likely to contribute to the character of the neighborhood. Landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within 1 mile of transit service along Hendersonville Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

   This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development. While transit service is not currently provided on Springside Road, the site is located within a mile of several bus stops along Hendersonville Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City's Traffic Engineer has reviewed the proposal and has determined that there are no traffic issues created by this project nor is a traffic impact analysis warranted.

Pros

- This project utilizes Conditional Zoning and the density bonus provision in order to provide an exceptional development project through affordable housing, enhanced site and building design, and project amenities.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- Provides an opportunity for infill residential development on underdeveloped property.

Cons

- City transit does not currently provide service along Springside Road.
- The proposed new building is of a larger scale than buildings currently found in the immediate area.

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Staff recommends approval of this request with the conditions outlined by the Technical Review Committee and the following added conditions:

1. All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; and
2. All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan.
3. In order to ensure the validity of the density bonus granted for provision of affordable housing and to ensure that the units remain affordable for a reasonable period of time, rents shall be maintained in accordance with federal and state Low Income Housing Tax Credit (LIHTC) regulations for at least 15 years after first occupancy. Documentary evidence of LIHTC participation shall be submitted as part of the file prior to the issuance of the Certificate of Occupancy.
4. At the request of the owner, a condition will be added to the project that should the tax credits or other sources of financing, for the proposed development of the senior citizen residential community not be approved by 10/31/06, the zoning of the property shall, upon request by the property owner, revert to the original Institutional zoning classification. The request by the owner for the reversion of the zoning shall be provided in writing to the Director of the Planning and Development.

Mr. Gerald Green, representing the developer, stated that this project will fit well into the community in that it is affordable housing for the elderly. The rents will range from approximately $400-600 a month. They are not subsidized rents. They are able to keep the rents so low through tax credits and other means of reducing construction costs. A community meeting was held and they addressed their concern of traffic. He urged Council to support this project.

In response to Councilwoman Cape about the preservation of trees, Mr. Green said that the City standards mandate a 5-foot utility strip between the street and the sidewalk. They are trying to have the sidewalk meander among the trees keeping the trees up close to the street, but that depends on the grade and other elements.

Mayor Bellamy closed the public hearing at 5:11 p.m.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3334, to conditional zone 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed 84-unit senior housing development with density bonus for affordable housing provision, subject to the conditions outlined by the Technical Review Committee and the following added conditions: (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan; (3) In order to ensure the validity of the density bonus granted for provision of affordable housing and to ensure that the units remain affordable for a reasonable period of time, rents shall be maintained in accordance with federal and state Low Income Housing Tax Credit (LIHTC) regulations for at least 15 years after first occupancy. Documentary evidence of LIHTC participation shall be submitted as part of the file prior to the issuance of the Certificate of Occupancy; and (4) At the request of the owner, a condition will be added to the project that should the tax credits or other sources of financing, for the proposed development of the senior citizen residential community not be approved by 10/31/06, the zoning of the property shall, upon request by the property owner, revert to the original Institutional zoning classification. The request by the owner for the reversion of the zoning shall be provided in writing to the Director of the Planning and Development. This motion was seconded by Councilwoman Cape and carried unanimously.

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE URBAN VILLAGE DISTRICT

ORDINANCE NO. 3335 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE URBAN VILLAGE DISTRICT

Mayor Bellamy opened the public hearing at 5:11 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise several sections of the UDO relating to the Urban Village District. This public hearing was advertised on February 17 and 24, 2006.

This code amendment has been developed to accommodate issues raised in the review of the Biltmore Park Town Square Urban Village zoning request. The amendment:

- Adjusts the height requirement to allow taller structures to be considered
- Clarifies the calculation of the "cornice height" setback requirement for structures taller than four stories
- Provides for exceptions to door and window opening requirements to accommodate LEED or other energy efficiency code compliance requirements
- Clarifies driveway and service alley requirements
- Clarifies off-street parking and loading requirements
- Makes minor stylistic changes

Staff feels these adjustments and clarifications represent improvements to the function and intent of the ordinance and provide the Planning & Zoning Commission and City Council with additional flexibility to review projects for green building compliance.

On February 1, 2006, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford said that the most substantial change is adjusting the maximum height allowed from 80 feet to 150 feet; however, he stressed that City Council will have the opportunity to set that height in each Urban Village District in the approval of the Master Plan.

Ms. Katheryn McCarten, resident in Biltmore Park, questioned how many stories would be allowed for a height limit of 150 feet, Also she urged Council to keep the definition at 80 feet and that City Council be allowed to adjust the height on an individual basis.

Mayor Bellamy closed the public hearing at 5:20 p.m.

There was Council discussion about the 150 feet height limitation with Mr. Shuford stating that some places in Asheville might be appropriate for 150 feet, whereas, other areas it would be inappropriate. Again, Council will have the ability to set that height in each Urban Village District. He explained that heights of buildings must be on the Master Plans and only City Council can waive those heights. City Attorney Oast also noted that the 150-feet is the maximum allowed but City Council can approve something lower.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3335. This motion was seconded by Councilman Davis and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER REZONING PROPERTY AT SCHENCK PARKWAY, SCHENCK CRESCENT EAST AND WATERSTONE ROAD FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT AND TO REVISE THE MASTER PLAN TO INCLUDE THE REZONED PROPERTIES

ORDINANCE NO. 3336 - ORDINANCE TO REZONE PROPERTY AT SCHENCK PARKWAY, SCHENCK CRESCENT EAST AND WATERSTONE ROAD FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT AND TO REVISE THE MASTER PLAN TO INCLUDE THE REZONED PROPERTIES

Mayor Bellamy opened the public hearing at 5:35 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property at Schenck Parkway, Schenck Crescent East and Waterstone Road from Central Business District and RS-8 Residential Single-Family High Density District to Urban Village District and to revise the Master Plan to include the rezoned properties. This public hearing was advertised on February 17 and 24, 2006.

The current request under review is to rezone almost 20 acres to Urban Village District and gain approval for an additional 155 residential units, 50,000 square feet of office space, 200,000 square feet of commercial space and another 50,000 square feet for other uses. The majority of the property under review is currently zoned Central Business District with a small portion zoned RS-8.

During a rezoning request for urban village, the developer generally provides a site master plan and overall build-out numbers. This allows City Council to consider the total impacts of the project at the time of the rezoning. After this initial approval all subsequent reviews for portions of the project and master plan are reviewed as Level II projects that are handled by the Technical Review Committee. The TRC will ensure that all of the development codes will be met during the plan submittal phase.

A traffic impact analysis (TIA) is being completed for this project at this time. A TIA is required at the time the project comes forward for Level II review as defined in the Urban Village District. With the road widening at Long Shoals Road currently taking place, it is expected that the development will not over burden the transportation system. Limited changes may be recommended to the number of turn lanes in specific areas in the Biltmore Park development.

Urban Village ordinance requirements will receive specific study and thorough review as each phase is submitted for permitting. In general, though, the master plan portrays a network of streets that are intersected by cross streets at relatively close intervals. As described in the Urban Village District, block length and sidewalk widths appear to meet development standards. Two parking garages are proposed as a part of this rezoning request, which will be added to three other approved parking garages. At least 17 new structures are shown on the plan with a major building being a large movie theater. In addition to the theater, a hotel is proposed for a location with views from and near the interstate. The hotel is proposed to be a twelve-story

structure and would be by far the tallest building proposed for the urban village development. Most of the other structures proposed will be 4 stories. The scale of the hotel height may be mitigated by the fact that is not at the heart of the urban village but out to the edge. On-street parking and street trees line each street. Several public plaza spaces are shown on the master plan. Even though the exact number and length of each block or number of buildings is not reviewed specifically one can get a sense of the 'grain' of the urban village project by reviewing the master plan. If the current proposal is approved, the Biltmore Park Urban Village will have approval for 475 residential units, 550,000 square feet of commercial space, 250,000 square feet of office space and 200,000 square feet of other non-commercial space. Some smaller amount of this is already built out at this time.

The small section of the urban village expansion is currently zoned RS-8 along Schenck Crescent East. There has been considerable public comment for this section of the proposal. Nearly two acres of land fronting on the street (that is also north of the creek) would be added to the urban village. The creek will become the dividing line from village area and the Heathbrook section of Biltmore Park. The buildings proposed for this area will be between 2 and 4 stories and three of the four buildings will be mostly residential buildings with below grade parking. A portion of the creek edge is protected with a conservation easement. The area of the parcel that is on the south side of the creek is not a part of this proposal. The main concern seems to be the potential loss of the vegetative buffer.

The Urban Village District is established to create mixed-use higher density development that is economically vital and pedestrian oriented. Urban Village guidelines encourage vibrant streets that offer a full range of commercial and office uses as well as a variety of housing types. Project densities are not limited except by master plan approval.

The Central Business District is established to reinforce the downtown as the urban center of Asheville and Western North Carolina, encouraging private and public investment which will preserve the Central Business District as the primary retail, office, hotel, institutional, cultural and entertainment center of our community. The CBD designation was applied to Biltmore Park because it was the best fit for the type of mixed-use project that they were seeking. The Urban Village district was developed after that initial zoning to CBD. In the areas of Biltmore Park that are currently zoned CBD, there is no residential density maximum or building height limits.

This developer is seeking to make some amendments to the wording of the Urban Village District to allow specific items portrayed in this proposal. The items affect height maximums, maximum size of the movie theater use and extending the time frame when the parking garages may be phased in and surface lots phased out. The current master plan will be subject to and require this wording amendment approval.

At the Planning and Zoning meeting, a comment came up that on-street parking was now prohibited along portions of Schenck Crescent East. The person who commented felt that the traffic speeds had increased since then and made the street and intersections unsafe. In the Urban Village area there is generally a requirement to provide on-street parking along streets in the village. However this zoning requirement must be considered with safety in mind. The village should provide on-street parking unless traffic safety is compromised. This can be reviewed on a street-by-street basis. The Planning & Zoning Commission recommended that the parking issue be looked at and perhaps be re-established on the street. He suggested City staff should have the opportunity to review the geometry of the street and make sure it will be safe.

Pros

- Mixed-use development is a positive trend for south Asheville
- The existing urban village will benefit from additional development and investment in the site

- The Biltmore Park neighbors will have nearby neighborhood amenities within walking distance.
- The rezoning to UV provides a clearer expectation of project build-out than the existing CBD zoning provides.

Cons

- Roadway noise may affect more people as the vegetative buffer against the interstate highway is removed.
- The development as proposed may attract regional patronage which may intensify the use (a potential plus)
- The proposed hotel will become an area landmark because of its height (a potential plus)

At their February 1, 2006 meeting the Planning and Zoning Commission recommended approval of the rezoning request and the amendment to Master Plan with the conditions that on-street parking be added back along Schenck Cresent East and that a sidewalk be provided along Columbine Road between Schenck Crescent East to the Heathbrook area and the project approval is contingent on the approval on the urban village wording amendment being approved.

Mr. Paul Szurek, Chief Financial Officer for Biltmore Park, spoke in support of the rezoning and amendment to the Master Plan. He reviewed how the project achieves an outstanding example of smart growth and new urbanism beginning with connectivity of this project with the surrounding neighborhood.

Mr. Larry Zinser, architect, reviewed with Council the project in detail describing the reasoning behind the hotel location and parking deck. He noted they have a very rich streetscape for a pedestrian friendly environment.

Mr. Charlie Hume, President of the Biltmore Park Homeowners Association, felt that south Asheville has had a tremendous amount of development over the last year. The residents of Biltmore Park are concerned about the increase of traffic and along with that comes speeding. To proactively address that, they have worked with the City's Traffic Engineer to install a traffic calming plan, which is presently being voted on by the homeowners. The cost is approximately $54,000 for a total of 24 speed humps and Biltmore Park has offered to contribute $10,000 for that project. He said that there is a nothing in the City's budget to address traffic calming issues. In addition to the cost, there is the issue of police enforcement to deal with speeding issues. He felt that with the large increase in the City's tax base from this development, he asked Council to budget money for these large traffic impact types of projects and review how the police will be involved in trying to enforce the existing speed limit.

A man voiced concern over the height of the hotel on the property. He said residents live there because of the mountain view and a building over 4-5 stories should not be allowed. He felt that people going to the movie theatre will go through the main street artery and it is not designed to accommodate thousands of cars.

Mayor Bellamy closed the public hearing at 6:05 p.m.

Upon inquiry of Councilwoman Cape, Mr. Szurek said that Schenck Parkway, which is a City-maintained street, is designed for four lanes. However, it is not stripped for 4 lanes because current traffic levels do not justify stripping it for 4 lanes. They have had a traffic study performed and with very minor modifications they feel that at full build out all of the significant intersections in this project, on Long Shoals and on I-26 will be operating at acceptable levels. He explained how their site plan is drawn up to disburse traffic as much as possible.

When Councilwoman Cape asked about the hotel height, Mr. Szurek said that the hotel is on the lower slope near the intersection and they are requesting the hotel height be 9 stories.

At the request of Councilman Mumpower, City Traffic Engineer Anthony Butzek had performed a preliminary review of the Traffic Impact Analysis and it does verify that the streets are adequate to accommodate the traffic with some traffic improvements at the intersection of Long Shoals Road that would be made a condition of the Master Plan approval. He will ask the developer's traffic engineer to look at the numerical impact of traffic in the neighborhood. Traffic is distributed within the development and Schenck Parkway is designed to handle much more traffic than it is carrying today. He said that the traffic calming project he is working on with the neighborhood is a separate project and will go forward with or without this project.

Mr. Butzek responded to questions from Council with regard to speed humps and the speed limits in the area. He did not recommend a lower speed limit than 25 mph on this typical residential street.

Upon inquiry of Councilman Freeborn, Mr. Glines said that all infrastructure improvements will be borne by the developer. In addition, Mayor Bellamy noted that they anticipate a $130,000 Million increase to the City's tax base within five years.

Councilman Mumpower moved to rezone property located at Schenck Parkway, Schenck Crescent East and Waterstone Road from Central Business District and RS-8 Residential Single-Family High Density District to Urban Village District. This motion was seconded by Councilwoman Cape and carried unanimously.

Regarding the height of the hotel, City Attorney Oast pointed out that City Council is not prescribing a maximum height in terms of feet.

Councilman Newman moved to approve the amended Master Plan for the Biltmore Park Urban Village with the conditions that (1) the sidewalk be extended from the urban village area to Heathbrook Circle; (2) City staff consider the issue of on-street parking along Schenck Crescent East; and (3) the height of the hotel be limited to 9 stories. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PERMIT CREMATORIES AS AN ACCESSORY USE TO FUNERAL ESTABLISHMENTS IN LOWER INTENSITY DISTRICTS AND A PRINCIPAL USE IN MORE INTENSE ZONING DISTRICTS

ORDINANCE NO. 3337 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PERMIT CREMATORIES AS AN ACCESSORY USE TO FUNERAL ESTABLISHMENTS IN LOWER INTENSITY DISTRICTS AND A PRINCIPAL USE IN MORE INTENSE ZONING DISTRICTS

Mayor Bellamy opened the public hearing at 6:27 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to permit crematories as an accessory use to funeral establishments in lower intensity districts and a principal use in more intense zoning districts. This public hearing was advertised on February 17 and 24, 2006.

Presently, the UDO contains limited references to crematories. Staff has relied on an interpretation that, except where allowed as uses of right (River District), crematories are only permitted as accessory uses to funeral establishments. This proposed amendment is intended to

set fair and reasonable standards for these uses in the City of Asheville. In drafting this proposal staff has consulted with the NC Board of Funeral Services and a working group of local funeral directors. The proposed ordinance would allow crematories as a principal use in more intense zoning districts (INST, HB, RB, CI, IND) and an accessory use to funeral establishments in other districts where they are allowed (OB, CB-I, CB-II, CBD). In all cases, crematories would be required to comply with current standards set by the WNC Regional Air Quality Agency, NC Board of Funeral Services, and NC Crematory Authority.

The Commission members noted the fact that the State standards only applied to the cremation of human remains, not to pet cremation services, and specified that the ordinance only apply to "crematories for human remains".

Pros –

- The ordinance would set clear standards relating to crematories for human remains.
- The ordinance would ensure that crematories comply with applicable state and regional standards.

Con –

- The amendment would increase the number of areas where crematories are permitted as a use of right.

The Planning and Zoning Commission recommended approval of these code amendments on January 4, 2006, by a unanimous vote of 6-0. City staff recommends approval of the proposed ordinance amendment, as well.

Mayor Bellamy closed the public hearing at 6:30 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3337. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 402

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF WAIVER OF ONE-YEAR WAITING PERIOD FOR ZONING ACTION ON PROPERTY AT 109 N. LIBERTY STREET

Development Services Director Joe Heard said that on Friday, February 24, 2006, an e-mail was received requesting this matter be removed from Council consideration.

B. RESOLUTION NO. 06-42 - RESOLUTION AWARDING CONTRACT TO BRANTLEY CONSTRUCTION COMPANY INC. FOR CONSTRUCTION OF THE OLD HAYWOOD FIRE STATION AND THE ROCKY RIDGE ROAD FIRE STATION, AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT

Fire Chief Greg Grayson said that this is the consideration of a resolution authorizing the City Manager to execute the award of bid to Brantley Construction Company Inc. for construction of the Old Haywood Road Fire Station and the Rocky Ridge Road Fire Station.

For more than six years, two fire station facilities have been in the planning phases for City government. In previous budget approvals, City Council has already authorized $4,825,000.00 for fire station construction. In addition, Council authorized purchase of two specific properties on which to locate the stations. Also, Council awarded an architectural services contract for the stations to the firm of Stewart, Cooper, Newell. Staff has advertised and held public informational community meetings concerning the new station design. Significant input was taken from citizens as well as neighboring property owners to the selected sites.

Bid proposals for construction of the stations were received in January and have been thoroughly evaluated by our architectural firm. The lowest responsible bidder was identified as Brantley Construction Company, Inc. of Canton, NC. Brantley's bid amount for both stations was $4,553,296.00. Brantley has demonstrated their ability to build fire stations for other cities. The cost per square foot of construction is approximately $166.00 per square foot. Bidding the two stations together has resulted in significant savings for the city, as other similar fire station projects in our state are being bid at over $200.00 per square foot.

With Council approval, construction of the stations will begin in April, with completion expected in the first quarter of 2007. Additional costs associated with full implementation of these two stations will be identified through the Fiscal Year 2006-07 budgetary process.

Both of these stations are fulfilling commitments made through previously approved annexation services plans. The City of Asheville has not built a new fire station since the 1970's. Each of these two fire stations will also provide needed work space for the Asheville Police Department.

Each of these stations will have a number of energy efficient "green building" features. However, the approved budgetary funding from past fiscal years coupled with operational time constraints complicate these projects from being LEED (green building) certified facilities. Council will be presented with the option of funding Fire Station 12 in the Sand Hill Road area as a LEED certified building. At this time, construction of Fire Station 12 is planned to be a part of the Fiscal Year 2007-08 fiscal year budget requests from the Asheville Fire and Rescue Department.

Pros:

- The city's standard of cover for provision of emergency services will improve with the addition of these two facilities. Emergency response times will be reduced – lives and properties will be saved.
- Council's previous commitments to approved annexation services plans will be honored.
- The two stations will significantly aid the city in being evaluated by the Insurance Services Office (ISO) to help homeowners and business owners keep their property insurance at a minimum cost.

Cons:

- None identified at this time.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council authorize the City Manager to execute the award of the fire station construction bid to Brantley Construction Company, Inc. in the amount of $4,553,296.00.

Fire Chief Grayson and Mr. Ken Newell responded to various questions/comments from Council, some being, but are not limited to: what the actual bid amount includes; information relative to the contractor; staffing and rolling stock for the two new stations; what does the bidding process consist of and are local contractors encouraged to bid; are both of the stations supported through prior annexation plans; is there space in the stations for a community gathering place; what is the shelf life of the buildings; and why are all the costs uniform across the bid sheet.

Chief Financial Officer Ben Durant explained the financial part of the project in that we will not be impacted by $1 Million next year because we are financing these fire stations. The true impact to the budget will be the annual debt service costs, which will go up by about $80,000.

Upon inquiry of Councilman Newman about ways to reduce the cost of the project, Fire Chief Grayson said that steel construction and concrete costs are the major expenses. Mr. Newell said the only way to reduce the cost of the facilities would be to change some significant visual appearances, e.g., lose masonry on the outside of the building and get metal liner panels which would not blend in well with either of the neighborhoods and the cost savings for that would be fairly insignificant to the total cost.

Upon inquiry of Mr. Fred English, Fire Chief Grayson said that the property on old Haywood Road was acquired in 2000 and the property on Rocky Ridge Road was acquired in 2006.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-42. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 375

At 6:57 p.m., Councilman Mumpower moved to go into closed session for the following reason: To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:25 p.m., Vice-Mayor Jones moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

C. ORDINANCE DECLARING "SNIPE" SIGNS TO BE NUISANCES, AND AUTHORIZING REMOVAL

City Attorney Oast said that this is the consideration of an ordinance establishing a process for the removal of temporary illegal signs.

The proliferation of small, temporary advertising signs adjacent to or within the right-of-way of streets and roads -- "snipe" signs – in addition to being an eyesore, affect the safety of persons using the roads, either by blocking line of sight or by distracting motorists.

The City's sign regulations are contained in the zoning ordinances. The enforcement provisions of the zoning ordinance are not effective to deal with transitory violations of the nature presented by snipe signs: by the time the notice of violation process is complete, the signs and the reasons for them are frequently gone. Sec. 7-18-5 of the UDO already provides for the summary removal of some nuisance signs. This ordinance more clearly defines what a nuisance sign is, more clearly sets out the public health and safety concerns, and more clearly defines the particular areas where such signs are of primary concern.

What the proposed ordinance does is make a legislative finding that a certain type of sign tends to distract or obstruct the vision of motorists and create visual clutter and road hazards, affecting the public health and safety in a negative way, and is therefore a nuisance. The ordinance authorizes the City's code enforcement officers to remove those signs, and provides a "post-removal" process for the responsible parties to challenge the removal and retrieve their signs. The ordinance also allows the code enforcement officer to dispose of signs that are not retrieved.

This ordinance is somewhat consistent with Buncombe County's recently adopted ordinance providing for the removal of signs in the right-of-way. Since the width of a street or road right-of-way can vary unpredictably, the proposed ordinance for the City applies within 30 feet of the traveled portion of a road. This ordinance was initially presented on January 17. Based on comments received, it has been revised to modify the notice and hearing requirement, and to better define the characteristics that make such signs objectionable as nuisances.

Considerations:

- Defines what a snipe sign is
- Declares such signs to be nuisances
- Establishes expedient process for removal
- Provides a process for challenging violation

If Council approves of the ordinance, adoption of it is recommended.

There was considerable discussion by Council of what types of signs would be covered by the ordinance, specifically yard sale signs and lost dog signs. City Attorney Oast said those signs can be placed on store-fronts or kiosks, but not on telephone poles.

At the request of Council, City Attorney Oast said that he would look at some provisions to possibly creating a yard sale permit that will permit someone to put up some signs. That provision could include that the sign has to be taken down within 12 hours.

Ms. June Patterson, founder of Stop the Signs, said that she has worked on this ordinance for over 2 years and yet has anyone to say that this issue is not important. These signs contribute to litter and traffic problems. Regarding the yard sale signs, she feels the point is moot because Asheville doesn't have adequate enforcement. What the new ordinance does is give City employees the ability to pick up a sign instead of going through a 30-day process to remove a sign.

Mr. Ashton Walton stressed that snipe signs are clearly a nuisance. Regarding yard sale signs, after they are removed, the nails and staples stay in the pole and Progress Energy crews can be injured when they climb the poles. People who place and leave up these signs have no regard for scenic beauty or safety.

When Councilman Newman asked if the City can permit someone to tack a sign on a Progress Energy pole, City Attorney Oast said no, but he can look into authorizing yard sale signs if they are not in the right-of-way.

Councilman Mumpower voiced concern about the abuse of political signs and asked the City Attorney for clear direction. City Attorney Oast said that political signs are not considered snipe signs but are addressed in the sign ordinance, which permits them for a limited period of time.

Councilman Mumpower asked what the realistic manpower ability is to pull up the signs. City Attorney Oast responded that the staff is out of the Planning & Development Department and the Director has proposed some additional manpower to handle this.

Councilman Mumpower asked the City Attorney to report back to Council giving them a specific enforcement plan and some realistic sense of what we can do to have a meaningful impact on snipe signs.

City Attorney Oast responded to questions from Vice-Mayor Jones regarding different signs in the community. City Attorney Oast said that this ordinance is trying to address he proliferation of advertising signs out on commercial highways. The problem that we have is that it is difficult to make content-based distinctions, so we have tried to define snipe signs in such a way that it is pretty clear what is intended to be covered by it.

Councilman Newman is supportive of getting rid of the advertising signs, but wondered if we are getting rid of some other signs along the way that we weren't thinking about.

Councilwoman Cape wondered what type of commitment the City is willing to make for public areas and kiosks for advertising. In addition, she wondered if we can enlist some volunteers from Quality Forward to help with sign removal.

Councilman Newman moved to continue this matter in order to give the City Attorney an opportunity to address some of Council's concerns. This motion was seconded by Councilman Mumpower and carried unanimously.

Ms. Christine Logan, Code Enforcement Officer, explained that the biggest offenders are commercial message signs that are posted in the right-of-way and that do not have a permit.

It was the recommendation of Mayor Bellamy, and the consensus of Council, to have the City Council Public Safety Committee review this ordinance prior to it being brought back for Council consideration.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WOOLPERT INC. FOR REVISIONS TO THE STORMWATER, EROSION CONTROL AND FLOODPLAIN ORDINANCES

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Woolpert Inc. in the amount of $89,161.50 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Due to the flooding events of September 2004, changes in State laws and requirements of Federal regulations, the City of Asheville is in the process of revising the Stormwater, Floodplain and Erosion Control Ordinances.

The process for making these updates includes reviewing the latest trends in the field, examining growth and land use patterns in the City and gathering input from the community. The reason staff is requesting hiring a consultant to perform these services include the following:

- The Consultant offers professional expertise in the stormwater, floodplain and erosion control fields;
- The Consultant has experience in working with similar municipalities in North Carolina;
- Staff resources are limited. It would be difficult to allot enough staff time to makes these updates in a timely manner. We have a deadline of July 1, 2006 to have the Stormwater Ordinance updated;

Staff developed a request for professional services for this project. We received three proposals. Staff reviewed these proposals and determined that Woolpert Inc. was the most qualified for this project.

Revisions to these ordinances will address City Council's strategic goals by improving the quality of our water. This goal is stated in the focus area of Natural and Built Environment.

Considerations

- Cost is within acceptable limits for the scope of the work.
- The money for this project is currently budgeted.
- The consultant will be working with the stakeholders group to make recommendations to Council.

City staff requests that City Council authorize the City Manager to sign a contract with Woolpert Inc. in the amount of $89,161.50 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Upon inquiry of Councilman Davis, Ms. Ball said that the City is working diligently with the other agencies involved to not duplicate services. In fact, we have found that we have opportunities to share a lot of information.

In response to Councilman Mumpower, Ms. Ball said that the outcome of this contract will result in a revised stormwater ordinance, which has to be revised to meet the federal mandate; a revised floodplain ordinance that will revisit what development the City allows in the floodplain; and a revised erosion control ordinance to address changes at the state level. She feels the ordinances interact with each other so much, it is very hard to make changes to one of the ordinances that doesn't impact the other one.

When Councilman Mumpower asked if there are existing models throughout the state, Ms. Ball said that there are other ordinances that are available, but because our topography is very different from the rest of the state, she didn't think we could readily take one of the off-the-shelf ordinances and make it work in Asheville.

Councilman Mumpower agreed that stakeholder input is important, but felt the has the capability of obtaining that input. He wondered if the City could hire the consultant on a smaller scale to tailor an existing off-the-shelf ordinance.

Upon inquiry of Councilman Freeborn, City Manager Jackson explained why the Engineering Department staff cannot handle this project in-house.

Ms. Ball said that she will meet with the consultant and talk to them about ways that to revise the scope and what capabilities we have in-house to do some of the work.

Councilwoman Cape suggested talking with Warren Wilson College to arrange a partnership.

E. RESOLUTION NO. 06-43 - RESOLUTION ESTABLISHING THE FEDERAL LEGISLATIVE AGENDA FOR FISCAL YEAR 2007

Economic Development Director Sam Powers said that this report follows up on the City Council worksession of February 21, 2006.

Over the past three years Congressman Taylor, Senator Burr, and Senator Dole have been successful in helping the City receive over $5 million in appropriations to fund City transit bus acquisition, drug interdiction, parks improvements, river redevelopment, and pedestrian improvements. Fiscal Year 2007 appropriations/legislative requests are currently being developed and the City needs to determine if it wishes to submit any requests for potential federal assistance, with a deadline for submittal to the congressional staff and the WNC Caucus by March 1, 2006.

City staff has identified the legislative remedy for the transit system as well as seven projects as potential submissions for assistance: Bus Acquisition Pilot Project, Green Building Fire Station, Driving & Firearms Simulator and Driving Range Upgrade, Thomas Wolfe Project, Reid Center, Public Service Radio Improvements, and Signal Preemption for Emergency Response.

Staff is seeking policy recommendations on setting a federal legislative agenda for Fiscal Year 2007 to be in position to submit to the congressional delegation and staff and the WNC Caucus by March 1, 2006, if Council so desires.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved to approve the Fiscal Year 2007 legislative agenda to include the Bus Acquisition Pilot Project; Green Building Fire Station; Driving & Firearms Simulator and Driving Range Upgrade; Reid Center; Public Service Radio Improvements; and Signal Preemption for Emergency Response, specifically making the census definition of our metropolitan area and the implications that will have on our local federal transportation funding our No. 1 priority. This motion was seconded by Vice-Mayor Jones.

Councilman Davis felt Council should include the Thomas Wolfe Cabin in our federal agenda for $350,000 to see if there is money earmarked for that type of project. He said the cabin is the City's responsibility and we should take the responsibility for preserving this significant piece of property.

Councilman Mumpower felt the legislative agenda is an exercise in political excess that talks more about what is nice than what is necessary. He was strongly against participating in that type of excess.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Davis moved to include $350,000 to the federal agenda for the Thomas Wolfe Cabin and that if no funds are available that City staff look for an alternate plan to realistically fix the cabin. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Newman, Councilman Davis explained the significance of the Thomas Wolfe Cabin.

Councilwoman Cape felt the City has made a huge investment in Azalea Park and the Cabin is equally important to the Park area.

The motion made by Councilman Davis and seconded by Councilwoman Cape carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

RESOLUTION BOOK NO. 29 – PAGE 378

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO RETAIN THE SERVICES OF BALL JANIK

Economic Development Director Sam Powers aid that this report follows up on City Council worksession of February 21, 2006. City staff was directed to contact Ball Janik to determine the firm's interest, ability, and fee structure to assist the City in working with the congressional delegation and congressional staff members in revising legislation dealing with federal appropriations to the City's transit system and/or for submitting any potential federal funding requests for Fiscal Year 2007. City Council is requested to provide policy direction to City staff in this matter.

For the past three years the City has utilized a Washington, DC firm, Ball Janik LLP, to assist the City in providing the necessary project information to congressional staffers to include in the various federal appropriations bills. Ball Janik also provided advice and counsel in matters of federal legislation affecting the City. The City did not renew its contract with Ball Janik when it expired in 2005. The City's transit system's service area has been reclassified as an urbanized area of over 200,000 in population due to changes in census boundaries. This reclassification has significant adverse affects on future operations of the system, and the City has considered seeking legislative remedy to the situation. Fiscal Year 2007 appropriations/legislative requests are currently being developed and the City needs to determine if it wishes to utilize Ball Janik to work with the congressional delegation and congressional staff in support of the City's federal legislative agenda.

Ball Janik has indicated that it can represent the City in pursuing the legislative remedy to the transit system reclassification and/or funding requests and a proposal for services for these elements. Ball Janik proposes a monthly retainer of $2,500 (compared to the previous retainer of $5,000 per month) which will enable them to aggressively pursue an Asheville-specific legislation fix on the transit flexibility issue, and will also them to monitor, on an ongoing basis, legislative issues of interest to the City.

Councilman Newman moved contract with Ball Janik on a monthly retainer of $2,500 to focus on the highly technical issue regarding transit. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt Asheville has a committee structure that can potentially address this and make the kind of things happen that we want to without the cushion between Council and our representatives. He committed working with Councilman Newman to meet with Congressman Taylor and his staff to passionately pursue the transportation issue.

Upon inquiry of Councilwoman Cape, Transit Services Director Bruce Black explained the decrease of funding each year regarding the transit system.

Councilman Newman explained the highly technical aspect of the transit system.

Mr. Powers responded to various questions from Council regarding Bali Janik and the timeframe for action.

Mayor Bellamy said that a meeting is being set up with Congressman Taylor, Senator Burr and Senator Dole in order to build a personal relationship.

The motion made by Councilman Newman and seconded by Councilwoman Cape failed on a 3-4 vote, with Vice-Mayor Jones, Councilwoman Cape and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

G. RESOLUTION NO. 06-44 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Jones said that the terms of Richard Fort (Regular member), Robert Middlemas (Regular member), Jonathan Glover (Alternate Member) and Scott Shealy (Alternate member who has resigned) on the Board of Adjustment expired on January 21, 2006.

At the City Council's worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Jonathan Glover, James Sheeler and Cheryl Johnson for the Alternate seats. Mr. Glover was unable to reached for an interview time.

Also at the City Council's worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Richard Fort (Regular member) and Robert Middlemas (Regular member) to each serve an additional three-year term respectively, terms to expire January 21, 2009, or until their successors have been appointed.

It was the consensus of Council to appoint James Sheeler and Cheryl Johnson as Alternates to the Board of Adjustment to each serve a three year term respectively, terms to expire January 21, 2009, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 392

H. RESOLUTION NO. 06-45 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Jones said that the terms of Michael Burkhead and Jim Mullen (who has resigned), as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Burkhead to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Rev. Keith Ogden, Veronica Sotolongo and Martha Brown. Ms. Sotolongo was unable to attend the interview.

After Council spoke highly about the candidates, Council voted until one candidate received the majority vote. As a result, Veronica Sotolongo was appointed to serve a three year term, term to expire December 31, 2008, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 393

I. RESOLUTION NO. 06-46 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Jones said that the terms of Chuck Pickering, Pat Whalen and Leslie Yancey (who has resigned) on the Downtown Commission expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Whalen to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Guadalupe Chavarria, Michael McDonough, Kitty Brown, Sherry Luft, Larry Johnson and Daniel Sanders.

After Council spoke highly about the candidates, Council voted until two candidates received the majority vote. As a result, Kitty Brown and Larry J. Turner were appointed to each serve a three year term respectively, terms to expire December 31, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 394

J. RESOLUTION NO. 06-47 - RESOLUTION APPOINTING MEMBERS TO THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Vice-Mayor Jones said that there currently exists four vacancies on the Economic Development Advisory Committee (Jim Mullen, James Geter, David Phillips and Valerie Dennis). Since the Advisory Committee is being reformed from a Task Force, terms have yet to be determined.

At City Council's worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Becky Anderson, John Payne, Phillip Ray Gibson, Kenneth Brown, Matthew Raker, Neil Newberry, Smithson Mills, LaVoy Spooner, Lewis Lankford and Kimberly Hodges. Mr. Payne was not able to attend the interview.

After Council spoke highly about the candidates, Council voted until four candidates received the majority vote. As a result, Becky Anderson, Matthew Raker, Lewis Lankford and Kimberly Hodges were appointed to the Economic Development Advisory Committee. Terms for each member will be determined by City Council at an upcoming Council meeting.

RESOLUTION BOOK NO. 29 – PAGE 395

K. RESOLUTION NO. 06-48 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Jones said that there currently exists two vacancies on the Asheville-Buncombe Fair Housing Commission until December 31, 2007, (Mr. Jim McCulley, who has passed away, and Ms. Christiana Tugman (who has resigned).

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Paul Ford, Jeff McMickens, Mary Robertson, C. Joy Thigpen and Jessica Erwin Leaven.

After Council spoke highly about the candidates, Council voted until two candidates received a majority vote. As a result, Paul Ford was appointed to serve the unexpired term of Mr. McCulley, term to expire December 31, 2007, or until his successor has been appointed; and Jeff McMickens was appointed to serve the unexpired term of Ms. Tugman, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 396

L. RESOLUTION NO. 06-49 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

The terms of Gerry Hardesty, Linda Giltz and David Tuch, as members on the Greenway Commission, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Giltz and Mr. Tuch to each serve an additional three year term respectively, terms to expire December 31, 2008, or until their successors have been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Glen Locascio, Starr Silvis, Sarai Rightmyer, Dawa Clark and Marc Hunt.

After Council spoke highly of the candidates, Council voted until one candidate received a majority vote. As a result, Marc Hunt was appointed to serve a three-year term, term to expire December 31, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 397

M. RESOLUTION NO. 06-50 - RESOLUTION APPOINTMENT MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Jones said that the terms of Bill Fishburne, Pam Myers and Dana Irwin, as members of the Public Art Board, expired on December 31, 2005. In addition, Kathleen Peters has resigned, thus leaving an expired term until December 31, 2007.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Fishburne and Ms. Irwin to each serve an additional four year term respectively, terms to expire December 31, 2009, or until their successors have been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Terry Taylor, Kenn Kotara, Kristin MacLeod, Janiece Meek and Bill Branyon.

After Council spoke highly of the candidates, City Council voted until two candidates received a majority vote. As a result, Kristin MacLeod was appointed to serve a three-year term, term to expire December 31, 2008, or until her successor has been appointed; and Kenn Kotara was appointed to serve the unexpired term of Ms. Peters, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 398

N. RESOLUTION NO. 06-51 - RESOLUTION APPOINTMENT MEMBERS TO THE ASHEVILLE TREE COMMISSION

Vice-Mayor Jones said that the terms of Bill Jones, Peter Gentling and Joseph Carney, as members on the Asheville Tree Commission, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Jones to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Richard Koerber, Hartwell Carson, Starr Silvis, Donna Clark, Bob Gale and Bill Branyon. Mr. Koerber was not interested in the Tree Commission at this time.

After Council spoke highly of the candidates, City Council voted until two candidates received a majority vote. As a result, Starr Silvis and Bob Gale were each appointed to serve a three-year term respectively, terms to expire December 31, 2008, or until there successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 399

VI. OTHER BUSINESS:

For Our Kids

Vice-Mayor Mumpower thanked people, through the For Our Kids Program, who helped out with painting the community center of Klondyke public housing development. He also updated Council on the next Top-A-Stops that will be built.

Claims

The following claims were received by the City of Asheville during the period of January 27 – February 16, 2006: Nichole Compton (Police), Sarah Richardson (Streets), BellSouth (Water), Cyndy Howze (Water), Maxine C. DeBruhl (Parks & Recreation) and Lonnie Bryant (Transit Services).

The following claims were received by the City during the period of February 17-February 23, 2006: Jeanette O'Connor (Fire), Wind-in-the-Oaks (Water), Robert E. Harris (Water) and Wendy E. Fletcher (Traffic Engineering).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Karen Snow addressed Council regarding the inadequacy of storm water structures and storm water damages on Reed Street off Hendersonville Road. Mayor Bellamy said that City Manager Jackson will be in contact with her to discuss this matter.

Mr. Tim Peck spoke to Council about the Merrimon Avenue zoning study. He explained the concerns that the survey is anonymous, the survey contains bias and the survey is open to the risks of fraud, misinterpretation and manipulation. The Greater Asheville Advisory Group

recommends that the results of the survey be given no weight in deliberations on zoning plans for the Merrimon Avenue corridor.

Mr. Fred English urged Council to contact the N.C. Dept. of Transportation to address the graffiti in the Beaucatcher Tunnel as well as the burnt out lights.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:03 p.m.

Magdalen Bowlesson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – March 7, 2006 – 8:15 a.m.
Police Training Room – 3rd Floor
Municipal Building

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Diana Hollis Jones and Councilman Brownie W. Newman

Mayor Bellamy announced that this special meeting is being held to consider a resolution of consideration identifying areas with potential for future annexation

RESOLUTION NO. 06-52 – RESOLUTION IDENTIFYING THE AREA DESCRIBED HEREIN AS BEING UNDER CONSIDERATION FOR ANNEXATION

Urban Planner Julia Cogburn said that this is the consideration of a resolution of consideration identifying areas with potential for future annexation.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the City may, within the reasonably near future be subject to annexation. After being in effect for at least one (1) year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of any annexation ordinance and the effective date of that ordinance from a minimum of one (1) year to a minimum of seventy (70) days. Each Resolution of Consideration is effective for two (2) years. The initial City of Asheville Resolution of Consideration was adopted on April 9, 2002, and a revised map adopted by Council on March 9, 2004. It is now time to consider the next resolution.

The map staff has prepared to accompany this resolution utilizes the same perimeter boundaries as were approved by Council in 2004, minus any areas that have been annexed by the City of Asheville or another jurisdiction since that time. In 2004, as well as today, these are areas with the potential for urbanization, such as the areas along major thoroughfares, areas within the City's extraterritorial jurisdiction, areas with existing infrastructure or areas where utility extensions are feasible and other areas with potential for urban development.

The map includes many areas that may not experience urban development in the near future, because the boundaries are drawn to be expansive enough so that any possible near term (1-5 years) annexation areas will be within the boundaries.

Pros:

- Gives residents and property owners within the area advance notice of possible annexation.
- Allows the time period between passage of an annexation ordinance and the effective annexation date to be shortened to a minimum of seventy (70) days.
- The City can (and will) conduct smaller, incremental annexations within the area.

Cons:

- The possibility of annexing some parts of the area may not be realized for a number of years.

City staff recommends that the Resolution of Consideration be adopted.

Upon inquiry of Mayor Bellamy, Ms. Cogburn said that the map can be viewed in the City Clerk's Office, in the Planning Department and the internet.

In response to Councilman Davis, Ms. Cogburn said that even though the map is the same as two years ago, staff did not see any other urbanized areas that should be included.

Mr. Tim Peck questioned Council if they favored the incorporation of Leicester. City Attorney Oast said that under the statutes if Leicester does pursue incorporation, then at that time City Council will have the opportunity to take a position on it.

At the request of Councilwoman Cape, Ms. Cogburn said that she would provide Council with more information regarding the area of Biltmore Forest and the Biltmore Estate.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 06-52. This motion was seconded by Councilman Freeborn and carried on a 4-1 vote, with Councilman Mumpower voting "no."

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ADJOURNMENT

Mayor Bellamy adjourned the meeting at 8:30 a.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – March 14, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Cadets from A.C. Reynolds High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF RECIPIENTS OF THE DR, MARTIN LUTHER KING JR. YOUTH AWARDS

Ms. Oralene Simmons explained the significance of the Dr. Martin Luther King Jr. Youth Awards. Mayor Bellamy then recognized Derrick Beasley (Asheville High School), Sharonda Bradley (Asheville High School), Megan Clark (Buncombe Community School) and Rita Williams (A.C. Reynolds High School) for receiving the Martin Luther King Jr. Leadership Award. In addition, she recognized Edith Alas-Ortega (Asheville Middle School), Cameron Bowers (Erwin High School), Nakia Harrell (Asheville Middle School), Katrina Ireland (Asheville Middle School), Zanele Mangena (Asheville Middle School), Shree McMorris (Asheville Middle School), Cynthia Molina (Asheville Middle School), Patricia Moore (Asheville Middle School) and Kyle Weeks (Asheville Middle School) for receiving the Martin Luther King Jr. Emerging Heros Award.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "B" was pulled from the Consent Agenda for discussion.

At the request of Councilman Newman, Consent Agenda Item "G" was pulled from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON FEBRUARY 28, 2006, AND MARCH 7, 2006

B. RESOLUTION DECLARING PROPERTY AT 8 CEDAR STREET AS SURPLUS AND ESTABLISHING THE MINIMUM PRICE

This item was pulled from the Consent Agenda for individual discussion.

C. ORDINANCE NO. 3338 - BUDGET AMENDMENT FOR REIMBURSEMENT BY THE N.C. DEPT. OF TRANSPORTATION FOR MATERIAL COSTS FROM THE HAYWOOD ROAD PROJECT

Summary: The consideration of a budget amendment, in the amount of $16,000, for the reimbursement from the N.C. Dept. of Transportation of funds expended completing Haywood Road ADA ramps.

City Council authorized the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NC DOT) to install Americans with Disabilities Act (ADA) compliant ramps along Haywood Road in conjunction with the NC DOT's resurfacing project. Both the City of Asheville and the NC DOT were in need of ADA compliant ramps along their respective street systems. It was a requirement of NC DOT to install ADA compliant ramps in conjunction with their resurfacing projects. In order to install some additional City amenities, and to expedite completion, the City of Asheville offered to install these ramps using Street Division forces. For completing this work on their behalf, the NC DOT agreed to reimburse the City the full cost of construction, which is estimated at $16,000 (16 ramps X $1,000 each). Street Divisions staff has completed this work, and the NC-DOT has submitted the reimbursement. Per the considerations on the original Staff Report, the Street Division would use reimbursements placed back in its operating budget on additional streets and sidewalk projects throughout the City.

Pros:

- This budget revision is a direct reimbursement of costs incurred completing a needed partnership project with NC-DOT, and will not be any burden to the general fund.
- The funds placed in the Streets Division materials line will allow additional streets and sidewalk projects to be completed.

Cons: None noted.

City staff recommends City Council adopt the budget amendment, in the amount of $16,000, for material reimbursements for completing the City's requirements of a Municipal Agreement between the City and the NC DOT.

ORDINANCE BOOK NO. 22 - PAGE 404

D. RESOLUTION NO. 06-53 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN FOR DEVELOPMENT OF 84 UNITS OF AFFORDABLE HOUSING ON SPRINGSIDE ROAD IN SOUTH ASHEVILLE

Summary: The consideration of a resolution approving a $300,000 Housing Trust Fund loan for the development of 84 units of affordable housing on Springside Road in South Asheville.

Shelter Development, LLC has requested a Housing Trust Fund (HTF) loan in the amount of $300,000 as partial financing for a proposed $9.3 million Low Income Housing Tax Credit (LIHTC) development for seniors. The project will consist of 84 units with many amenities for the residents.

Shelter Development specializes in housing developments for the elderly and has an excellent track record with LIHTC developments nationwide. The proposed rents are very affordable and the LIHTC rules guarantee 30 years of continued affordability.

The application was evaluated by a panel of outside experts and staff and scored well against the HTF criteria. The Housing and Community Development Committee reviewed the application on January 23, 2006, and has recommended awarding an HTF loan in the amount of $300,000 at 2% interest amortized over a 30 year term.

Advantages:

- Creation of 84 units of affordable housing for seniors
- Long-term affordability
- Increased tax base

Disadvantages: None

Staff recommends approval of a $300,000 HTF loan to Shelter Development, LLC

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E. RESOLUTION NO. 06-54 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOUNTAIN AREA JOB LINK CENTER OF THE MOUNTAIN WORK FORCE DEVELOPMENT BOARD TO PROVIDE THE ORGANIZATION AND ADMINISTRATION OF THE SUMMER YOUTH EMPLOYMENT PROGRAM

Summary: The consideration of a resolution authorizing the City Manager enter into an agreement with Mountain Area Job Link Center of the Mountain Work Force Development Board to provide the organization and administration of the Summer Youth Employment Program.

The Parks and Recreation Department has again contacted the Mountain Area Workforce Development Board (MAWDB) on the campus of A-B Technical College to determine the feasibility of organizing and administering a summer youth employment program for 2006. The MAWDB has actively administered and delivered career development services, remedial education, job skills training and subsidized employment opportunities for Asheville's economically disadvantaged youth for more than 30 years. The MAWDB successfully administered the program, providing employment and educational opportunities for over 55 youth in 2005.

Highlights of the proposal:

- Employment of 55 disadvantaged youth from the City of Asheville.
- Summer employment period of June 8, 2005 – July 29, 2005 (8 weeks)
- Youth employees between the ages of 14 and 17 years old.
- Specific application process and selection procedures mutually agreed upon by the City and MAWDB.
- Education and training components aimed at assisting youth to move forward in school and toward a successful productive life.
- MAWDB will develop, organize, administer supervise and evaluate the program through an agreement with the city including recruitment of youth, development of worksite agreements, orientation and training of worksite supervisors and employees, monitoring and counseling of youth employees and program accounting and oversight.
- The City of Asheville will provide payroll services and worker's compensation insurance.

Pros:

- History of proven professional administration of youth employment programs in Asheville by MAWDB for over 30 years.
- Cooperative agency approach to providing youth development activities.
- Ability to integrate the City's youth employment program with the efforts of the MAWDB career development programs.

- Existing connections to public and private agencies through the MAWFDB "workforce board partners program" which allows for better recruitment of disadvantaged youth and potential worksites.
- Allows for program over site by City staff without the extensive time commitment necessary to actually administer a program of this magnitude.

Cons

- Only enough funds to employee 55 youth for eight weeks which is far less than the demand for this type of employment program.

This action is in keeping with the City Council Strategic Plan's economic development goal #4 of providing vocational training opportunities for teenage youth and the plan's critical services and infrastructure goal #4 of reducing drug related crime activities through holistic approaches targeting at-risk and economically disadvantaged youth. This agreement is for the delivery of a youth development program that combines the opportunities for summer employment with meaningful training and education in the areas of job success skills, career planning, life skills, personal financial management and development of teamwork and interpersonal relations on the job

City staff recommends the City Manager be authorized to enter into a contract with the Mountain Area Job Link Center of the Mountain Work Force Development Board, to provide the organization and administration of the program, in the amount of $100,000.

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F. RESOLUTION NO. 06-55 - RESOLUTION AMENDING RESOLUTION NO. 95-81 REGARDING THE CITY'S POLICY RELATING TO CLAIMS AND JUDGMENTS SOUGHT OR ENTERED AGAINST THE CITY OFFICERS AND EMPLOYEES

Summary: The consideration of a resolution amending the policy for claims and judgments against City employees.

Since 1995 and earlier, the City has provided legal defense to its employees who are sued or named as defendants in actions taken in the course and scope of their employment. Beginning in 1995, the defense for most matters was provided through Asheville Claims Corporation, our self-funded risk management facility

Recently we found language in our excess coverage policy (insurance for claims exceeding the amount covered by the City's self-coverage) that could be viewed as inconsistent with our policy, and might require us to provide a defense even when the employee was clearly acting outside the course and scope of their employment. The resolution addresses that issue by amending the policy to provide that the City may request that the employee indemnify the City for those costs. The only change from Resolution No. 95-81 is the addition of subparagraph C that addresses this particular issue, but the entire resolution is being readopted. This amendment does not otherwise change the City's policy of providing a legal defense to its employees.

Considerations:

1. Addresses inconsistency between City's policy and some insurance coverage;
2. Continues policy of providing employees a defense in appropriate cases.

City staff recommends adoption of the resolution amending the policy for claims and judgments against City employees.

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G. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION EASEMENT WITH RIVERLINK AT AZALEA PARK

This item was removed from the Consent Agenda for individual discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION DECLARING PROPERTY AT 8 CEDAR STREET AS SURPLUS AND ESTABLISHING THE MINIMUM PRICE

Summary: The consideration of a resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price.

The City owns property at 8 Cedar Street (PIN No 9657.07-58-4903) which it does not need and proposes to sell using the process provided in N. C. Gen. Stat. sec. 160A-269, negotiated offer and advertisement for upset bids.

The property at 8 Cedar Street is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It was acquired by the City in December, 1999, for the purpose of realigning the Cedar Street/Fairview Road and Liberty Street/Fairview Road intersections in order to eliminate one of two "back to back" traffic signals. Since that time the amount of traffic on Liberty Street and Cedar Street has diminished significantly due to the closing of Crayton Road and the alternative access between Tunnel Road and Sweeten Creek Road via I-240 and I-40 at Exit 51. Realignment of the intersections is no longer needed based on current and anticipated traffic flow.

The property is zoned RS-8 and improved with a single family residential structure. The lot is 0.1745 acre, rectangular in shape and level to street grade with typical residential landscaping, fencing, etc. The structure is a circa 1926 two story Dutch Colonial with white clapboard siding containing 1,674 square feet. It is structurally sound and in fair to good condition, but it does need some repairs in order to obtain a Certificate of Occupancy. Marketability prospects for the property are very good.

The property has been appraised by CDN Appraisals at $128,000 and by BRB Appraisals at $165,000. The appraisals were reviewed by the City's Real Estate Manager and based on that review $158,600 is recommended as a minimum price for the property. The proceeds from the sale of the property will be general fund revenue.

The positive aspects of marketing the property are:

- The property will be marketed at the appraised value using the upset bid method of sale to ensure a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.
- It is an efficient use of resources, because un-needed property will return to private ownership.

- It will make available moderately priced housing in a fully serviced neighborhood.

The one negative aspect is that if traffic improvements at the Cedar Street/Fairview Road intersection were ever needed the property may have to be reacquired.

Approval of the resolution will authorize marketing of the property through the process provided in N. C. G. S. 160A-269 and establish a minimum price of $158,600.

City staff recommends City Council adopt the resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price of $158,600.

Upon inquiry of Councilwoman Cape, a short discussion took place regarding how might this property be affordable. City Attorney Oast said that the City can explore putting those types of restrictions on the sale.

Councilman Newman agreed that the City needed affordable housing, but didn't think addressing it on a house-by-house basis was the most constructive way to do it.

Councilwoman Cape moved to refer this matter to the Housing & Community Development Committee. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION EASEMENT WITH RIVERLINK AT AZALEA PARK

Summary: The consideration of a resolution authorizing the Mayor to sign a conservation easement at Azalea Park with RiverLink Inc. for stream bank restoration and protection.

The Parks and Recreation Department and RiverLink, Inc., have been working together to develop a conservation easement in conjunction with the Clean Water Management Trust Fund for approximately 27.09 acres located along the Swannanoa River within the Azalea Park. This particular easement will allow for restoration and rehabilitation for the stream bank along the Swannanoa River. The plan will allow a contractor to perform stream restoration and stabilization measures within the riparian buffer easement area which will include removal of a number of trees, laying back the bank of the river, and providing an extensive landscape plan for vegetation in the disturbed area. Funds for this project are being provided through the Clean Water Management Trust Fund through a grant secured by RiverLink. The overall management of this project will be the responsibility of RiverLink working in conjunction with the City of Asheville. This project will occur without disruption to the existing park features and will allow for continued development of the master plan that was approved by City Council for this park. In addition, this project will not in any way affect the beneficial fill area that is currently being used by the City of Asheville.

Pros:

- This project will stabilize the stream bank along a large portion of the Swannanoa River.
- This project will allow for a conservation easement of approximately 27.09 acres for protection for future generations.
- This stream bank restoration will also assist in future flooding events and assist in minimizing damage downstream from this area.
- This project will also allow for increased protection of fish and wildlife along this stretch.

Cons:

- Construction will result in the removal of a number of very large trees near the bank of the Swannanoa River within the park area.

- Construction will be occurring while the soccer complex is in use, and it will be necessary for protection measures to occur for the safety of all participants.

This project relates to City Council's Strategic Plan in regard to protection and improvement of water quality in the region.

City staff recommends City Council authorize the Mayor to sign a conservation easement between the City of Asheville and RiverLink Inc. within Azalea Park.

There was a brief discussion about the need to discuss this easement prior to placing any permanent restrictions on the property.

Using a map, Parks & Recreation Director Irby Brinson said that the Clean Water Management Trust Fund requirement is that approximately 10% of the land in the easement can be developed. City staff have worked on specifics all the way down to trash cans, picnic tables and paved trails that can be in the area. Approximately 50% of the 27 acres is part of the wetland area existing now in that area. The area protected in the easement follows the river and is 50-feet on each side from the top of the bank of the Swannanoa River. They have put a lot of detail into the discussion in making sure that the protection of the park plan was first and foremost.

Councilman Davis moved to continue this matter until the March 21, 2006, worksession. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

ORDINANCE NO. 3340 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

Mayor Bellamy said that this public hearing was originally scheduled for January 10, 2006, however, City staff and the property owner asked that the public hearing be continued until February 14, 2006. That request was granted. On February 14, 2006, City staff requested the public hearing be continued again, with the approval of the applicant, until March 14, 2006. That request was granted.

Mayor Bellamy opened the public hearing at 5:23 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include a Habitat for Humanity subdivision (2 lots) located off of Sand Hill Road. This public hearing was advertised on December 30, 2005.

Asheville Area Habitat for Humanity has petitioned the City for the annexation of two lots they own located off of Sand Hill Road (PIN Nos. 9617.16-74-9433 and 9617.16-83-8448) containing approximately 17.24 acres. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lots are currently vacant, however, the property has been reviewed and approved by the City's Technical Review Committee for a single-family subdivision of 55 lots. The current assessed valuation for this property, according to the Buncombe County tax records, is

110

$200,600.00. The City reviewed the subdivision as its location is within our extraterritorial jurisdiction. Habitat is requesting annexation prior to the construction of the homes in the development.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation.

The proposed effective date for this annexation is March 31st of 2006.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and inspect the development of homes in the proposed subdivision.

Cons:

- There will be service costs involved, consisting of street lights, street maintenance, and tips fees for approximately $4,000 a year and a single one-time capital cost of $2,500 for the sanitation trash cans for the single-family homes.

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mr. Lew Krause, representing Habitat for Humanity, encouraged Council to support this petition and said that they are anxious for the 55 houses to become part of the City.

Mr. Steve Arpin encouraged the City to build compactly and preserve as much of the tree cover as possible when considering development.

Upon inquiry of Councilman Mumpower, Ms. Cogburn said that she believed Habitat requested annexation because they were contiguous to the City limits and they preferred to have inspections, etc. be conducted by the City.

Mayor Bellamy closed the public hearing at 5:27 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3340. This motion was seconded by Councilwoman Cape and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 509 BILTMORE AVENUE, AND IDENTIFIED AS MISSION HOSPITALS DOGWOOD PROJECT, FOR A PROPOSED ADDITIONAL BUILDING ON 29 ACRES

ORDINANCE NO. 3339 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 509 BILTMORE AVENUE, AND IDENTIFIED AS MISSION HOSPITALS DOGWOOD PROJECT, FOR A PROPOSED ADDITIONAL BUILDING ON 29 ACRES

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:29 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located at 509 Biltmore Avenue, and identified as Mission Hospitals Dogwood Project, for a proposed additional building on 29 acres.

He said that The *Asheville City Development Plan 2025* recognizes that the future development of major institutions such as the Mission-St. Joseph Health Center must be considered as an element of planning for Asheville's future. One of the plan's land use goals urges that the City pursue compatible adaptive reuse, redevelopment, and infill development. This project's design, re-using a part of the campus that previously was occupied by another building, exemplifies one kind of compact development encouraged in the smart growth principles.

Another goal of the plan is that the City should enhance its role as western North Carolina's regional medical and education center, with one explicit strategy being "The City should work with Mission-St. Joseph's Health System in the implementation of the Health System's Master Facilities Strategic Plan." Construction of this facility is part of the Health System's master plan.

One of the goals of the Strategic Operating Plan is increased street and sidewalk connections. This project would enable a future sidewalk extension along McDowell Street.

Regarding recent zoning actions, on March 22, 2005, a conditional use zoning from RM-16 and RS-8 to INST-CUZ was approved for the "Biltmore Gardens" project at Biltmore Avenue and Caledonia road. This project, with a combination of retail, office, and residential uses, is about ¼ mile south of the hospital property being considered.

There is another rezoning application currently under review, which is about the same distance south of the hospital property on McDowell. The 430 McDowell Street rezoning, seeking

a change from RS-8 to INST, was remanded to the Technical Review Committee (TRC) by City Council on January 24, 2006, and is on their agenda for March 20, 2006, as a conditional zoning request.

This review concerns a proposed project in the interior of the Mission Hospitals campus. The project would involve 219, 390 square feet of new construction plus 4,160 square feet of renovation. The facility would provide: a new entrance and waiting area for surgery patients, new operating rooms and support spaces, and 48 intensive care patient rooms. The building would have 5 stories above grade, as well as two stories below grade.

The site is located in an Institutional zoning districts within the corporate limits of the City of Asheville, between Biltmore Avenue and McDowell Street (Attachments to City Exhibit 3 – Location Map & Aerial Map). The primary vehicular access to the building's main entrance would be via the McDowell Street and Victoria Road entrances to the campus. The project would also include a proposed service area on the north side of the building (City Exhibit 4 – Site Plan; City Exhibit 5 – Building Footprint; and City Exhibit 6 – Building Elevations).

Medical centers are a permitted use in the Institutional zoning district. Review for compliance with the development and design standards from Article 11 of the Unified Development Ordinance (UDO) is applied to the area of the property affected by the project.

The applicant has provided analysis of present and projected parking facilities, which indicate that an appropriate number of spaces will be available to meet the needs of the proposed facility.

Concept plans for this project were reviewed and discussed at an informal TRC meeting on June 13, 2005. Comments from that review were addressed and written responses were supplied by the applicant as part of the packet submitted for review.

At their January 18, 2006, formal meeting, the TRC approved the project with the conditions stated in the TRC staff report.

At their February 1, 2006, the Planning and Zoning Commission (P&Z Commission) unanimously recommended approval for the project. The only element of the project discussed at the meeting was the sidewalk requirement along the east side of McDowell Street. The sidewalk is shown in the submitted plans, but the applicant had expressed a desire to not construct the sidewalk until a safe connection is provided through and beyond the tunnel. The P&Z Commission noted the applicant's concern about the safety of a sidewalk that would terminate in an exceptionally tricky location for pedestrians, and added the condition that the sidewalk requirement be waived in the event a suitable and safe alternative cannot be found (Fee-in-lieu would be required if the sidewalk is waived.)

On February 23, 2006, staff from the Engineering and Planning departments met with the applicants about this sidewalk situation. It was agreed that the applicant would prepare the site for the sidewalk shown on the plan, performing the necessary grading and retaining wall work to create a strip of appropriate width and slope. Rather than paving that strip, however, the applicant will leave it covered with topsoil and plantings to discourage (temporarily) its use as a path. The applicant will also pay the fee-in-lieu amount, and, when the sidewalk through the tunnel and north of the tunnel is due to be constructed, the City will complete the paving of that section.

Staff has received no communications from citizens regarding this project.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The area of the property on which the building would occur is mostly flat and has previously been paved, graded, or built upon. Thus, no undeveloped land or open space would be affected other than the sidewalk area along McDowell Street. The proposed project is thus compatible with the topography and natural features.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed project would be adjacent to other large medical facilities, and would be very much in harmony with the neighboring area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The **Asheville City Development Plan 2025** recognizes that the future development of major institutions such as the Mission-St. Joseph Health Center must be considered as an element of planning for Asheville's future. One of the plan's land use goals urges that the City pursue compatible adaptive reuse, redevelopment, and infill development. This project's design, re-using a part of the campus that previously was occupied by another building, exemplifies one kind of compact development encouraged in the smart growth principles. Another goal of the comprehensive plan is that the City should enhance its role as western North Carolina's regional medical and education center, with one explicit strategy being "The City should work with Mission-St. Joseph's Health System in the implementation of the Health System's Master Facilities Strategic Plan." Construction of this facility is part of the Health System's master plan. One of the goals of the Strategic Operating Plan is increased street and sidewalk connections. This project will facilitate a future sidewalk extension along McDowell Street.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location off Biltmore Avenue and McDowell Street ensures access to major transportation facilities and other services. Transit routes 4, 6, 8, and 12 serve the area, with one route passing immediately in front of the proposed building. In

addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. Only minor changes to the property's entrance and exit from McDowell would occur, primarily to improve pedestrian safety.

Pros

- Would further goals of City of Asheville comprehensive plan, smart growth policies, and strategic operating plan.
- Could accommodate necessary growth for important regional health system, in keeping with their master plan.
- No apparent opposition.

Cons

- Likely construction noise and disturbance to neighboring hospital facilities during building process.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report, and subject to the February 23, 2006, sidewalk agreement mentioned above.

After rebuttal, Mayor Bellamy closed the public hearing at 5:32 p.m.

Upon inquiry of Mayor Bellamy, Mr. Esselstyn explained that City departments did not have any concerns regarding traffic. In addition, he said that the project would be complete in the summer of 2008.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3339, granting a conditional use permit for property located at 509 Biltmore Avenue, and identified as Mission Hospitals Dogwood Project, for a proposed additional building on 29 acres, subject to the conditions in the Technical Review Committee staff report and subject to the February 23, 2006, sidewalk agreement. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF VARIOUS PROPERTIES RECENTLY ANNEXED ALONG LONG SHOALS ROAD

ORDINANCE NO. 3341 - ORDINANCE ZONING VARIOUS PROPERTIES RECENTLY ANNEXED ALONG LONG SHOALS ROAD

Mayor Bellamy opened the public hearing at 5:36 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance initially zoning various properties recently annexed along Long Shoals Road. This public hearing was advertised on March 3 and 10, 2006.

She said that the *Asheville City Development Plan 2025* identifies Long Shoals Road as a connecting corridor and shows the intersection of Long Shoals and I-26 as a Regional Node. According to the plan, the purposes of the connecting corridor is to "....preserve the flow of traffic along major thoroughfares that connect compact centers of urban development. Connecting corridors are characterized by land uses such as offices and apartments, and should not include regional shopping destinations." The plan further calls for the encouragement of transit supportive residential density (8-16 units per acre minimum) along and adjacent to major corridors. The HB zoning proposed at the intersection of Long Shoals and I-26 supports the regional node concept.

A number of recent zonings related to annexation in Biltmore Park (2004) and a voluntary annexation on Long Shoals Road (2005) have taken place. A conditional use zoning application was approved in early 2005 (to CI) for a property just east of this area.

The property presented to Council for initial zoning is property annexed by the City of Asheville effective December 31, 2005. The properties (a total of 55 parcels) are located along Long Shoals Road and Overlook Roads. The land uses on these property are varied from commercial and institutional to multi- and single-family residential. Surrounding land uses are also similarly varied. The zoning in the area (both City of Asheville and Buncombe County – Limestone Zoning) is a mix of commercial (near the intersection with I-26), institutional (properties surrounding and including the schools in the Overlook area) and residential (the properties between the I-26 and Overlook nodes).

The initial staff recommendation for the entire annexation area was presented to the Planning and Zoning Commission at a meeting on January 4, 2006. At this meeting the Commission accepted staff recommendation on all but thirty-five (35) of the properties south of Long Shoals Road that staff had recommended for RM16 zoning. The purpose of the continuation was to allow the property owners in this area a greater chance to review their options under the City's ordinances.

The City's Planning and Development staff held an informal meeting with the property owners in the area on January 19, 2006, to discuss the zoning of these thirty-five (35) properties. At that time, staff presented options and explained the process and relevant ordinance information as follows:

OPTIONS - WITH PROS AND CONS FOR EACH

HB (HIGHWAY BUSINESS)

Pros

- Consistent with the zoning pattern and development of properties closer to the interstate and at intersection of Long Shoals with Hendersonville Road.
- Provides property owners with greatest flexibility of use.
- Provides land for services needed by the growing residential population in the area.

Cons

- Promotes commercial strip development of Long Shoals Road.
- Not as compatible with abutting residential properties as RM16 or lower intensity commercial/office districts.
- May allow consolidation of properties for big box development.
- May create capacity problems for newly widened road.

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CBII (COMMUNITY BUSINESS II)

Pros

- More consistent in use and scale with commercially zoned properties to the east than HB development would be.
- Provides a "cap" on building size.
- More appropriate scale with surrounding development than Highway Business.
- Provides property owners with large degree of flexibility in use.

Cons

- Promotes commercial strip development of Long Shoals Road.
- Not as compatible with abutting residential properties as RM16 or lower intensity commercial/office districts.
- 45,000 square foot building size maximum allows for a fairly large building.

CBI (COMMUNITY BUSINESS I)

Pros

- More consistent in use and scale with commercially developed properties to the east than HB development would be.
- Provides a "cap" on building size.
- More appropriate scale with surrounding development than Highway Business or CBII.

Cons

- Promotes commercial strip development of Long Shoals Road.
- Not as compatible with abutting residential properties as RM16.
- 12,000 square foot building size limit might promote the development of convenience stores and small, fast food (non-drive thru) restaurants.

OB (OFFICE BUSINESS)

Pros

- More consistent in use and scale with commercially developed properties to the east than HB development would be.
- Provides a more reasonable "cap" on building size than HB, CBII, or CBI.
- More appropriate scale and uses with surrounding development than HB or CBII.
- May not result in commercial strip development of Long Shoals Road.
- Supports the *Asheville City Plan 2025* purposes for connecting corridor development.

Con

- Not as compatible with abutting properties as RM16.
- Residential density is lower than allowed in RM16.
- Flexibility (in development) for current property owners is more limited than HB or CBII.

RM16

Pros

- Supports the *Asheville City Plan 2025* purposes for connecting corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.
- Prevents the development of strip commercial along another Asheville corridor.

Cons

- Flexibility (in development) for current property owners is limited to residential.

At their meeting on February 1, 2006, the Planning and Zoning Commission considered the aforementioned options for the thirty-five (35) parcels to the south of Long Shoals Road.

They recommended (6-1; Byers opposed) that these parcels be zoned CB II. Mr. Byers supported an OB designation for these properties.

The Planning and Zoning Commission recommends approval of the proposed initial zoning of the properties shown on the proposed map and known as the Long Shoals Road Annexation Area: Staff initially recommended RM16 zoning for the thirty-five (35) properties that were the subject of the continued Planning and Zoning Commission discussion. However, it is clear that the Commission supports a wider range of uses than just multi-family (the Commission unanimously supported either CBII or OB zoning for these properties) based on public input received at two public hearings on this matter.

Senior Pastor James V. King of the Family of Faith Fellowship, formerly Asheville Pentecostal Holiness Church, requested CB II zoning of the 3 parcels at 213 Long Shoals Road, for the following reasons: (1) the purchase of road right-of-way reduced the size of their property to approximately 3.5 acres which hinders their ability to expand their facilities for future growth; (2) some expenses have accrued on their present property and they have spent a considerable amount on new property for relocation; (3) the value of this property on Long Shoals was set at commercial by two appraisals – one 5 years ago and one 2 years ago. The State also negotiated a settlement with us on the right-of-way at commercial rates. Based on this information we planned to move forward, but if those funds are not available from a commercial sale we would probably not be able to afford the move; (4) this decision is a common consensus among the entire church body, not just a few; and (5) qualified individuals have deemed the present 10,300 sq. ft. building on this property suitable for a variety of commercial applications with very little renovation necessary. He presented Council with a petition, containing 80 signatures, requesting 213 Long Shoals Road be zoned commercial, preferably Highway Business. However, the signers of the petition are now in support of the Planning & Zoning Commission's recommendation of CB II.

Mr. Curtis Ensley, representing 31 out of 34 parcels property owners, requested Community Business II zoning for their parcels, which the Planning & Zoning Commission recommended. Some reasons are (1) CB II is in keeping with the surrounding area and zoning on the south side of Long Shoals Road; (2) property owners are in favor of CB II zoning; (3) property owners are trying to be proactive and plan ahead to control our community and continue the tradition of being good stewards of this land for over 50 years; (4) CB II will give flexibility to have mixed use and consistent zoning throughout the 34 parcels without forcing individual property owners to come to Council on a parcel by parcel basis; (5) CB II allows commercial, offices, and residential in a planned manner to provide for pedestrian friendly areas and greenways; (6) the heavy concentration of surrounding residential have needs for goods, services and jobs in this area without having to make a two-way drive across Long Shoals Road to an already busy Hendersonville Highway; and (7) minimal impact on surrounding properties since it is bordered by the south by Progress Energy and on both ends by existing Highway Business and CB II. He presented Council with a petition, containing 26 signatures, requesting Highway Business, which he said was prepared for the February 1, 2006, Planning and Zoning Commission meeting. However, at the February 1, 2006, meeting, the signers of the petition are now in support of the Planning & Zoning Commission's recommendation of CB II.

Mr. Charles Worley spoke in support of the Planning & Zoning Commission recommendation of CB II.

Mayor Bellamy closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford explained how staff looks at the zoning pattern and how it might work with the relationship of the road.

In response to Councilwoman Cape about looking for secondary access roads to take traffic off the main corridor, Mr. Shuford felt that was closer related to a thoroughfare plan that a local government might adopt to look for ways to encourage, as development occurs, connecting streets to be built. That is in our 2025 Plan and staff could focus on that if that becomes a priority for Council. He felt we should do that City-wide. He did say it would be difficult to get significant traffic distribution along Long Shoals Road off of the roadway because of the depth of the properties with regard to the lake to the south and the established development pattern to the north.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3341, adopting the Planning & Zoning recommendation. This motion was seconded by Vice-Mayor Jones.

There was discussion initiated by Councilman Freeborn about possibly changing the Highway Business zoning district to Commercial Business II. Mr. Shuford explained that those areas already have a development pattern that has Highway Business type development on it. Even though the existing development would conform to the Community Business II development, it would make some of the uses non-conforming and since there was no objection to the Highway Business designation by the owners at the Planning & Zoning Commission meeting, he felt Council may want to let those owners know of the potential zoning change prior to taking action on it.

Councilman Freeborn felt that by designating property Highway Business in that area, that we are contributing to congestion along that road more so than if it was a more limited usage of that property. Therefore, he moved to amend the original motion to change the rezoning of the Highway Business zoning district to Community Business II District. This motion failed due to lack of a second.

The original motion made by Councilman Mumpower and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 22 – PAGE 413

D. PUBLIC HEARING TO CONSIDER AN APPEAL FROM AN ORDER OF THE BUILDING SAFETY DEPARTMENT ORDERING THE BUILDING LOCATED AT 1500 TUNNEL ROAD (FORMER SITE OF DAYS INN MOTEL), VACATED, CLOSED AND REPAIRED

Mayor Bellamy said that on March 13, 2006, a First Motion to Continue was received from Mr. David W. Cartner, attorney for the owners. Said motion requests an extension of time within which to investigate the facts, prepare an answer or otherwise respond to the City's Findings of Fact/Order and Appeal thereto. Therefore, Vice-Mayor Jones moved to continue this public hearing until March 28, 2006. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Freeborn voting "no."

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 06-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WOOLPERT INC. TO ASSIST THE CITY OF ASHEVILLE IN UPDATING THE STORMWATER, FLOODPLAIN AND EROSION CONTROL ORDINANCES

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Woolpert Inc. for an hourly rate not to exceed the amount of $74,000 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Due to the flooding events of September 2004, changes in State laws and requirements of Federal regulations, the City of Asheville is in the process of revising the Stormwater, Floodplain and Erosion Control Ordinances.

The process for making these updates includes reviewing the latest trends in the field, examining growth and land use patterns in the City and gathering input from the community. The reason staff is requesting hiring a consultant to perform these services include the following:

- The Consultant offers professional expertise in the stormwater, floodplain and erosion control fields;
- The Consultant has experience in working with similar municipalities in North Carolina;
- Staff resources are limited. It would be difficult to allot enough staff time to makes these updates in a timely manner. We have a deadline of July 1, 2006, to have the Stormwater Ordinance updated;

Staff developed a request for professional services for this project. We received three proposals. Staff reviewed these proposals and determined that Woolpert Inc. was the most qualified for this project.

Staff has reviewed the original scope of work and reduced the amount of time the consultant will dedicate to working with the stakeholders group. Additionally staff has removed the task of developing design standards from the contract. These changes have resulted in a reduction in the contract from approximately $90,000 to $74,000.

Considerations:

- Cost is within acceptable limits for the scope of the work.
- The money for this project is currently budgeted.
- The consultant will be working with the stakeholders group to make recommendations to Council.

Revisions to these ordinances will address City Council's strategic goals by improving the quality of our water. This goal is stated in the focus area of Natural and Built Environment.

City staff requests that City Council authorize the City Manager to sign a contract with Woolpert Inc. for an hourly rate not to exceed an amount of $74,000 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-58. This motion was seconded by Councilman Davis.

In response from Councilman Newman, Ms. Ball said that City staff needs the consultants for their technical expertise.

Ms. Ball responded to Councilman Mumpower's concern about spending $74,000 when he felt that City staff should be able to take a strong look at the existing federal and state models.

In response to Councilwoman Cape, Ms. Ball said that these ordinance revisions will not only cover the City of Asheville, but possibly the extraterritorial jurisdiction area as well.

City Manager Jackson said that what this offers Asheville residents is that we are not looking at an off-the-shelf answer for Asheville. We are asking specialists in the field, who are familiar with the best practices, to look at our specific terrain, our unique grades and slopes, and our unique development patterns to make sure Council has the best advice possible.

Vice-Mayor Jones said that we want the best for the community and that we have a fund set aside to do this very work.

In response to Councilman Freeborn, Ms. Ball said that she does have confidence in her staff, but there is no one that has the specialty in this field, without doing a lot of research and dedicating a lot of time. However, that would indirectly cost the City as much as hiring the consultant.

At 6:26 p.m., Vice-Mayor Jones called the question.

The motion made by Vice-Mayor Jones and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 29 – PAGE 406

B. ORDINANCE NO. 3342 - ORDINANCE DECLARING "SNIPE" SIGNS TO BE NUISANCES, AND AUTHORIZING REMOVAL

City Attorney Oast said that said that this is the consideration of a revised ordinance regulating snipe signs.

During Council's consideration of this ordinance on February 28, several questions were raised, and the matter was referred to the Public Safety Committee. In response to the questions raised, as follows:

Regarding will the ordinance apply to non-commercial signs, yes. It is legally difficult to distinguish between signs based on content. A sign in the right-of-way / safety zone is no less a visual distraction / nuisance because it advertises for a lost dog or a yard sale than a closing out sale at a discount store.

Regarding whether the new ordinance will apply to activities such as neighborhood protests expressed on bed sheets hung from trees or houses, yes, if they are located in the right-of-way / safety zone. However, our Code allows for non-commercial messages to be displayed in all zoning classifications, if they comply with the ordinance requirements for that district. This allows signs, but bed sheets may not comply with applicable size limitations.

He suggested the following solutions: Limit applicability of snipe sign ordinance (and summary removal) to non-residentially zoned areas only. This is where the majority of snipe signs are posted, and where the traffic safety issue is most critical. Other non-nuisance sign code provisions would continue to apply to snipe signs in residential areas.

The question regarding if political signs are covered, he responded yes, if they are in the right-of-way / safety zone. He misspoke at Council's February 28 meeting when he said that political signs were permitted in the right-of-way (he confused them with governmental signs). However, political signs are subject to certain time limitations.

With regard to whether this will increase our budget/resource burden, he responded no. Snipe signs are already illegal and subject to removal, but the process for dealing with them is cumbersome. The proposed ordinance does not create a new regulation, or give us something else to enforce. Rather, it gives us an additional less cumbersome tool to enforce the ordinance. Rather than increasing the enforcement burden, it should make things easier for our code enforcement staff to effectively address a temporary, but nettlesome problem.

The Committee indicated that the issues were addressed satisfactorily, and Planning Director Scott Shuford provided some additional clarification with respect to the logistics of implementing the ordinance.

The Committee recommended that the ordinance be revised to limit its application to non-residential areas only, and be sent back to Council. Accordingly, he have revised the ordinance to reflect that the snipe sign problem is particularly acute in commercial areas, and revised the definition of snipe sign so that it does not apply to signs in residentially zoned areas. Such signs would still be subject to the sign regulations in the Unified Development Ordinance, but would not be classified as nuisance under the proposed ordinance.

In the coming months, staff will do some further work to identify the corridors where the problem is most acute, and may request some additional revisions based on that work.

Considerations:

- Revision restricting ordinance application to non-residential areas.

If Council approves of the proposed ordinance as revised, adoption of it is recommended.

He suggested the definition be amended so that it does not include signs affixed to kiosks, bulletin boards or other structures permitted or constructed by the City and intended for community use.

City Attorney Oast said that some further narrowing of the ordinance may be called for because our code enforcement staff has identified not just the commercial areas but specific corridors where the signs are a particular problem. He would like to ask Council to adopt this ordinance, with the definition amended, and direct staff to come back to Council at some point to report on the progress of how they are doing with the snipe sign ordinance and perhaps ask that it be narrowed so that it only applies to certain corridors.

Ms. June Patterson, representing Stop the Signs, spoke in support of the ordinance showing letters of support from the N.C. Dept. of Transportation, Progress Energy, Coalition of Asheville Neighborhoods, Quality Forward, etc.

Councilman Mumpower was concerned that political signs were not specifically mentioned in this ordinance as being prohibited in the right-of-ways. City Attorney Oast said that there is a specific provision in the sign ordinance (Section 7-13-2 (d) (6)) that deals with the

placement of political signs. Political signs are not allowed in the right-of-way, and if they are, they would be subject to the same snipe sign provisions as any other sign. He reiterated that any sign that is not specifically permitted to be displayed in the right-of-way is prohibited.

When Councilman Mumpower felt the snipe ordinance should specifically reference political signs, City Attorney Oast felt that if we start referring to political signs, we start distinguishing on the basis of content, which is a legal problem. He said we can be more specific in the sign ordinance that political signs are not permitted in the right-of-way.

Mayor Bellamy felt it was important to educate political candidates about these changes, which will be enforced. In addition, she asked that the snipe ordinance be well publicized to advise the public about the changes and strict enforcement as well.

In response to Vice-Mayor Jones about the public taking down signs, City Attorney Oast said that this does not deputize anyone to go out and remove a sign they think is illegal. The issues the City would run into is that they might be construed as agents of the City with attendant liability concerns or they might be trespassing on someone's property. We are hoping that this enables our Code Enforcement Officers to be more efficient in how they do their jobs. We are continuing to explore ways to allow community groups to help us out on this and we will advise Council when we have gotten there.

Councilwoman Cape asked the City for a commitment to place more kiosks and more information areas for the community to communicate with each other.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it will not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3342, with the definition being amended so that it does not include signs affixed to kiosks, bulletin boards or other structures permitted or constructed by the City and intended for community use. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 416

V. NEW BUSINESS:

A. RESOLUTION NO. 06-57 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN IN ORDER TO UPDATE THE RECENT CHANGES TO THE MINORITY BUSINESS PROGRAM

Minority Business Director Brenda Mils said that this is the consideration of a resolution amending the Minority Business Plan in order to update the recent changes of the Minority Business Program.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended five times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December 1999 to add the 72-hour delay requirements for "good faith efforts; (3) December 2001 to expand certification to two years; (4) October 2002 to reduce the Minority Business Commission from 13 to 11 members and provide for clarification of the grievance process in the Plan; and (5) September 2004 to make administrative changes and updates to the Plan.

At their meeting on December 1, 2005, the Minority Business Commission recommended that the Plan be amended to reflect the recent changes of the Minority Business Program, which

is no longer a joint agreement between the City of Asheville and Buncombe County but solely managed by the City of Asheville as of October 2005. Ms. Mills reviewed the substantial changes with Council.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

Ms. Mills responded to various questions from Council, some being, but are not limited to: why did Buncombe County withdraw from the joint program; did Buncombe County equally contribute monetarily to the program; is Buncombe County still working with minority businesses; what did the City accomplish this last year regarding reaching our goals; what is the Minority Business Program's budget; how is the City doing with their stated goals vs. the actual performance; what percentage of our overall business in the City is invested in construction vs. procurement and professional services; when was the last disparity study performed;

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-57. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt that the City is consistently missing our goals by dramatic proportions. He hoped that over the next year, Council will be shown some progress in our goals or advise Council on how those goals can be achieved.

Ms. Mills explained that when the goals were set for the City, it was through the disparity study, so you can't do a market study just for the City and Buncombe County. You have to use the market at wherever you buy goods and services – you may be comparing goods and services from Chicago, etc. A lot of those goals are outgrown for Western North Carolina. She felt the City is doing an excellent job of opening access to this community of how to do business with the City and County.

Ms. Mills said that she provide Council with the cost of a new disparity study and a report on exactly what the City is buying so Council has a good benchmark as they make policy.

After a brief discussion initiated by Councilwoman Cape in the declaration of policy, City Attorney Oast said that he would review the law with respect to the policy statement and will change if possible.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 407

B. RESOLUTION NO. 06-58 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTRACT WITH HUNTLEY CONSTRUCTION COMPANY INC. FOR CONSTRUCTION OF THE FAIRVIEW ROAD WATER LINE

ORDINANCE NO. 3343 - BUDGET AMENDMENT FOR CONSTRUCTION OF FAIRVIEW ROAD WATER LINE

Assistant City Engineer John Echeverri said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Huntley Construction Company, Inc., in the

amount of $1,054,499, for the project known as Fairview Road Water Line Replacement and approval of a budget amendment, in the amount of $1,083,963, to provide funding for this project.

This project consists of the installation of approximately 8,640 linear feet of eight-inch diameter water line and related appurtenances.

The Engineering Department received and publicly opened bids on Thursday, February 2, 2006, at 2:00 p.m. Four (4) bids were received from Steppe Construction Co., Buckeye Construction, Buncombe Construction and Huntley Construction in the amounts of $1,315,906.80, $1,103,476.00, $1,056,800.39 and $1,054,499.00, respectively. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Huntley Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $1,054,499.

This project totaling $1,083,963 for construction and inspections will be funded in the Water Capital Projects Fund. $759,567 which is currently budgeted in In-Lieu of City Taxes in the FY 05/06 Water Fund Budgeted will be transferred to the Water Capital Projects Fund. The remaining $324,396 will be reprogrammed from the following deleted or obsolete projects in the Water Major Capital Projects Fund. NCDOT Hwy 151 and NCDOT 70/74 were completed below NCDOT's estimate. The EPA Grant (for an Emergency Response Plan) and Pesticide Mixing Stations Project were completed below our engineer's estimate. The Master Plan Project (for Water Line Oversizing) is being deleted.

Huntley Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City of Asheville Water Resources Department to continue upgrading old and small diameter water mains in the water system;
- The bid amount of $ 1,054,499.00 for the construction of the Fairview Road Water Line Replacement is equitable and reflects the increase in market prices experienced by the piping industry.
- Replacement of this water line will enhance domestic and fire protection service for a service area extending from Sweeten Creek Road to Bleachery Boulevard, along Fairview Road. Construction of this sewer line is in line with Goal # 1 under the Natural and Built Environment focus area of the Strategic Operating Plan of the City of Asheville.
- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land and traffic pattern disturbances along the proposed construction corridor.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Huntley Construction Company, Inc., in the amount of $ 1,054,499.00,

for the project known as Fairview Road Water Line Replacement as well approve a budget amendment to provide funding for this important project.

City Manager Jackson said that he has asked the Chief Financial Officer to go through all of the water capital accounts and rather than bring Council these reallocations piece-meal, he would like a comprehensive review of all the projects. Where we have projects that are completed. the available funds should move into a capital reserve for Council to reallocate or to remain in that reserve for these types of purposes.

Mayor Bellamy said that a lot of residents will be impacted as a result of this project and she instructed City staff to do a special outreach to the citizens, including the phone system, newspaper and television. In addition, she instructed staff to make sure that the contractor is well aware of the need to complete the work within the 120 days.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they will not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-58. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 408

Councilman Mumpower moved for the adoption of Ordinance No. 3343. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 420

VI. OTHER BUSINESS:

Councilman Mumpower thanked groups and individuals for their work and contributions on the Top-A-Stops

Mayor Bellamy urged people in our community to keep Asheville clean. She invited the community to join with the City in a community clean-up event in cooperation with the N.C. Dept. of Transportation and the Chamber of Commerce. She would advise the public when the dates and times are set,

Upon inquiry of Councilman Davis regarding the number of people who are damaging their cars due to traffic islands, City Manager Jackson said that the Chief of Police and Traffic Engineer are putting together a report to bring back to Council on traffic calming, their observations on what it has and has not accomplished, and practices with other jurisdictions. It was the consensus of Council that the City Council Public Safety Committee review this report.

Councilwoman Cape felt the City should be involved in a community slow-down effort.

Upon inquiry of Councilman Newman, Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that her Committee will be discussing possible consolidation or dissolution of existing committees.

The following claims were received by the City of Asheville during the period of February 24 – March 2, 2006: John Madden (Streets), Larry Ray/Mission Hospital (Police) and Ashley St. Martin (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton felt City Council should establish a committee to assure the achievement of quality public education in Asheville.

Ms. Karen Snow, resident at 346 Reed Street, said that over the past 20 years, permitted development of commercial properties all around the affordable housing neighborhood, combined with the lack of upgrades to the City storm water drainage system in the area, has resulted in a serious damaging impact to the homes on Reed Street. She requested Council (1) to instruct City staff to re-attach and stabilize the section of pipe that has become disconnected behind her house at 346 Reed Street; and (2) review the situation concerning the current project recently permitted above this block of Reed Street. Mayor Bellamy asked that the City Manager and City Attorney report back to Council in an open session.

Mr. Zev Friedman talked about the need for improved bicycle infrastructure planning. It was the consensus of Council to refer this matter to the City Council Public Safety Committee and instructed the City Manager to provide Mr. Friedman with some existing information.

Mr. Steve Arpin talked about sustainable development, especially land use planning, compact building with walkable distances and green spaces in the city as a pattern of development that is a wise alternative to urban sprawl. Mayor Bellamy said that a task force is being formed and as the City moves forward that applications for that Task Force will be sought.

Mr. David Herbert talked about the need for aggressive enforcement of the stormwater ordinance.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:56 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – March 21, 2006- 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy asked for a moment of silence for Mr. Kevin Wilson, Mr. John Van Dyke, Staff Sergeant Joe Ray and Sergeant Kevin Akins.

STATE OF THE AIRPORT PRESENTATION

Mr. David Edwards, Airport Director, reviewed with Council the Authority's mission, an overview of the Airport, financial information of Fiscal Year 2002- 2006, passenger traffic growth, Airport terminal improvements, other Airport projects; Airport services; and the future development phases and costs. He said that key objectives include (1) fund the future development program as a pay-as-you-go program; no local tax dollars or long-term debt financing will be used; (2) promote general aviation and commercial air travel from and to Asheville and Western North Carolina; (3) seek additional air service options for both the business and leisure traveler; and (4) seek aviation and non-aviation related business development opportunities.

Mr. Edwards and Vice-Chair Jim Ellis responded to various questions from Council,

Discussion surrounded an independent airport authority.

Upon inquiry of Councilman Freeborn, Mr. Edwards said that the total assets of the Airport are approximately $55 Million, which is a combination of buildings, land and equipment.

Councilman Freeborn questioned if Asheville removes itself from owning the Airport, would we be losing that money and would it affect our bond rating. City Manager Jackson said that if Buncombe County, the City Council and the Airport Authority were interested in pursuing that independent authority, we would want to explore the pros and cons. He said that the conditions under which, he believed, Council would entertain a self-supporting airport would be with some compensation back to the City for their assets – some kind of long-term plan of payment and some review/research/analysis of alternative structures to replace what is in place now. To speak to how that might be structured and what those levels of compensation might be would be a matter for a joint mutual study group to entertain. In his discussions with the Buncombe County Administrator and Mr. Edwards, there was consensus about the amount of work necessary, e.g., financial feasibility, governance structure, sensible alternative models, legal considerations, previous bond covenants, advantages and disadvantages from a regulatory standpoint with the Federal Aviation Administration, etc. They envisioned a 6-month study process to get to the point where there would be a serious report and potential policy consideration. During this process, preliminary contacts would be made with Henderson County, the Federal Aviation Administration, major stakeholders at the Airport, etc. He asked for Council's direction to begin this feasibility work at a staff level so that Council might be in a position to send the request to the General Assembly.

Vice-Mayor Jones was interested in seeing the analysis report but stressed that it was a courageous act on the part of the City to step out there when the Airport was built for not only Asheville, but the entire region.

Councilman Newman was open to obtaining additional information on this, but felt there are several other opportunities for regional cooperation, e.g., Civic Center, recreational services, water issue, etc., and felt Council might want to chose on which regional cooperation presents the best opportunities.

Because City Council requested more time before they commit to that feasibility process, it was the consensus of Council to bring a resolution forward at a formal meeting in April, 2006, authorizing City staff to explore the feasibility of creating an independent airport authority.

REPORT FROM CHAIRS OF POLICY COMMITTEES

Revenue & Finance

Councilman Newman, Chair of the Revenue & Finance Committee, reviewed with Council when the Revenue & Finance Committee's regularly scheduled meetings will be held and updated Council on the latest actions and discussions of the Committee, some being, but are not limited to: how the Buncombe County revaluation will affect City taxpayers; the tax rate; infrastructure and service needs; fees and charges; revenue neutral budget; and potential revenue sources.

Public Safety

Councilman Mumpower, Chair of the Public Safety Committee, reviewed with Council when the Public Safety Committee's regularly scheduled meetings will be held and updated Council on the latest actions and discussions of the Committee, some being, but are not limited to: City-County negotiations on consolidated dispatch center; manpower – retention and compensation; legislative priorities on judicial system funding and structured sentencing; new district deployment system; take-home car process; and emergency response vehicles..

Housing & Community Development

Vice-Mayor Jones, Chair of the Housing & Community Development Committee, reviewed with Council when the Housing & Community Development Committee's regularly scheduled meetings will be held and updated Council on the latest actions and discussions of the Committee, some being, but are not limited to the allocation of $1.9 Million of Community Development Block Grant Funds; revisit the Housing Trust Fund allocation process; revisit some of the out-of-the-box innovative ideas for increasing affordable housing stock; and city-owned property.

Planning & Economic Development

Councilman Davis, Chair of the Planning & Economic Development Committee, reviewed with Council when the Planning & Economic Development Committee's regularly scheduled meetings will be held and updated Council on the latest actions and discussions of the Committee, some being, but are not limited to form-based codes, the Unified Development Ordinance, the hillside/hilltop ordinances, the West End/Clingman Avenue Corridor, the Merrimon Avenue Corridor Plan, river development, and also city-owned property.

2006-07 BUDGET PLANNING

Overview/Update/Schedule

Chief Financial Officer Ben Durant said that the purpose of this report is to give an overview and update of the current status of the budget.

He said that planning for the Fiscal Year 2006-2007 budget began in January with a projected budget gap of approximately $2.6 million. Staff has made significant progress toward closing this gap since then.

Guiding principles for staff development of the budget are as follows: resources are limited; must prioritize programs and services; core services must be maintained; evaluate a market-competitive compensation plan; address strategic initiatives as resources allow; assume a revenue neutral tax rate; use cost reduction and revenue enhancement strategies; and development multi-year approach to financial planning.

Implications of a revenue neutral scenario include: unable to fully fund strategic initiatives; unable to effectively address challenges of employee recruitment/retention/ compensation; unable to effectively address growth demands; may require reduction/elimination of existing services; and public demand for service exceeds available revenues.

Potential gap closing strategies include budget reductions of (1) across-the-board departmental reductions; (2) delay/reduction in capital purchases; (3) reducing general fund contingency; (4) reduction of existing programs/services: (a) non-core services; (b) outside agency funding; and (c) low priority strategic initiatives; and (5) re-engineering proposals for greater efficiency.

Various revenue enhancement strategies, including adjusting the business privilege license fees, extending development fees into the extraterritorial jurisdiction area. Increasing cost recovery for special events, greater cost recovery for fee-based services and sale of property are being developed and will be discussed in detail with the Revenue and Finance Committee.

Staff is also developing various "belt-tightening" strategies, including delaying/reducing capital equipment purchases, reducing the general fund contingency budget and reducing various consultant contracts. More aggressive strategies being examined include reducing contributions to outside agencies and subsidies to other funds. Staff's emphasis in balancing the budget has been to provide sufficient funding for existing programs and services. No provisions at this point have been made for new strategic initiatives. Staff will provide more detail on these recommendations in the upcoming weeks.

Mr. Durant responded to various questions/comments from Council.

Growth Management – Planning, Building Safety, Engineering

Chief Financial Officer Ben Durant said that Asheville is currently experiencing significant economic growth, which is placing increasing demands on our ability to manage the development process and maintain our public infrastructure assets. He used various graphs that illustrated current growth trends in Asheville relative to resources available to manage our growth and invest in public infrastructure. Resources available for growth management and investment in infrastructure in general have not kept pace with recent growth pressures.

Councilman Newman said that one way to address the Planning Department's major workload is to hire some additional staff, but there might be another way of addressing that by streamlining some of the Planning Department's processes so a full-time person can handle more caseload than they have in the past.

Strategic Initiatives Discussion

Assistant City Manager Jeff Richardson said that at the City Council's February 21, 2006, worksession, the City Manager indicated that staff would be bringing forward the City Council

draft two-year strategic initiatives that were brought forward individually by City Council members at the January 20-21 board retreat. He reviewed the compilation of new and old initiatives that were listed for future consideration and discussion by City Council.

During the Fiscal Year 2004-05 budget process, City Council adopted its current Strategic Operating Plan. Seven focus areas and accompanying short and long range goals were identified and adopted accordingly. These goals have been woven into each respective department's work plans accordingly, which has served to guide City staff for the past two budget cycles. Most recently, staff has received additional six month to two year priorities from each Council member as mentioned above. He reviewed with Council these priorities which allow City Council to consider any existing priority in coordination with the new initiatives.

In coordination with the review and adoption of the Fiscal Year 2006-07 budget process, City staff is prepared to execute City Council's short range and long range strategic priorities by assuring available resources are aligned with City Council's final direction.

Councilman Davis felt that the review of the 2025 Comprehensive Plan may need to be moved to the longer-term goals.

At the request of Vice-Mayor Jones and consensus of Council, Mr. Richardson was instructed to find the appropriate place in the short-term goals of developing a regional approach to flood management, thinking long-term.

Ms. Lauren Bradley, the City's Public Information Officer, updated City Council on the citizen communication and customer service enhancements by explaining the outreach and participation; e-communications improvements; and customer service enhancements.

Compensation Framework Proposal

Human Resources Director Belinda Odom said that in developing appropriate employee pay and reward systems, organizations must determine the best fit for their particular organizational mission and culture. Once City Council approves such a philosophy the detailed work of implementation begins. Human Resources will facilitate additional management and employee information gathering to determine appropriate next steps within the established philosophy.

Mr. Bruce Lawson of Fox, Lawson Inc. presented a philosophy to City Council and asked for City Council to give policy direction on these recommendations.

Existing challenges include three major issues: recruitment challenges, retention problems and pay compression.

Motivation includes monetary rewards, such as benefits, wellness programs, etc.; intangible rewards, such as recognition, flexible scheduled, etc.; but, an appropriate base salary is the necessary starting point.

The process includes reviewed current pay plan, policies and procedures; interviewed department directors; reviewed input from employees focus groups; analyzed data; and make recommendations to Council on philosophy.

He said that before we go further, we need Council's guidance in the form of a compensation philosophy.

Basic premises: (1) as reaffirmed by Council in the last strategic plan, the mission of the City is to deliver an excellent quality of service to enhance the quality of life of its citizens; (2) consistent with the practice of City Council and administration for the last seven years, the City is striving to fulfill its potential as a high performance organization; and (3) any proposed system is affordable. He questioned if Council agrees that these premises are the correct framework for the compensation philosophy for the City of Asheville.

Implications are that the City must attract (recruit), motivate and retain productive employees who are willing and able to provide excellent service, and the City needs more flexibility in structure, policies and employee job classifications.

Competitive markets include local public and private employers; statewide and local public employers; and regional and national public employers.

He asked if Council agrees that these are the appropriate markets against which the City must compete for talent.

Market placement considerations are (1) natural grandeur of Western North Carolina and the draw of a vibrant, diverse community make this a desirable place to live and work; and (2) high cost of living (especially housing) and low availability of job opportunities for family members are challenges.

Regarding the market rate, it is (1) calculated by analyzing salaries within the appropriate competitive market for each position; and (2) adjusted based on the cost of labor (very high paid areas and very low paid areas do not skew the data). He reviewed a chart of the city salaries vs. the market. 20% are above the market by more than 5%; 25% is near market; and 55% is below market by more than 5%.

He explained the market = target pay for full performance; new hire pay = based on experience; and movement from new hire to market = based on progress toward full performance. He used charts that showed samples of non-public safety and samples of public safety.

Regarding retention, it is (1) providing excellent service requires seasoned professionals; and (2) replacement costs are expensive.

Implications are that (1) the City cannot afford to be a training ground; (2) to retain good employees, salaries must not be significantly out of step with the competitive market; and (3) this system will specifically improve pay for the City's lowest paid employees and the lower ranks in police and fire.

Compression is a market-based system that will alleviate the City's internal compression over time.

Regarding affordability, (1) phased transition over 3 to 5 years allows for affordable implementation; and (2) by reducing turnover the City should save significant recruitment and training costs.

Cost of implementation is as follows: (1) Year 1: $450,000 (+1% to salaries); (2) Year 2: $450,000 (+1% to salaries); (3) Year 3: $450,000 (+1% to salaries); (4) Year 4: $450,000 (+1% to salaries); and (5) Year 5: $450,000 (+1% to salaries). Total cost over 5 years will be $2.25 Million. This adds 0.4% to annual operating budget. He felt the first year would be Police, Fire and Engineering.

It is Fox Lawson's recommendation that Council support a market-based compensation system. If Council concurs with that recommendation, then (1) adoption of compensation philosophy; (2) implementation plan; (3) employee communications plan; and (4) budgetary decisions.

Mr. Lawson, City Manager Jackson and Chief Financial Officer Ben Durant responded to various questions/comments from Council, some being, but are not limited to: how does the market base deal with merit pay; how was the 5-year implementation schedule arrived at; will the City lose ground over that five years; does the City have a policy for training and commitment; at what time does the Council review the benefit package; what is the definition of the market and how is that formula developed; can the City remain revenue neutral and still proceed with the recommendation of Fox Lawson; interest in looking at other revenue options; and need for a better understand of who is impacted.

Mayor Bellamy asked for City staff to provide to Council everything that staff is cutting to meet the needs, like positions delayed, equipment purchases delayed, consultants; etc.

Vice-Mayor Jones was open to the plan, but felt strong about being revenue neutral. She stressed that Asheville should look at our annexation process to grow our tax base as Asheville citizens are already paying more than their fair share.

Councilman Mumpower supported being revenue neutral, noting that our biggest hole is a result from Sullivan Acts II and III. He felt staff should bring Council options so they can choose.

Mayor Bellamy summarized that City Council pretty much agrees with the study presented and the need for its implementation. How we do that is the question. Council would like for City staff to give Council a menu of options on how to best get to that place, giving Council different levels of cuts in our budget and letting Council know where all those cuts will be, as well as the impact of those cuts. Council is open to seeing deeper cuts than maybe staff is proposing. Council is open to seeing the revenue enhancement strategies, as well as options to not go entirely revenue neutral. Once this information is received by Council, Council will then decide how to proceed. She requested a preview of the overview of the rest of the budget as soon as possible.

Councilman Newman felt that Council can't get there by just raising the property taxes. Council also has to look at consolidating certain city/county functions to reach that goal. Another idea is that we need some new progressive revenue options.

City Manager Jackson said that City staff will come back to Council in approximately two weeks with a rough cut of the budget and a menu that closes the gap.

After a short discussion about the sales tax distribution by Buncombe County, it was the consensus of City Council to ask City staff to prepare a resolution requesting Buncombe County to consider a more fair and equitable sales tax distribution.

Budget Direction

After discussion, it was the consensus of City Council to hold the following budget worksessions, all to begin at 3:30 p.m. – 5:30 p.m.: Monday, May 8, 2006; Tuesday, May 16, 2006 (with the regular worksession starting at 3:00 and the budget worksession beginning at 3:30 p.m.), and Monday, May 22, 2006. These worksessions will be held in the Council Chamber, located on the 2nd Floor of the City Hall Building, Asheville, N.C., with each worksession being televised.

In addition, it was the consensus of City Council to cancel the 5th Tuesday community meeting.

At this time, Mayor Bellamy announced a short break.

EXTRATERRITORIAL JURISDICTION AREA & JOINT PLANNING AREA REPORT

Mayor Bellamy said that this report is being pulled from the worksession agenda at this time.

RESOLUTION NO. 06-59 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION EASEMENT WITH RIVERLINK AT AZALEA PARK

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Mayor to sign a conservation easement at Azalea Park with RiverLink Inc. for stream bank restoration and protection.

The Parks and Recreation Department and RiverLink, Inc., have been working together to develop a conservation easement in conjunction with the Clean Water Management Trust Fund for approximately 27.09 acres located along the Swannanoa River within the Azalea Park. This particular easement will allow for restoration and rehabilitation for the stream bank along the Swannanoa River. The plan will allow a contractor to perform stream restoration and stabilization measures within the riparian buffer easement area which will include removal of a number of trees, laying back the bank of the river, and providing an extensive landscape plan for vegetation in the disturbed area. Funds for this project are being provided through the Clean Water Management Trust Fund through a grant secured by RiverLink. The overall management of this project will be the responsibility of RiverLink working in conjunction with the City of Asheville. This project will occur without disruption to the existing park features and will allow for continued development of the master plan that was approved by City Council for this park. In addition, this project will not in any way affect the beneficial fill area that is currently being used by the City of Asheville.

Pros:

- This project will stabilize the stream bank along a large portion of the Swannanoa River.
- This project will allow for a conservation easement of approximately 27.09 acres for protection for future generations.
- This stream bank restoration will also assist in future flooding events and assist in minimizing damage downstream from this area.
- This project will also allow for increased protection of fish and wildlife along this stretch.

Cons:

- Construction will result in the removal of a number of very large trees near the bank of the Swannanoa River within the park area.
- Construction will be occurring while the soccer complex is in use, and it will be necessary for protection measures to occur for the safety of all participants.

This project relates to City Council's Strategic Plan in regard to protection and improvement of water quality in the region.

City staff recommends City Council authorize the Mayor to sign a conservation easement between the City of Asheville and RiverLink Inc. within Azalea Park.

Upon inquiry of Councilman Mumpower, Mr. Brinson said that construction should begin relatively soon and be completed by early summer.

Councilman Mumpower expressed concern of taking formal action at the worksessions.

Vice-Mayor Jones moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-59. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 409

MISCELLANEOUS

Councilman Freeborn commented on the good educational experience he encountered on a Police Department ride-along.

Councilwoman Cape invited the public to a Citizens/Police Advisory Committee meeting on Thursday, March 23, 2006, at 7:00 p.m. at the North Asheville Library. This meeting will give the public an opportunity to understand the new police districting system.

Councilman Mumpower thanked the Church of Latter Day Saints and volunteers on completing the third Top-A-Stop. He also reminded the public of two seminars which will be taking place on March 28, 2006.

CLOSED SESSION

At 7:00 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The property is located on Amboy Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilman Davis and carried unanimously.

At 8:45 p.m., Councilwoman Cape moved to continue the closed session until Tuesday, March 28, 2006, at 4:00 p.m., in Room 209 of the City Hall Building, Asheville, N.C. This motion was seconded by Councilman Freeborn and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:45 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday, - March 28, 2006 – 4:00 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman Brownie W. Newman; City Manager Gary W. Jackson; and City Attorney Robert W. Oast Jr.

Absent: Vice-Mayor Diana Hollis Jones; Councilman R. Carl Mumpower (hosting Asheville-Buncombe County Drug Commission Program)

At 4:00 p.m., Councilman Freeborn moved to go into closed session in order to continue the closed session discussion on the following item from the March 21, 2006, meeting: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Davis and carried unanimously.

At 4:50 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

Tuesday – March 28, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower (arrived at 5:26 p.m.); Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The North Buncombe High School Color Guard led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL, 2006, AS "CHILD ABUSE PREVENTION MONTH"

Mayor Bellamy read the proclamation proclaiming April 2006 as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, Director of Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

City Attorney Oast requested that Consent Agenda Items "D" and "F" be removed from the Consent Agenda for further clarifications.

City Manager Jackson requested that Consent Agenda Item "K" be removed from the Consent Agenda.

Mayor Bellamy requested Consent Agenda Item "M" be removed from the Consent Agenda for an individual vote due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 14, 2006, AND THE WORKSESSION HELD ON MARCH 21, 2006

B. RESOLUTION NO. 06-60 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE AND SETTING A PUBLIC HEARING ON APRIL 25, 2006

Summary: The consideration of a resolution of intent to close an unopened right-of-way off of Carroll Avenue and setting a public hearing for April 25, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Martin Barnes of Brooks & Medlock Engineering, PLLC representing the property owner Farwood Properties, Mike Farmer, President of Farwood Properties, has requested the City of Asheville to permanently close to the public an unopened right of way off of Carroll Avenue as shown on Plat Book 6, Page 6, Block "C" in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened right-of-way is not a City maintained street. Closure of this unopened right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There is one parcel that abuts this section of right-of-way, owned by Farwood Properties. It is identified by PIN No. 9648.07-68-1457.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for April 25, 2006, to close the unopened right-of-way off Carroll Avenue.

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C. RESOLUTION NO. 06-61 - RESOLUTION AUTHORIZING CRAFTSMAN CIRCLE AND A PORTION OF ROLLING TERRACE IN CHUNNS COVE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution to accept Craftsman Circle and a portion of Rolling Terrace in Chunns Cove as a City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Craftsman Circle and a portion of Rolling Terrace are developer constructed streets that have an average paved width of 22 feet and a length of 0.29 and 0.06 miles respectively for a total length of 0.35 miles. The City of Asheville staff inspected the construction of these roadways and certified they were built in accordance with City standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution accepting Craftsman Circle and a portion of Rolling Terrace as a City maintained streets.

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D. RESOLUTION ACCEPTING BLEACHERY BOULEVARD IN EAST ASHEVILLE AS A CITY MAINTAINED STREET

This item was removed from the Consent Agenda for further clarification.

E. RESOLUTION NO. 06-63 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION OF REAL PROPERTY ON SWANNANOA RIVER ROAD FOR PARK AND GREENWAY AND NAMING SAID PARK "RIVERBEND PARK – A MEMORIAL TO OFFICER JEFF HEWITT"

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on the Swannanoa River from Home Development River Bend LLC (Home), for the City of Asheville parks and greenway system and naming the park: "Riverbend Park ~a memorial to Officer Jeff Hewitt~".

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville and in particular along the Swannanoa River. Home has offered to donate an approximately 11± acre parcel on the Swannanoa River Swannanoa River (PIN Nos. 9658.15-54-1298; portion of 9658.14-44-8292; portion of 9658.15-53-8225; and portion of 9658.15-53-9371) to become part of the City's parks and greenway system.

The subject property lies between Swannanoa River Road and the Wal-Mart parking lot with most of the property between the river and the parking lot. It extends along the river bank from the I-240 right of way in an east then southeast direction to a point about It is level to gently sloping and follows a natural bend in the river making it an attractive location for recreational purposes. It is grassy and the bank of the river in this area for the most part has a steep approach to the water. The property is improved with a paved trail and picnic tables and is easily accessed from the parking lot.

The positive aspects of the donation are:

- The improvements to the park have been installed by the donor.
- The proposed park is consistent with the greenway master plan.

- It will preserve in perpetuity green space along the river as a buffer to the developed area.
- It is an efficient use of resources both public and private, because the City will own property best suited to the greenway while property appropriate to the development will remain in private ownership.
- The greenway was a requirement of the site development approval by Council.

The negative aspects are:

- The City will incur the cost of maintaining the park at an approximate cost of $7,500 per year
- Land will be removed from the tax base at an estimated tax value of $185,600.

We have on file an Environmental Site Assessment and a copy of a "no further action" letter issued by the N. C. Department of Environmental and Natural Resources. A preliminary survey has been completed and final revisions are in progress. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the parks and greenways system.

This action ties in with City Council's Strategic Operating Plan in the Focus Area: Natural and Built Environment, Goal 1, Objective C, Task #1 – Require new development projects to dedicate easements for greenways included in the City's Greenway Master Plan.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept the donation of real property from Home and naming the park: "Riverbend Park ~a memorial to Officer Jeff Hewitt~".

RESOLUTION BOOK NO. 29 – PAGE 415

F. RESOLUTION APPOINTING OFFICERS OF PINE PROPERTIES INC.

This item was removed from the Consent Agenda for further clarification.

G. RESOLUTION NO. 06-65 - RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK ON AN INTERIM BASIS

Summary: The consideration of a resolution appointing retiring City Clerk Maggie Burleson as City Clerk, and a resolution authorizing the City to enter into a contract with Ms. Burleson for that purpose.

Current City Clerk Maggie Burleson is retiring effective March 31, 2006. Council has not selected her replacement, but is in the process of doing so. However, there will be a continuity gap between Ms. Burleson's retirement date, and the date when the new clerk starts.

North Carolina law, N.C.G.S. 160A-171, provides that "there shall be a city clerk" to perform a certain designated functions, so the office should not remain vacant. At Council's request, Ms. Burleson has consented to continue as clerk in an interim capacity until the new clerk is on the job. She has agreed to do this at her current compensation, plus an additional amount to cover costs for the City's health insurance, previously part of the standard benefits package.

The first resolution appoints Ms. Burleson as City Clerk on a contracted basis, effective March 31, 2006, at 5:00 p.m., until the new city clerk is on the job.

The second resolution authorizes the Mayor to sign a contract with Ms. Burleson setting out the terms and conditions of her employment as City Clerk on an interim basis.

The appointment and the contract are both terminable at the will of Council; however, the contract contains some provisions for notice of any premature termination. The contract also contemplates that Ms. Burleson may be retained in a consulting capacity even after the new clerk is on the job, but any such service would be pursuant to a separate agreement.

If Council approves of the appointment of Ms. Burleson as city clerk on a contracted, interim basis, adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 29 – PAGE 417

H. RESOLUTION NO. 06-66 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH MAGDALEN BURLESON TO SERVE AS CITY CLERK

Summary: See Consent Agenda Item "G" above.

RESOLUTION BOOK NO. 29 – PAGE 418

I. RESOLUTION NO. 06-67 - RESOLUTION ESTABLISHING THE TERMS OF THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Summary: The consideration of a resolution establishing terms of Economic Development Advisory Committee

In 2002, the City Council adopted the Sustainable Economic Development Strategic Plan, and established a citizen-led task force for providing the expertise of the Plan, and established an initial duration the task force of 3 years. In May of 2003, the task force was reauthorized for an additional two year period. In September of 2003 the task force became a standing committee of City Council, and was directed to make recommendations to the Council as to its structure.

The City Council Boards and Commissions Committee has reviewed the membership of 19 of the EDAC, and recommends staggered terms of 3 years, commencing March 1, 2006.

If Council agrees with the proposed structure of the EDAC, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 419

J. RESOLUTION NO. 06-68 - RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO (1) ADD TWO BUDGET WORKSESSIONS BEGINNING AT 3:30 P.M. ON MONDAY, MAY 8, 2006, AND MONDAY, MAY 22, 2006, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.,; AND (2) CANCEL THE COMMUNITY MEETING SCHEDULED FOR TUESDAY, MAY 20, 2006

RESOLUTION BOOK NO. 29 – PAGE 421

K. BUDGET AMENDMENT TO FUND WEB SITE DESIGN AND CONTENT MANAGEMENT SOFTWARE IMPLEMENTATION SERVICES

This item was removed from the Consent Agenda for individual discussion.

L. RESOLUTION NO. 06-69 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Summary: Mr. Andy Archie, member of the Asheville Downtown Commission has resigned, thus leaving an unexpired until December 31, 2006. This resolution will appoint Mr. Guadalupe Chavarria, 84 Walnut Street, Unit A, Asheville, N.C., as a member of the Asheville Downtown Commission to serve the unexpired term of Mr. Archie, term to expire December 31, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 422

M. RESOLUTION AUTHORIZING OWENS BELL LANE TO BECOME A PUBLICLY MAINTAINED STREET

This matter was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 06-62 - RESOLUTION ACCEPTING BLEACHERY BOULEVARD IN EAST ASHEVILLE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Bleachery Boulevard in East Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Bleachery Boulevard was constructed as part of the Riverbend Development. It has an average paved width of 24 feet and a length of 0.94 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Bleachery Boulevard will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Bleachery Boulevard in East Asheville as a City maintained street.

City Attorney Oast said that the City has encountered a few minor problems with completing the plat that is supposed to be recorded as cited in the resolution. He asked that the

resolution be amended to reflect the fact that (1) the right-of-way for Bleachery Boulevard does not include any portion of the current right-of-way for Stevens Street, which is anticipated to be closed at a later time; and (2) the resolution shall be effective upon the recordation of the plat for RiverBend Market Place in Buncombe County Registry, which plat shall comply with the above-stated condition as to Stevens Street, as approved by the City Attorney.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-62, as amended by the City Attorney. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 413

RESOLUTION NO. 06-64 - RESOLUTION APPOINTING OFFICERS AND BOARD OF DIRECTORS OF PINE PROPERTIES INC.

Summary: The consideration of a resolution appointing officers to the Pines Properties, Inc. (Jake Rusher Estate).

In 1999, the City reached an agreement with Jake Rusher regarding the acquisition of the Royal Pines property, now Jake Rusher Park. As part of that agreement, the City was also a main beneficiary of Mr. Rusher's estate. Mr. Rusher died in October of 2003, and his estate has been in administration ever since, complicated by some handwritten codicils that required resolution in court.

Now that these issues have been resolved, distribution from the estate has begun. Earlier this month, we received the corporate stock of Pines Properties, Inc., which was Jake Rusher's corporate identity, and the business entity that ran the Pines when it was in operation. The City of Asheville is now the sole stockholder of the Pines Properties, Inc.; the main asset of which is Mr. Rusher's Rutherford County farm, fulfilling his promise to leave the property to the City to make the City whole for purchasing the Jake Rusher Park. Other assets include some personal property at the farm; several items of personal property including some cash distributions, were disbursed following the judicial ruling on the handwritten codicils.

Since the City is the owner of the stock of Pines Properties, Inc., action needs to be taken to appoint officers of the corporation. This will enable the City to proceed with disposition of the corporation's assets, and the wrapping up of its affairs. A resolution has been prepared appointing the following corporate officers, based on the operational areas that will be concerned with the disposition of the assets:

President – Irby Brinson
Vice President – Jeff Richardson
Secretary/Treasurer – Ben Durant

Regular reports regarding the corporation's activities, including the wrapping up of its business activities and distributions, will be provided to Council.

Considerations:

- Appointment of officers will facilitate the disposition of the Rusher estate, fulfilling Mr. Rusher's promise to the City.

If Council approves of the proposed officers, adoption of the resolution is recommended.

City Attorney Oast asked that the resolution be amended to reflect that the same individuals are also appointed as the board of directors for the corporation

Vice-Mayor Jones moved for the adoption of Resolution No. 06-64, as amended by the City Attorney. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 416

BUDGET AMENDMENT TO FUND WEB SITE DESIGN AND CONTENT MANAGEMENT SOFTWARE IMPLEMENTATION SERVICES

City Manager Jackson asked that this item be removed from consideration at this meeting in order to give him the opportunity to have further discussions with local firms to make sure that we are aware of their capabilities and they are aware of our needs. He asked that this item be rescheduled.

Councilman Freeborn moved to postpone this matter indefinitely. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION NO. 06-70 - RESOLUTION AUTHORIZING OWENS BELL LANE TO BECOME A PUBLICLY MAINTAINED STREET

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Summary: The consideration of a resolution to accept Owens Bell Lane in the West End/Clingman Avenue area as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Owens Bell Lane is a developer-constructed street that has an average paved width of 20 feet and a length of 0.10 miles. The City of Asheville staff inspected the construction of this roadway and certified they are built in accordance with City standards.

Following City Council's approval of this resolution, this street will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution to accept Owens Bell Lane in West End/Clingman Avenue area as a City maintained street.

Councilman Newman moved for the adoption of Resolution No. 06-70. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 423

Vice-Mayor Jones continued to conduct the meeting as Mayor Bellamy has a conflict of interest on the following public hearing regarding the conditional use permit for Crowell Park Apartments.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON CROWELL ROAD, NEAR SMOKY PARK HIGHWAY AND I-40, KNOWN AS CROWELL PARK APARTMENTS

ORDINANCE NO. 3344 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT LOCATED ON CROWELL ROAD, NEAR SMOKY PARK HIGHWAY AND I-40, KNOWN AS CROWELL PARK APARTMENTS

Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Jones opened the public hearing at 5:13 p.m.

Council members disclosed that they had either attended the Planning & Zoning Commission public hearing on this matter or had read proposals about this project. However, they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Crowell Road near Smoky Park Highway and I-40, known as Crowell Park Apartments, for a proposed 73-unit apartment complex (Attachment to City Exhibit 3 – Aerial Map).

The project is supported by a number of goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City's ETJ (Extraterritorial Jurisdiction). It is also located within close vicinity to potential employment centers, restaurants and shopping centers. A disadvantage to this project is the absence of public transportation, which is not available in this area. The closest transit stop is more than 2 miles away near the NCDOT driver's license office off of Smokey Park Highway.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median

income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

Provides an increased supply of affordable housing by providing up to 73 affordable rental units.

The applicants (the Estate of Harlan L. Barnes & Murphy-Wilson Investments, Inc.), being represented by Mountain Housing Opportunities, has requested a conceptual site plan review for a Level III multi-family project to allow for the construction of a 73 unit affordable housing development. The project site is located off of Crowell Road and consists of 2 parcels totaling 3.59 acres (Attachment to City Exhibit 3 – Site Plan). The site currently zoned Highway Business and is located within City's extraterritorial jurisdiction area (ETJ).

The site, as it currently exists, is mostly undeveloped and wooded with mild to moderate slopes. The property has frontage along two state maintained roads (Crowell Road and Farm Street). Access to the development is proposed off of Crowell Road via two, one-way connecting drives. In addition, a pedestrian connection will be provided from the buildings to Farm Street.

The HB district permits a density of 32 units per acre. Given the acreage of the property, 115 units could be constructed. The project proposes 73 units, a density of approximately 20 units per acre.

The development proposes construction of two, three story, 42,171 square foot multi-family buildings located on the periphery of a 32,968 square foot landscaped courtyard. The project will consist of 73 units with 20 one bedroom apartments, 34 two bedroom apartments and 19 three bedroom apartments. A 1,015 square foot office is also housed within the complex.

The project site is being developed to accommodate a large-open air courtyard that will serve as the primary open space and recreational area for the development. The buildings are located at the periphery of the courtyard in order to provide access to the area from each unit. Additional site development will include the construction of a 95-space parking lot, perimeter landscape buffers (some areas enhanced with the existing vegetation) and parking lot landscaping as required by the Unified Development Ordinance (UDO). A sidewalk, street trees and shrubs will be provided along Crowell Road (Attachment to City Exhibit 3 – Building Elevations).

The Technical Review Committee reviewed this project on February 20, 2006, and voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report. Revised plans' addressing the open space area necessary for approval of the project has been provided through a reduction in the initial number of units and types of units proposed (79 units to 73 units) and the number of parking spaces (from 101 spaces to 95 spaces).

On March 1, 2006, the Asheville Planning and Zoning Commission, voted unanimously to approve the project subject to the conditions outlined in the staff report and with the following addition that Mountain Housing Opportunities (MHO) shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO and must find that all 7 standards for approval of the conditional use are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and

appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The existing site topography is mildly sloped along the southwestern side of the property. The northern side and southeastern parts of the site have a more moderate slope towards Farm Street. The property will require a fair amount of grading and fill to develop the site as proposed.

   The project is designed more sensitively through building design and preservation of existing vegetation. The placement of the buildings is more compatible with the existing topography as they terrace with the natural slope of the land towards Farm Street. This project also proposes to preserve many of the large mature pine trees that exist on the site. The site plan shows preservation of trees within the courtyard area and along the perimeter of the north, south and west sides of the property. These areas will also be enhanced as needed to meet the City's landscape buffer requirements.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project site is zoned (HB) Highway Business, which allows for a wide variety of both residential and large scaled commercial uses. A multi-family project is more in keeping with the residential context of the area than a commercial development would be, as permitted under the HB (Highway Business) zoning designation. In addition, the higher density development could serve as a buffer/transition area to the existing single-family residences north of the project site that could be impacted by more intense uses and development likely to occur along Crowell Road.

   Additionally, this project will provide on-site management with a caretaker and office manager. The development is expected to preserve many of the large pine trees on site and enhance the 25-foot landscape buffer areas required around the perimeter of the property. It is not expected that this development would negatively affect the value of surrounding properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The project site and many of the surrounding single-family properties along Crowell Road are zoned (HB) Highway Business. While it is noted that the proposed development is of greater scale and density than the existing single-family development along the western section of Crowell Road, the buildings are similar in size and scale with development found along the southern section of Crowell Road. Additionally, the project is proposed at a density below that permitted in the (HB) Highway Business zoning district.

   The buildings, although 3-stories in height, are designed to appear more like a large two story single-family structure when viewed from Crowell Road. The bulk of the development's visual impact will be along the north, east and south sides of the property. The building elevations presented for the development, however, incorporate architectural design elements that assist in visibly reducing the overall scale and mass of the structures allowing the development to be more in context with the neighborhood.

Additionally, properties to the north, south and portions of the east side of the site will be separated from the development by a 25-foot landscape buffer. The north and south sides of the site will be greatly enhanced with the preservation of many large mature pine trees that exist on site.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by a number of goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City's ETJ. It is also located within close vicinity to potential employment centers, restaurants and shopping centers. A disadvantage to this project is the absence of public transportation, which is not available in this area. The closest transit stop is more than 2 miles away near the N.C. Dept. of Transportation driver's license office off of Smoky Park Highway.

   This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee and found that adequate sewage and water utilities are available for the proposed development.

   The project site is located in the City's ETJ. Properties located in these areas are provided Fire and Police protection through Buncombe County. The developer will also be responsible for providing waste disposal to the development. Public transportation is not available in this area.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City's Traffic Engineer has determined that the project does not meet the threshold for requiring a Traffic Impact Analysis. However, due to the narrowness of Crowell Road, the applicant is required to increase the width of the road to 20-feet, as a condition by the Technical Review Committee.

Pros

- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project site is zoned for the use and proposed density.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- Provides an opportunity for infill residential development on underdeveloped property.
- A multi-family project is more compatible with the residential character of the area than a commercial development would be, as permitted under the HB (Highway Business) zoning designation.

- The higher density development could serve as a buffer/transition area to the existing single-family residences north of the project site that could be impacted by more intense uses and development likely to occur along Crowell Road.
- The project proposes preservation of a large quantity of mature pine trees that exist on the site.

Cons

- A primary disadvantage to this affordable housing development is the absence of public transportation.
- The buildings will be larger in scale than those found along the western side of Crowell Road (although consistent with building sizes typically found in the Highway Business zoning district).
- The existing zoning in the area and the proposed project could spur additional development, including commercial uses, along Crowell Road resulting in an overall change in character of the area. (Could also be a pro.)

Staff recommends approval of this request with the conditions outlined by the Technical Review Committee and the following added conditions:

1. All site lighting shall be equipped with 90-degree cutoff features and be directed away from adjoining properties and streets.
2. A tree survey shall be provided noting all existing vegetation to be retained. This vegetation shall be clearly indicated and dimensioned on the site plan, landscape plan and grading plan.
3. The zoning permit must be issued prior to initiating clearing and grading of the site.
4. No grading shall commence until tree protection devices are installed and inspected by Planning Staff.
5. Due to the size and scale of the project an urban level of service shall be provided.
6. MHO shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development. The location of the shelter is to be coordinated with the Engineering Department.

Mr. Gerald Green, representing the developer, spoke in support of the project showing Council examples of MHO's work (Applicant Exhibit 1). He also showed Council examples of area architecture (Applicant Exhibit 2). He said they have addressed the major concern of residents (which is the widening of Crowell Road), and they have no problems with meeting the conditions imposed by the Technical Review Committee or the Planning & Zoning Commission. He summarized by saying that (1) the apartments will enhance the residential character of the area; (2) this is a good transition from the more commercial scaled uses to the residential scale uses; (3) the proposed development is permitted within the Highway Business District; (4) the project helps strengthen the business community in that it will provide housing for the working people of Buncombe County; (5) the structures will buffer the other residential uses from the commercial uses further down Crowell Road; (6) they will preserve as many of the existing trees as possible; and (7) the project is good for the neighborhood and the City.

At 5:27 p.m., Councilman Mumpower arrived at the meeting.

Mr. Fred English asked if any public money is used in this project.

At 5:27 p.m., Vice-Mayor Jones closed the public hearing.

Upon inquiry of Councilman Mumpower about voting on the matter when he didn't hear the presentation, City Attorney Oast said that the presentation did not differ from the materials sent to Council last week. It was his opinion that Councilman Mumpower should vote on the matter.

Ms. Cindy Weeks, Housing and Development Specialist for Mountain Housing Opportunities, responded to questions regarding financing. She noted that they will be paying property taxes on this development in the amount of approximately $70,000.

Councilman Newman pointed out that no Housing Trust Fund revenues are part of this project. However, the Housing Trust Fund is funded from the City's General Fund.

Upon inquiry of Councilman Mumpower, Ms. Weeks said that the cost per square foot, including administration and other variables is approximately $85.00 per square foot.

Councilman Freeborn moved for the adoption of Ordinance No. 3344, granting a conditional use permit for property located at Crowell Road near Smoky Park Highway and I-40, subject to the following conditions: (1) all conditions outlined by the Technical Review Committee; (2) All site lighting shall be equipped with 90-degree cutoff features and be directed away from adjoining properties and streets; (3) A tree survey shall be provided noting all existing vegetation to be retained. This vegetation shall be clearly indicated and dimensioned on the site plan, landscape plan and grading plan; (4) The zoning permit must be issued prior to initiating clearing and grading of the site; (5) No grading shall commence until tree protection devices are installed and inspected by Planning Staff; (6) Due to the size and scale of the project an urban level of service shall be provided; and (7) MHO shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development. The location of the shelter is to be coordinated with the Engineering Department. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 423

At this time, Vice-Mayor Jones returned the gavel to Mayor Bellamy who proceeded with conducting the meeting.

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON BEAUCATCHER ROAD FROM OFFICE BUSINESS DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 3345 - ORDINANCE TO REZONE PROPERTY ON BEAUCATCHER ROAD FROM OFFICE BUSINESS DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:36 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property on Beaucatcher Road from Office Business District to RM-6 Residential Multi-Family Low Density District. This public hearing was advertised on March 17 and 24, 2006.

This rezoning request is being brought forward by staff to change the zoning from Office Business (OB) to RM-6 Residential Multi-Family Low Density District found on the majority of this parcel. Recently the subdivision plat for Restaurant Row was completed for the development with access from Tunnel Road. This is the reason for the recently assigned PIN for the parcel. Because of the way the larger parcel was subdivided, a rear section of the parcel that fronts on Beaucatcher included a section of OB zoning. Rezoning this back corner to RM-6 will provide consistent zoning for the entire parcel.

Office Business District is set aside for a wide range of office uses and a more limited range of other commercial uses. The OB district can provide a transition between intensive commercial uses and residential areas.

Residential Multi-family Low Density District (RM-6) is established to permit a limited range of low-density multi-family and single family housing types. It can provide a transition from single family areas and other more intensive multifamily areas.

Pros

- Provides consistent zoning for a residentially zoned parcel
- Avoids any future problems with a split-zoned parcel

Cons

No concerns noted

At their March 1, 2006, meeting, the Planning and Zoning Commission voted 7-0 to recommend approval of the rezoning request. Staff concurs with that recommendation.

Mayor Bellamy closed the public hearing at 5:38 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3345. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE 429

C. PUBLIC HEARING TO CONSIDER AN APPEAL FROM AN ORDER OF THE BUILDING SAFETY DEPARTMENT ORDERING THE BUILDING LOCATED AT 1500 TUNNEL ROAD (FORMER SITE OF DAYS INN MOTEL), VACATED, CLOSED AND REPAIRED

Mayor Bellamy said that this public hearing was continued from March 14, 2006, at which time the owners requested an extension of time within which to investigate the facts, prepare an answer or otherwise respond to the City's Findings of Fact/Order and Appeal. That request was granted.

Mayor Bellamy opened the public hearing at 5:38 p.m.

Assistant City Attorney Martha McGlohon said that this is the consideration of an appeal from an Order of the Building Safety Department ordering the buildings located at 1500 Tunnel Road (former site of Days Inn Motel), vacated, closed and repaired. This public hearing was advertised on February 28, 2006.

The property at 1500 Tunnel Road (herein "Property"), is the site of the former "Days Inn Motel," consisting of three separate buildings. The property had operated as a motel. The buildings were found to have Building and Fire Code violations in July 2004 and despite the efforts of staff to encourage compliance, the condition of the property worsened. The deterioration was coupled with an increase of calls to the Asheville Police Department, with complaints of drug and criminal related activity. In July of 2005, the City's Building Safety Department held a hearing under the Unsafe Buildings Act and ordered the buildings on the Property vacated and closed until repairs were made consistent with the requirements of the State Building Code. Barry Rogers, either as an alleged party in interest or on behalf of the property owner, appealed that Order. The time period to comply with the Order has long since passed and the property owner has not applied for the required building permits. Additionally, recent activity on the property indicates that the buildings continue to be occupied in violation of the Order entered. City Council

is being asked to hear the appeal of Mr. Rogers despite staff's lack of success in getting Mr. Rogers to perfect his appeal.

Positives:

1. Authorizes City staff to initiate appropriate proceedings to abate a growing nuisance.
2. Allows the City to obtain a court order enforceable by the local police to prevent occupancy of the property.
3. Eliminate a safety and fire hazard
4. Eliminate frequent calls to police, fire, building and housing staff

Cons:

1. Requires ongoing monitoring by police and fire personnel to enforce the Order

This action complies with City Council Strategic Operating Plan on Partnerships to Improve Critical Services & Infrastructure directs staff to work for providing the quality of life within the mountain region: Goal #4: Develop programs and policies to defeat street level drug problems and crime. Asheville City Council has directed staff to work diligently to provide sufficient, safe, and affordable housing for Asheville residents. All neighborhoods should provide a safe and nurturing environment within which to raise a family.

After hearing the appeal, Council is asked to enter an order to affirm the order from which the appeal has been taken. Further, Council is requested to give the City's Legal Services Division authorization to initiate any appropriate legal proceeding in a court of law to prevent, restrain, correct or abate any violation of the Order affirmed and/or to enforce the requirements thereof.

Ms. McGlohon said that Mr. Cartner, attorney for the owners, is not present and she has not heard from him, however, it is her understanding that they will not contest the motion to dismiss the appeal filed by Mr. Barry Rogers.

Mayor Bellamy closed the public hearing at 5:40 p.m.

Councilman Newman moved to dismiss the appeal filed by Mr. Barry Rogers. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Councilman Newman moved to give the City's Legal Services Division authorization to initiate any appropriate legal proceeding in a court of law to prevent, restrain, correct or abate any violation of the Order affirmed and/or to enforce the requirements thereof. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Upon inquiry of Councilman Davis, Ms. McGlohon said that the City hopes the property owner will (1) put the property on the market for sale; (2) proceed with obtaining a demolition order to demolish the building; or (3) obtain the appropriate permits to commence proceedings to do the necessary repairs. If they should do none of those, then we are prepared to move forward. City Attorney Oast noted that the representative of the property owner has been in contact with the Building Safety Department to pursue option no. 3.

In response to Vice-Mayor Jones, Ms. McGlohon said that in terms of a timeframe, she leaves that up to the Building Safety Department to work with the property owner. As a general rule, they usually give the property owner anywhere from 60-90 days, but in this particular instance (because this is a huge commercial building), they may give them more time. But, it

depends on what they believe is reasonable under the circumstances in light of what they must do to bring the buildings into compliance.

Ms. McGlohon responded to Councilwoman Cape when she asked if the City could place a lien on the property to recoup the costs the City incurred regarding this property.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3346 - BUDGET AMENDMENT TO PROVIDE FOR LEGAL FEES FOR CHALLENGING THE SULLIVAN ACT

City Attorney Oast said that this is the consideration of an ordinance amending the budget, in the amount of $50,000, to provide for legal fees for challenging the Sullivan Act

When Council undertook the legal challenge to the Sullivan Act, legal fees were estimated to be $100,000. Some of these costs were paid from the Legal Services line item (not intended for the Sullivan Act matter), and in October, Council amended the budget to provide $50,000 for this purpose. This amount has been exhausted, and an additional $50,000 is needed to (1) replenish the budget line item for routine legal services; and (2) take us through disposition of this matter in the trial court.

Considerations:

- The City is committed to following through on this legal challenge;
- The requested amount is still within initial estimates.
- Line item for routine legal services can be replenished.

Adoption of the ordinance is recommended.

Councilman Mumpower felt that it was disgusting that Asheville has to spend this money because our legislative delegation unanimously facilitated legislation against the City, which is unique to Asheville. He hoped our legislative representatives will make an effort to re-think their position that Asheville is unique, because the only thing that is unique in this process is their willingness to intrude on local government affairs.

Councilwoman Cape felt that this is money well spent.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3346. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 431

B. EXTRATERRITORIAL JURISDICTION AND JOINT PLANNING AREA POLICY DIRECTION

Planning & Development Director Scott Shuford said that the purpose of this report is to advise Council concerning issues and opportunities for managing growth in areas immediately proximate to the City limits and to seek Council direction concerning the extension of City development review services into the extraterritorial jurisdiction (ETJ), the cessation of

negotiations with Buncombe County regarding the Joint Planning Area (JPA), and whether the ETJ area should be expanded beyond current boundaries.

In the staff's opinion, there are strong positive reasons for discontinuing JPA negotiations with Buncombe County, for extending the full range of City development review services into the ETJ, and for considering further extension of the City ETJ consistent with state law. The following report was discussed with the Planning and Economic Development Committee and the Committee directed that the report be placed on the Council's March worksession agenda.

Ms. Shuford then summarized the following report:

ETJ

Statutory Authority. NC Statutes allow cities the size of Asheville to extend a wide range of development review services beyond their corporate limits if the county does not provide all of three critical development review services: Building inspections; subdivision regulation; and zoning. Buncombe County is the largest county in NC without countywide zoning, so Asheville has adopted an ETJ.

Cities like Asheville can extend their ETJ areas unilaterally (i.e., without county permission) up to one mile beyond their corporate limits. With Buncombe County's approval, Asheville could extend its ETJ up to three miles beyond its corporate limits. Asheville's current ETJ does not include all areas within one mile of our corporate limits.

Statutory Purpose. The purpose behind an ETJ is to ensure that municipalities are able to effectively manage land uses, establish development standards, and address infrastructure needs on land adjacent to their corporate boundaries. In NC, counties are generally not responsible for providing urban services like roads and water and sewer infrastructure. ETJ therefore enables the local governments responsible for providing those services -- cities and towns - to set the standards for those services. ETJ's are not unique to NC; many states confer some form of extraterritorial powers on their cities.

Range of Services. ETJ areas may have a wide range of development review services administered by the municipality. Asheville has elected to only provide two of these services in our ETJ area - zoning and subdivision regulation. We also understand that the mandated stormwater management program will ultimately need to be administered by the City in part or all of our ETJ areas. Services that are not currently being provided but could be are listed below. We cannot provide nuisance abatement services in the ETJ.

- Floodplain Management
- Street Address Assignment
- Erosion Control
- Stormwater Management (mentioned above)
- Building and Life-Safety Code Inspections

Recent ETJ History. Asheville most recently extended its ETJ in 2001. The City was prepared to extend its ETJ earlier but waited until Buncombe County chose to not establish countywide zoning based on the results of a citizen referendum. Once that decision was made, Asheville City Council directed staff to extend the ETJ to cover urbanizing areas near the City. We initially proposed a very large ETJ expansion but the reaction from the County was not positive so we significantly scaled back our proposal, concentrating on areas that:

- Were growing extremely rapidly
- Contain property suitable for industrial development

- Serve as gateways to the City

Despite the City's concession regarding a reduced ETJ area, Buncombe County chose to attempt to block Asheville by trying to establish a single district zoning for just the area within one mile of the City corporate limits. Essentially, the County proposed to surround the City with a zoned circle for the sole purpose of rebuffing the current and any future ETJ expansions. The County took one vote on this proposal and it failed by a 2-3 vote, but at its next meeting the Commissioners revived the proposal and it passed by a vote of 3-2.

City Council felt the procedures used by the County to resuscitate the zoning vote were improper. Council took two actions: (1) It directed staff to proceed with the ongoing ETJ expansion; and (2) It authorized a lawsuit against the County. The City enacted the ETJ and later prevailed in the lawsuit. The ETJ extension was legal and County zoning was not in place. The City currently maintains zoning and subdivision regulations over the ETJ.

JPA

After the lawsuit, City Council had informal negotiations with County Commissioners about compromises that would offer ETJ property owners less stringent zoning than that found in the City. When charged by Council to provide ideas on this concept, Planning and Legal staff proposed a Joint Planning Area (JPA), an area of shared jurisdiction between Buncombe County and the City of Asheville where both the County and City would agree to the development standards and enforcement procedures.

This proposal was acceptable to Buncombe County and they authorized their staff to work with City staff in developing the JPA regulations and associated zoning map. They also chose not to appeal the court's decision regarding their zoning.

Under the City proposal, the JPA would replace the City ETJ fully to reduce customer confusion. The JPA would automatically expand to include a roughly one-mile area around Asheville as the City annexed. The potential benefits of the JPA are summarized in the following table.

City Benefits	County Benefits
Shared growth management over larger area	Less restrictive than UDO
Automatic JPA expansion	Day-to-day County administration
Cooperation with County on key issue	Cooperation with City on key issue

After months of City and County staff, City Planning and Zoning Commission, and County Planning Board negotiations about the development regulations, JPA discussions were postponed to accommodate County elections and the Water Agreement termination process. There were many "sticking points" remaining, including the following:

- Big box development regulation
- Infrastructure standards, especially streets, stormwater and erosion control
- Board of Adjustment make-up

Our negotiations with Buncombe County have led us to the conclusion that the City and County have fundamentally different viewpoints on the subject of growth management and infrastructure standards. These differences are related to several factors, including the fact that Buncombe County is not in the infrastructure business and has no vested interest in the long-term durability

of roads, stormwater ponds and pipes, and similar improvements and the fact that the County has traditionally taken a non-regulatory approach to growth management.

Issues and Recommendations

Staff has identified two key issues related to the ETJ and JPA where City Council policy direction is needed. These issues are described in the following policy questions:

- What standards for development should apply in the ETJ?
- Which organization is best able to implement those standards?

What standards for development should apply in the ETJ?

City staff spent months attempting to create a reasonable, suburban-style zoning for the JPA. After reaching a general consensus with County staff about the standards, we found that the County Planning Board expected a substantially weaker set of regulations and development standards. As noted above, the key issues that were not resolved were standards and processing procedures for "big box" development, infrastructure standards and inspection procedures, and governance structure for the jointly-appointed Board of Adjustment that would administer reviews of larger structures and developments and grant variances to the standards.

As far as infrastructure is concerned, we are starting to see Fire Department and Public Works concerns about annexing urban areas of the County due to inadequate infrastructure that could negatively affect our fire insurance (ISO) rating and our ability to effectively serve these areas. Additionally, our reading of the stormwater management mandate requires the same standards to apply in the ETJ or JPA as in the City proper.

With regard to the Board of Adjustment make-up and procedures, the County's latest proposal to us was for the Board of Adjustment to consist of four County appointees and one City appointee. Not coincidentally, decisions by the Board of Adjustment have to be made on a 4-1 or 5-0 majority, rather than a simple majority. City staff was willing to accept a Board of Adjustment made up of three County appointees and two City appointees for this reason. The Board of Adjustment would represent the one opportunity for public consideration and comment on conditional use permits, as opposed to the two opportunities under City regulations. These two issues create concerns about the extent to which the public would have a voice in development matters in a JPA arrangement.

In summary, while the JPA offers an opportunity to allow development standards to cover a wider area of land than the current ETJ, staff believes that City standards are more appropriate for the future development of periphery areas than anything that could reasonably be negotiated.

Which organization is best able to implement those standards?

The City of Asheville has experience in managing the full range of development review services possible to apply in the ETJ or the JPA.

- Floodplain Management Program - Currently, the City of Asheville does not administer the Floodplain Management Program outside its corporate limits. However, given recent events, this is an area that City staff has a heightened interest in administering as new standards are developed to address flooding issues. The City Engineering Department is set up to manage such a program and the fee

structure makes it self-supporting.

- Street Address Assignment - The responsibility for assigning street addresses in ETJ areas remains with the County. The City has an Address Coordinator position that can assume these duties in a highly effective fashion.

- Erosion Control Ordinance - The City of Asheville does not review or enforce the Erosion Control Ordinance outside the corporate limits. Proposed development projects in an ETJ area are required to submit erosion control plans to Buncombe County for review, approval and periodic inspection. There are substantial differences between the City and County requirements and level of enforcement. Silt and sediment are the number one threats to water quality in WNC. The City Engineering Department is set up to manage this program and the existing fee structure would make this service self-supporting.

- Stormwater Management - The UDO stipulates that the City's regulations apply only to "proposed developments within the city limits of the City of Asheville" but our reading of the stormwater management mandate from the state requires the same standards to apply in the ETJ or JPA as in the City proper. The City Engineering Department is set up to manage this program, with the fee structure making this service self-supporting.

- Minimum Housing Code - The City has a Minimum Housing Code program with a proven track record for effectiveness. However, the City of Asheville does not review or enforce its Minimum Housing Code outside its corporate limits. The City Building Safety Department is set up to manage this program; the fee structure would make this service self-supporting.

- State Building Code - A city may assume responsibility for administering the State Building Code in an ETJ area. However, the responsibility has remained with Buncombe County in City of Asheville ETJ areas. Problems have occurred in the past when permits have been issued by the County for projects located in the City's ETJ area without required zoning permits from the City. Other problems have resulted from County staff not notifying City staff members prior to a Certificate of Compliance being issued so that required buffers, parking areas, and planting areas can be inspected for conformance with City regulations. There have been situations in which new development has received a Certificate of Compliance from the County but the project did not comply with the approved plans. Additionally, the City of Asheville Building Safety and Fire Departments are nationally recognized for the knowledge and diligence of their programs. Consequently, the City Building Safety and Fire Departments are set up to manage this program. The fee structure would make this service self-supporting.

City Council and staff are concerned about addressing Council priorities and making up the revenue shortfall caused by the effect of Sullivan Acts II and III. There is a fee option used by many NC cities that could help make up the revenue difference and improve development review service quality at the same time – extension of State Building Code enforcement by the City into the ETJ.

The ETJ is about 12,500 acres compared with our corporate limits (CL) of 42,500 acres, so it is roughly 30% the area of the City. Generally speaking, more growth is happening in the ETJ than in the CL since there is more vacant land in the ETJ, but, to be conservative, we can assume at least a 20% increase in Building Safety fees alone if we started performing building inspections in

the ETJ. This would generate about $350,000 in fee revenue (based on the projected $1,748,100 fee revenue in the current budget).

Building Safety Director Robert Griffin has estimated that he could undertake building inspections in the ETJ with the addition of three new inspectors and a paraprofessional to handle application intake. The cost of these new positions for the first year, including vehicles and equipment is about $215,000. The difference in fee revenue over costs could pay for at least two positions in Planning and Development that are currently solely involved in development review. (This is not a new idea: Increased fee revenues due to the increase in development activity were used to fund the most recent position added to the Planning and Development Department, for example.) This would free up approximately $135,000 that could be used for other General Fund priorities or to address the revenue shortfall created by Sullivan Acts II and III.

In summary, the greater experience level of City staff in handling the above areas of development review make it logical to extend these services into the ETJ at the beginning of the coming Fiscal Year. Our fee structure and existing staff not only make such extension possible but offer the opportunity for reducing some of the impact of Sullivan Acts II and III on the City budget.

Staff makes the following recommendations for Council direction:

(1) Advise Buncombe County that, while we are no longer interested in discussing the JPA as an alternative to the existing ETJ, we do remain open to discussing shared goals and objectives concerning land use. For example, perhaps there is a supporting role for the City to play in the development of the County Land Use Plan. Additionally, we may have opportunities for joint facility siting or public land redevelopment. We will certainly want County cooperation with any of our project development financing initiatives.

(2) Extend the following development review services into the existing ETJ in Fiscal Year 2006/07:
- Floodplain management
- Stormwater management
- Erosion control
- Street address services
- State Building Code
- Minimum housing code

(3) Evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits.

Pros and cons for these actions are listed below.

CONS: For ETJ development service expansion, there may be the following concerns:

- New or higher service fees for property owners and developers in the ETJ
- New or more extensive requirements may increase building costs
- County may object to losing inspection fees or jurisdiction
- County may claim City is not complying with a prior commitment to the JPA

PROS: Staff feels the above potential public concerns are outweighed by:

- Enhanced service to community residents
- Quality of public infrastructure considerations
- General development quality considerations

- Public safety and Fire ISO considerations
- Effectiveness of future annexations
- Improved quality and consistency in review and inspection
- Management of ETJ development pattern
- Compliance with mandated stormwater regulations
- Budgetary considerations

Mr. Shuford asked for Council direction on the three issues and if Council is interested in the second recommendation of extending the above-mentioned development review services into the existing ETJ in Fiscal Year 2006/07, then the City Attorney will come back with a recommended procedure by which we would handle that at an upcoming meeting.

Mr. Fred English questioned if the City has to maintain the streets in the ETJ. He also felt that the ETJ is just a fast-track for annexation. He felt the City need to take care of what they have in the City before annexing any more residents.

Councilman Davis felt it was commendable that the County's Planning Board and our Planning & Zoning Commission spent so much time and effort to try to get to the point where if areas were annexed there would not be long periods of time before the area was built to the same standards. Again, it was a good effort on a lot of people's part.

Upon inquiry of Councilwoman Cape, Mr. Shuford said that the ETJ does address street standards, but the City does not take over the maintenance of those streets – they would either be private streets or state maintained roads.

In response to Councilwoman Cape of why the city is not extending the ETJ to the complete one mile area, Mr. Shuford said that originally in 2001 the City considered about 14,000 acres out of the 6,000 acres we did proceed with. At that time there was a great deal of resistance on the part of Buncombe County and some County residents to that concept, so we unilaterally scaled back our effort to just cover areas that we felt were gateway areas, areas experiencing a lot of rapid development and also areas that might be suitable for industrial uses. We dropped off roughly 8,000 acres from our original proposal. City Attorney Oast also responded that under the law, although one mile is the extent to which you can go without approval from the County Commissioners, within that one mile you have to define areas of critical concern. Therefore, we identified the areas of critical concern and extended the ETJ to those areas.

In response to Councilwoman Cape, Mr. Shuford said that all of the areas in the ETJ (and some areas outside that) are included in the resolution of consideration identifying areas with potential for future annexation.

Councilman Davis moved to (1) advise Buncombe County that, while we are no longer interested in discussing the JPA as an alternative to the existing ETJ, we do remain open to discussing shared goals and objectives concerning land use; (2) extend the following development review services into the existing ETJ in Fiscal Year 2006/07: floodplain management, stormwater management, erosion control, street address services, State Building Code, and Minimum Housing Code; and (3) evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits. This motion was seconded by Vice-Mayor Jones.

Councilman Davis pointed out that in the latest draft the County came to the City with, they were willing to adjustment the Board of Adjustment make-up of 3 County appointments and 2 City appointments, and there was also a willingness to compromise what their desire was for the thresholds of big box-type development. We just never really heard because of the Water

Agreement termination and there was not a particular willingness to move forward. He regretted that it has come to this, but he did think we should leave it as an opportunity in the future. Again, he felt there was a great effort made by both parties and he wished it would have gotten to a better place. However, he thinks by this move we can control some of Asheville's future.

Councilman Mumpower was concerned that our timing with this action is off. As discussed earlier, our state representatives have put the City in a very difficult decision budget-wise, and the County Commissioners are requesting a moratorium on annexation. We have a keen sense of our responsibilities as a city but no willingness to support us by our state legislators or by our County Commissioners. He felt that since we spent 3 years working on the JPA we certainly shouldn't close any doors. Though the JPA effort we were trying to grow in cooperation with the County, but now we have an adversarial process. He struggled to see any grand benefits from extending our services into the ETJ and was concerned that we risk creating an elite city that the wealthy can afford to live in but others can't.

Councilman Freeborn was not an advocate for annexation, but if we do take on new property, then it should be closer to city standards. He felt this is a way to start bridging that gap.

Councilwoman Cape felt that this is about the quality of how development and infrastructure proceeds and how people are brought into the community, even though they are outside the city limits. Asheville is annexing at a much slower rate than the rest of North Carolina cities and development is happening very rapidly all around us. To not try to create good standards at our city limits, we end up making the citizens of Asheville bear the burden of growth in the whole area.

Councilman Newman said that Asheville is the economic hub of the multi-county area of Western North Carolina. All the people who come to Asheville use our infrastructure every day and it is the City residents who live here who have to pay for the infrastructure being used by many, many other people. The people who use it the most are those people who live immediately outside our city limits in the areas that are growing very fast and becoming urban in nature.

Councilman Davis felt the JPA would have been a great opportunity to work with the County. He hoped that we will continue to keep this plan on the shelf because a lot of time and work have been invested in this and at some time we will get past the adversarial relationship with Buncombe County.

Councilman Newman didn't want to say that the City was no longer interested in discussing the JPA, because we should always be open to the possibilities of coming together around ideas.

Councilman Davis moved to amend his motion to read as follows: (1) Advise Buncombe County that in recognizing the work that has taken place on this issue for 3 years and we haven't been successful in finding a common approach, the City feels, in light of that, the need to move on, but will remain open to joint community planning efforts and new ideas; (2) extend the following development review services into the existing ETJ in Fiscal Year 2006/07: floodplain management, stormwater management, erosion control, street address services, State Building Code, and Minimum Housing Code; and (3) evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits. Vice-Mayor Jones accepted the amendment with said amended motion carrying on a 6-1 vote, with Councilman Mumpower voting "no."

C. RESOLUTION NO. 06-71 - RESOLUTION APPOINTING CITY OF ASHEVILLE REPRESENTATIVES TO THE COMPREHENSIVE TRANSPORTATION PLAN TASK FORCE

Councilman Freeborn said that City Council is requested to make appointments to a task force advising the N.C. Dept. of Transportation (NCDOT) and Metropolitan Planning Organization (MPO) on the area's Comprehensive Transportation Plan.

Mayor Bellamy has requested that City Council appoint City members to a task force to provide input into the Comprehensive Transportation Plan (CTP) under development by the NCDOT for the MPO. The best way to proceed in making these appointments was determined to be the use of the City board structure as the basis for selecting City members to the task force (Buncombe County and other municipalities will also appoint members to the task force). The following persons have been identified from the listed boards to serve on this task force, as they would best represent our community in creating long-range maps for Buncombe County and the MPO:

- Greenway Commission – Linda Giltz
- Bike and Pedestrian Task Force – Claudia Nix
- Transit Commission - Karen Austin
- I-26 Aesthetics Advisory Committee – Leslie Fay
- Sustainable Economic Development Advisory Committee – Chuck Tessier (or delegate)

By using existing boards, information about the CTP can be more effectively shared across the community and with the affected boards. The long-range maps would then go back to the community for their input. The maps need to be ready by late summer of 2006.

City staff recommends City Council adopt the resolution appointing the above persons to the CTP Task Force as City representatives.

Upon inquiry of Councilwoman Cape, Planning & Development Director Scott Shuford said that the meetings will not be a major time commitment. He felt there would be approximately 4 meets ranging from 1-2 hours in length to gain the level of public input. He reiterated that this Task Force will also include representatives from Buncombe County and other areas.

In response to Mayor Bellamy, Mr. Shuford said that he will find out at what opportunity City Council will have to review the maps.

There was considerable discussion, initiated by Councilmen Davis and Mumpower, regarding the balance of the Task Force and the need to move forward and continue dialogue on this time-sensitive matter.

At 6:43 p.m., Mayor Bellamy called a short recess.

Councilwoman Cape moved to adopt Resolution No. 06-71 to appoint the members identified above, along with a representative from the Asheville Downtown Commission, a representative from the Planning & Zoning Commission, and a representative from the Buncombe County Tourism Development Authority to the Comprehensive Transportation Plan Task Force. This motion was seconded by Councilman Mumpower and carried unanimously.

Vice-Mayor Jones, Chair of the City Council Boards & Commissions Committee, said that her Committee will take on the task of developing guidelines for task force process and appointments and bring it back to City Council for review.

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VI. OTHER BUSINESS:

Announcements

Councilman Mumpower spoke about the successful seminars of "Reaching for a 21st Century Criminal Justice System" (sponsored by the N.C. District Attorney's Council and the Asheville-Buncombe Drug Commission) and "'Best Practices' for Hard Drug Interdiction" (sponsored by the Asheville-Buncombe Drug Commission, the Asheville Police Department, and the Buncombe County Sheriff's Department) that occurred earlier in the day.

Councilman Mumpower thanked the many community volunteers and the cadets from the Police Academy for helping with the For Our Kids Program by painting at Aston Park Towers.

Councilman Davis urged the public to get involved in the Quality Forward Clean-Up Program.

Councilman Freebom reminded the public about the Arbor Day Celebration that will be taking place on April 1, 2006, at Vance Elementary School in West Asheville with various activities throughout the day.

Claims

The following claims were received by the City of Asheville during the period of March 3-16, 2006: Beverly-Grant Inc. (Water), Hilda K. DeBruhl (Transit Services), Opal Mann (Sanitation) and Amy Lovinger (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Avram Friedman, Director of The Canary Coalition, urged Council to support the Energy Futures Resolution that calls for a comprehensive state-wide study to determine the least-cost mix of electrical generation and demand reduction, including an evaluation of impact on public health, the environment and agriculture and the costs of the full fuel cycle, waste handling and decommissioning of power plans. He said that 20 prominent community organizations have supported this resolution and urged the City of Asheville express their support as well. When Mayor Bellamy explained Council's policy to not address policy issues if they don't have a unique relevance to Asheville, Councilman Newman asked (and the majority of Council concurred) that time be set aside at the April worksession to address matters such as this, long with the Land for Tomorrow resolution.

Mr. Bruce Delle urged Council to rescind the ordinance that prohibits begging in the City of Asheville. Mayor Bellamy responded by stating the several programs City Council has supported for the homeless and encouraged him to contact some of the local non-profit organizations who provide services to the homeless and the phone service of 211.

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods (CAN), requested input into the outside review process of the recent Planning Department's decisions relating to Greenlife, Staples and Prudential Realty. After Mr. Pelly explained how he felt CAN has uncovered Planning decisions that do not adhere to the Unified Development Ordinance and how the system for citizen appeals is flawed, he requested (1) for City Council to heard CAN's 3 appeals which the Board of Adjustment dismissed two and said one appeal was moot; (2) the return of $1,500 for CAN's filing of the appeals; and (3) a commitment from City Council to fix the citizen appeals process. It was the consensus of Council to have the City Council Planning & Economic Development Committee review the process.

Ms. Leslie Fay urged City Council to dedicate a staff person (10-20 hours a week) to work specifically on growth on the Haywood Road Corridor.

Mr. Fred English spoke about the short duration of the indoor football at the Asheville Civic Center.

Mr. Walter Plaue was concerned that the City of Asheville is not being viewed as a regional partner.

Mr. Reid Thompson spoke to Council about the Unified Development Ordinance not being adhered to regarding screening by Greenlife Grocery on Maxwell Street.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:28 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – April 11, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda "C" be removed from the agenda entirely for additional information.

At the request of Councilman Mumpower, Consent Agenda Items "F", "G", and "H" were removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 28, 2006

Vice-Mayor Jones asked that the March 28, 2006, minutes be amended to reflect that she was not present at the closed session.

Mr. Bruce Deile asked that the March 28, 2006, minutes be amended to reflect that his statement to Council was to urge them to rescind the ordinance that prohibits begging in the City of Asheville.

B. RESOLUTION NO. 06-72 - RESOLUTION REVISING THE NAME OF THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE TO SUSTAINABLE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Summary: The consideration of a resolution revising the name of the Economic Development Advisory Committee to Sustainable Economic Development Advisory Committee.

In 2002, the City Council adopted the Sustainable Economic Development Strategic Plan, and established a citizen-led Sustainable Economic Development Implementation Task Force for providing the expertise of the Plan. In September of 2005 the Task Force became a standing committee of City Council and at the initial authorization, the word "Sustainable" was not included in the committee's name. The committee members voted at their February, 2006 meeting to revise the name to Sustainable Economic Development Advisory Committee to better reflect their work plan.

If Council agrees with the proposed addition of the word "Sustainable" to the Economic Development Advisory Committee's name, adoption of the resolution is recommended.

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C. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO EXPLORE THE FEASIBILITY OF CREATING AN INDEPENDENT AIRPORT GOVERNANCE STRUCTURE THROUGH THE GENERAL ASSEMBLY OF NORTH CAROLINA FOR THE ASHEVILLE REGIONAL AIRPORT

This item was removed from the agenda entirely in order to gather additional information.

D. RESOLUTION NO. 06-73 - INITIAL RESOLUTION AUTHORIZING NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT AND CALLING FOR A PUBLIC HEARING ON MAY 9, 2006

Summary: The consideration of (1) an initial resolution authorizing negotiation of an installment purchase contract and calling for a public hearing on May 9, 2006; and (2) a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract.

The current budget includes funds previously appropriated by City Council to finance (1) the construction of two fire stations, (2) the replacement of the civic center roof (3) the upgrade of the 800 mhz public safety radio system and (4) the acquisition of large vehicles.

The first proposed resolution, *initial resolution*, asks Council to confirm that it is in the City's best interest to enter into an installment purchase contract with a financial institution to fund the aforementioned projects and to provide for a public hearing on these matters. This resolution is simple formality required by North Carolina General Statutes before the process of securing financing can begin.

The second proposed resolution, a *reimbursement resolution*, allows the City to reimburse itself from the proceeds of the financing the City incurs any project related expenses before the financing is actually incurred. This resolution provides an appropriate audit and accounting trail, allowing us to tie the proceeds from the financing back to the specific projects that they will fund.

City staff recommends City Council adopt (1) an initial resolution authorizing negotiation of an installment purchase contract and calling for a public hearing on May 9, 2006; and (2) a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract.

RESOLUTION BOOK NO. 29 – PAGE 427

E. RESOLUTION NO. 06-74 - RESOLUTION AUTHORIZING THE REIMBURSEMENT OF THE CITY FROM PROCEEDS OF THE FINANCING FOR PROJECT EXPENSES INCURRED PRIOR TO THE EXECUTION OF THE INSTALLMENT PURCHASE CONTRACT

See Consent Agenda Item "D" above.

RESOLUTION BOOK NO. 29 – PAGE 431

F. **RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A GRANT FOR THE PACK SQUARE CONSERVANCY PROJECT**

This item was removed from the Consent Agenda for discussion.

G. **RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND PACK SQUARE CONSERVANCY FOR SAFETEA-LU GRANT FOR PACK SQUARE RENAISSANCE PROJECT**

This item was removed from the Consent Agenda for discussion.

H. **BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF TRANSPORTATION FOR THE PACK SQUARE CONSERVANCY PROJECT**

This item was removed from the Consent Agenda for discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda, with the two amendments to the March 28, 2006, minutes. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 06-75 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A GRANT FOR THE PACK SQUARE CONSERVANCY PROJECT

RESOLUTION NO. 06-76 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND PACK SQUARE CONSERVANCY FOR SAFETEA-LU GRANT FOR PACK SQUARE RENAISSANCE PROJECT

ORDINANCE NO. 3347 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF TRANSPORTATION FOR THE PACK SQUARE CONSERVANCY PROJECT

Summary: The consideration of a resolution authorizing the Mayor to sign: (1) a municipal agreement with the N.C. Dept. of Transportation (NCDOT) for a grant in the amount of $3,899,860; and (2) an agreement with Pack Square Conservancy (herein "PSC") to carry out the work that is to be funded by the grant. Additionally, staff is requesting the consideration of a budget ordinance amendment in the amount of $3,899,860 for this project.

Working through Congressman Charles Taylor, PSC has secured grant funding through the Safe Account Flexible Efficient Transportation Equity Act – A Legacy for Users (herein "SAFETEA-LU") for its work on the Pack Square Renaissance Project. This money was earmarked through the NCDOT for this purpose.

Since NCDOT can only provide these funds to municipalities, PSC and NCDOT requested that the City accept the money from the State and pass it through to PSC. This grant requires a 20% match, but these funds will come from PSC. Two agreements are required to accomplish this:

1. A Municipal Agreement between the City and NCDOT. This Agreement outlines the terms and conditions that the City must follow in order to qualify for the grant, including procurement of professional and construction services, permitting, and compliance with State and federal guidelines. The grant money does not come all at once, but is in the form of reimbursement upon submission of proper documentation of completed work, and the amount is expressly made subject to the availability of federal funds.

2. The Grant Administration agreement between the City and PSC. This agreement requires PSC to manage and execute the work required for the Project, and to comply or ensure compliance with the terms and conditions of the SAFETEA-LU grant. In essence, PSC would function as the City's contractor for the project. The City, upon proper documentation, would pay PSC – or pay contractors directly – for completion of portions of the work. Using that same documentation, the City would then request reimbursement from DOT. The City reserves the right to review any plans or documents prepared by or for PSC, and to inspect any work.

This arrangement is similar to the existing arrangement approved in 2004 for the administration of a TEA-21 grant for the design of certain pedestrian improvements.

Considerations: By authorizing these agreements and adopting the budget amendment, the City would be responsible for the following:

- Reimbursing Pack Square Conservancy for eligible expenses up to $3,899,860, of which the City would be reimbursed $3,899,860 from NCDOT
- Processing necessary paperwork to reimburse Pack Square Conservancy, and for getting reimbursed from NCDOT.
- Providing updates to NCDOT on the status of the project.

There will be no direct costs to the City as a result of entering into this agreement.

If Council approves of the arrangement as outlined above, adoption of the resolutions and budget amendment are recommended.

Councilman Mumpower voiced concern of investing almost $4 million from the federal government in a City park, especially at a time of extreme deficits.

Vice-Mayor Jones moved for the adoption of the Resolution No. 06-75. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 433

Vice-Mayor Jones moved for the adoption of the Resolution No. 06-76. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 435

Councilman Freeborn moved for the adoption of the Ordinance No. 3347. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 22 - PAGE 433

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON SMOKY PARK HIGHWAY AND COOPER BOULEVARD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/ CONDITIONAL ZONING FOR A PROPOSED WAL-MART SUPER CENTER STORE AND ADDITIONAL RETAIL DEVELOPMENT

Mayor Bellamy announced that around Noon today the City Clerk received a letter from Ashley H. Story, attorney with Troutman Sanders, LLP, which read: "Please accept this letter as notification that Wal-Mart Real Estate Business Trust ('Wal-Mart') is withdrawing its application for Conditional Zoning to be heard at the April 11, 2006, City Council meeting. Wal-Mart is terminating this project and will no longer be pursuing this site. Wal-Mart appreciates all of your assistance in this matter."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Land Use

Councilman Newman asked for Council to revisit the definition of single tenant development vs. multi-tenant development in terms of square footage allowed. He questioned if it is Council's intent to define a one large single tenant development (using Wal-Mart as an example) as a multi-tenant development just because it has a very small percentage of ancillary businesses (like a vision business, or a McDonalds or Dominos Pizza). Councilman Mumpower suggested some type of proportional percentage increase. Planning & Development Director Scott Shuford will report back to Council with some options to pursue.

Mayor Bellamy asked that City Council be prepared to come to the May 16, 2006, worksession with a list of items from the Unified Development Ordinance they wish to have reviewed. At that time, Council will give direction to Planning staff on which items they wish to move forward with, with the ultimate result of letting the citizens of Asheville know the vision for what type of development City Council is seeking for the City of Asheville.

Mr. Shuford said that ultimately he will need some guidance from Council about what areas in the City seem more appropriate for suburban type of development patterns and what areas in the City an urban development pattern would be more appropriate. That will help Planning staff try to formulate regulations that will address those issues.

In the midst of discussion initiated by Councilman Newman, Councilman Newman moved to direct Planning staff to look at the areas in Asheville that contain mobile home parks and identify how they are zoned. Keeping in mind the goal of preserving the City's affordable housing stock, Planning staff is directed to think about the areas that are not zoned residential, to determine if they should be. After Planning staff has completed that task, they directed to take their results to the Planning & Zoning Commission for their input and then report back to Council. Councilwoman Cape seconded the motion.

After more discussion regarding Mayor Bellamy's request to have all land use concerns discussed by Council at the May 16, 2006, worksession, Councilman Newman and Councilwoman Cape withdrew their motion noting that they will bring the matter back up at the May 16 worksession. In the meantime, however, Planning staff was directed to bring forward to

Council a map of Asheville and it's extraterritorial jurisdiction area to show where the mobile home parks are located, along with their current zoning designations.

For Our Kids

Councilman Mumpower thanked all the volunteers from UNC-Asheville, the children and adults who participated in the successful For Our Kids event at Lee Walker Heights on Saturday, April 8, 2006.

Arbor Day

Councilman Freeborn thanked the many volunteers, in particular City employee Mark Foster and Susan Roderick from Quality Forward who all helped plant the trees donated by Progress Energy on Arbor Day.

Claims

The following claims were received by the City of Asheville during the period of March 17-30, 2006: Nancy Tabel (Fire), Michael Sullivan (Transit Services), Vilma Lindo (Transit Services), Clay Property Management (Transit Services), Harry Ramsey (Water), Mildred Delp (Water), Maricene Clark (Water) and Michael Micciche (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Jill Rios, Clean Water for North Carolina, Erin Krauss, Emma Family Resource Center, and Mr. Craig White, Center for Participatory Change, all representing the Cooper Boulevard Community Support Network, said that they have been working extensively with the Cooper Boulevard/Monticello mobile home community by collecting information from residents, sharing accurate information with residents and encouraging community involvement in the public process regarding the Wal-Mart Super Center that was proposed on Smoky Park Highway. They noted that they do not speak for the residents, who hold many different views, as their primary commitment is seeing that they are treated fairly. They then reviewed with Council a snapshot of the neighborhood and families that would have been displaced if the Wal-Mart Super Center was constructed. Regarding of whether the property is sold to Wal-Mart, the seller of the mobile home park has indicated a wish to sell the Cooper Boulevard property. Therefore, they recommended the following two considerations. One, that City Council develop a public/private partnership to maintain affordable housing through a land trust. They recommend that Council instruct the Community Development Division of the Planning Department to convene a meeting with local affordable housing nonprofit organizations to discuss the viability of raising money for purchase of property and development of a land trust, in either the Cooper Boulevard or an alternate location, which could indefinitely maintain a number of affordable housing units, whether mobile homes or more permanent housing. Two, that City Council research and approve a policy that would add relocation assistance as a condition for new development that displaces low income residents. Displacement of one or two families is a landlord / tenant issue, but in a city and county that already has an affordable housing crisis, displacement of a significant number of families by new development imposes a burden on the whole community, at least as significant as traffic, noise or light pollution. This concern is only going to escalate in the next decade, and should be addressed in a comprehensive manner. Whether or not this particular development is approved, we strongly recommend that Council research relocation assistance policies in other cities, and pass an ordinance that will require relocation assistance be paid to residents displaced by any new development that displaces ten or more families or eliminates ten or more units of affordable housing. After discussion by Council on the two recommendations, it was the consensus of City Council to ask that the City Council Housing & Community Development Committee review these

suggestions and report back to Council at their June worksession. Councilman Newman also noted that this may be an issue to be discussed at Council's May worksession regarding land use issues.

Mr. Fred English urged City Council to support a resolution supporting legal immigration.

Mr. Bruce Delle spoke to Council about the non-profits not meeting the needs of the homeless. He again explained why Council should rescind the ordinance prohibiting begging in the City of Asheville. It was the consensus of Council to refer Mr. Delle's request to City Council's Housing & Community Development Committee. Vice-Mayor Jones, Chair of the Housing & Community Development Committee, felt that there was a need to check on the progress of the 10-Year Plan to End Homelessness and requested an update from the Downtown Social Issues Task Force on their recommendations, especially from the Subcommittee on Panhandling. Mayor Bellamy wanted to make sure that the City Council Public Safety Committee is kept informed of this issue, as they are reviewing panhandling issues.

Mr. Tim Peck was sorry Wal-Mart felt compelled to withdraw their conditional zoning application, which store would have provided jobs and would have helped defray moving expenses for those living in the mobile home park.

Mr. Steve Arpin urged Council to create a committee to develop recommendations for sustainability. Councilwoman Cape invited Mr. Arpin to attend the Sustainable Economic Development Advisory Committee, which will be meeting on April 14, 2006, at 8:30 a.m. at 29 Haywood Street, Asheville, N.C., to voice his ideas.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – April 18, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

REPORT FROM CHAIRS OF POLICY COMMITTEES

Public Safety

Councilman Mumpower, Chair of the Public Safety Committee, updated Council on the latest actions and discussions of the Committee and requested full Council action on the following items:

(1) Traffic calming report – After a discussion of completed and active projects, the effects of traffic calming on traffic, the effect of traffic calming on police enforcement, vehicle damage, and the effect on other City services, Council voiced their opinions on traffic calming.

Councilman Freeborn encouraged the School Board to instruct the School Resource Officers at the elementary and middle schools to have more of a presence on the streets. He suggested presenting a menu of options (islands, bulb-outs, speed humps, increased police presence), with costs associated with each option, to neighborhoods and encourage them to be proactive in finding funds for their preferred option.

Councilman Newman was under the impression that once the active traffic calming projects were completed, Council would move away from comprehensive traffic calming to more pedestrian safety measures at targeted areas in the community, like schools and parks.

It was the consensus of Council to instruct City staff to initiate strong traffic enforcement.

Traffic Engineer Anthony Butzek will provide the full Council with more detail on the effectiveness of each street that has traffic calming in a format available to be placed on our website.

Mayor Bellamy said that once additional information from the Traffic Engineer has been formulated, the information will come back to the full Council.

(2) Fund and Support the Quick Response Vehicles as deemed appropriate by Fire Department staff - After discussion, final action was to direct the Fire Chief to prioritize this request in his budget, noting that City staff has general policy direction from Council recognizing that this is important.

(3) Police Department take home vehicles – After discussion, final action was for City staff to provide additional information regarding the cost of this program.

Housing & Community Development

Vice-Mayor Jones, Chair of the Housing & Community Development Committee, updated Council on the latest actions and requested full Council action on the following items:

(1) At the request of Mayor Bellamy, Councilman Newman moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously. Mayor Bellamy turned the meeting over to Vice-Mayor Jones. Approval of Mountain Housing Opportunities' request for a $500,000 loan (for Crowell Park) on provisional terms of 0% interest for 15 years, with the condition that the final terms would be set after the Fiscal Year 2007 property tax rates are known. After discussion, final action was to bring this matter forward to the April 25, 2006, meeting. Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

(2) Committee performed due diligence on 8 Cedar Street on whether to sell the property to the highest bidder or retain as affordable housing. After discussion, final action was to bring this matter forward to the April 25, 2006, meeting.

(3) The following three amendments to the Housing Trust Fund guidelines: (1) To increase the loan limit to $500,000, (2) To significantly increase price limits for both the Housing Trust Fund and the Fee rebate program; the limit for a 3-bedroom unit should be $160,000; and (3) To allow the developer to exceed price limit if other subsidies are available to make home affordable to low-income buyer. After discussion, final action was to bring this matter forward to Council at their April 25, 2006, meeting.

(4) Funding recommendations for the Community Development Block Grant funds. Final action was to bring this matter forward to Council at their April 25, 2006, meeting.

Planning & Economic Development

Councilman Davis, Chair of the Planning & Economic Development Committee, updated Council on the latest actions and discussions of the Committee, some being, but are not limited to: Eagle/Market Street redevelopment; areas of improvement with networking with Council members in terms of overall performance from staff on important issues, e.g., planning policies and processes; discussion of Board of Adjustment responsibilities and explanation of appeals process; and preliminary review of future annexation plans.

In addition, at the meeting, the Committee heard a presentation from Coalition of Asheville Neighborhoods regarding the Board of Adjustment appeals process.

After considerable discussion about the appeals process, particularly with development issues, Mayor Bellamy stressed that City Council is the policy-making board and if there is a procedure in place that is not working, Council can create new policy and move forward. She asked City Council for possible solutions. Some suggestions were (1) expanding the length of time to appeal to the Board of Adjustment; (2) having a private Certified Planner signing off on Unified Development Ordinance interpretations that are being aggrieved; (3) procedure for citizens getting their "Day in Court"; (4) make sure aggrieved parties go through an established process before it comes before Council; (5) ask for third-party reviews only in extreme measures, with possible shared cost; (6) develop an alternative process for the public to appeal decisions of

the Unified Development ordinance; and (7) process for citizens to be heard and responded to by Council not only with development issues.

Councilman Newman moved to refer this matter to the Planning & Economic Development Committee. This motion was seconded by Councilman Mumpower and carried unanimously.

City Manager Jackson said that staff will research some best practice models in other cities.

Mayor Bellamy pointed out that this seated Council has only been in place for 5 months and cannot address problems without giving them time within which to research and obtain data to help support good policy changes.

Closed Session

At 5:07 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 6:10 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

Revenue & Finance

Councilman Newman, Chair of the Revenue & Finance Committee, updated Council on the latest actions and discussions of the Committee, some being, but are not limited to: increase and decrease recommendations for various fees and charges; outside agency funding will be discussed at the next Committee meeting; and heard a presentation from firefighters about their long-standing concern regarding retirement.

At the suggestion of Vice-Mayor Jones, Councilman Newman said that the Committee would be open for Council to suggest an amount of money that would be available for outside agency funding.

2006-07 BUDGET PLANNING

General Fund Overviews

Chief Financial Officer Ben Durant reviewed with Council the revised budget schedule, with the public hearing being held on June 13, 2006, and final adoption being on June 27, 2006.

He explained that the goals of this budget preview session will be to (1) provide updated financial and budgetary forecasts; (2) identify budget-balancing alternatives; and (3) offer Council decision packages for resource allocation in Fiscal Year 2006-07 budget.

Policy decisions will be (1) what should the price of government be – (a) what are citizens willing to spend; (b) what are the citizens priorities and desired outcomes; and (c) what is the

price of priority outcome; (2) who should bear the cost of general government services – (a) users of the service (through fees and charges); (b) all citizens for the good of the whole (through taxation); and (c) outsiders who pay no taxes, but enjoy the benefits of city services and programs; and (3) which should take funding priority in any given year – long term needs or short term goals.

He then reviewed the General Fund revenue assumptions of property tax; licenses and permits; intergovernmental revenues; sales tax; and one-time revenues. In addition, he reviewed with Council in detail the General Fund Revenue Summary.

General Fund expenditure assumptions: maintains current level of service in most areas; personnel; operating costs; capital expenditure; General Fund Subsidy of Enterprise Fund reduced; and additional General Fund needs identified by Council and staff, but not budgeted. He then reviewed in detail the General Fund Expenditure Summary.

Another topic Mr. Durant reviewed was the General Fund subsidy of enterprise funds: Civic Center Fund, Festivals Fund, Golf Fund, Housing Trust Fund, Parking Fund, Transit Fund, Transit Motor Vehicle Fee, Stormwater Fund and Water Fund. The Fiscal Year 2005-06 amended budgeted was $2,661,622 and the Fiscal Year 2006-07 budget estimate is $2,380,222.

He reviewed the General Fund continuation budget summary of a General Fund budget gap of $2.4 Million. Requests not currently in the General Fund budget include: (1) market-based compensation plan - $2.2 Million; (2) service enhancement requests - $1.8 Million; (3) strategic initiatives ($1.8 Million); and (4) capital improvements - $11.9 Million = Total $17.7 Million. Capital Improvement requests not in the budget (current capital needs without identified source of funding): (1) General Fund (fleet, technology, maintenance) - $11.9 Million; (2) Golf Fund (irrigation system) - $1.0 Million; (3) Water Fund (infrastructure) - $8.2 Million; and (4) Civic Center (existing facility) - $16.6 Million = $37.7 Million.

Staff recommendations for the General Fund budget balancing alternatives: (1) proposed reductions in spending of $460,000 (professional/contracted services; staff realignments; and departmental line item adjustments); and (2) proposed revenue enhancements of $870,000 (privilege license adjustments; fee and permit adjustments; and cost recovery/allocation).

He explained in detail further considerations for Council for balancing alternatives: (1) possible reductions in spending: maintain Housing Trust Fund at current level (no new funding in Fiscal Year 2006-07); reduce service levels; eliminate low priority programs; reduce/eliminate funding for outside agencies; achieve 100% cost recovery for co-sponsored activities/events; defer capital expenditures; and defer filling position vacancies; and (2) revenue opportunities: property tax rate adjustment; increase recycling fee to include organic (loose leaf/brush) & bulky goods collection and recycling; adjust other fees and charges; and one-time revenue generation (proceeds from sale of land and appropriation of fund balance).

He outlined other potential service reductions, but not recommended: (1) reduce service in streets and sidewalk maintenance; (2) discontinue right-of-way maintenance; (3) scale back lower priority programs in public safety; (4) scale back lower priority programs in Parks and Recreation; (5) reduce Community Oriented Government Services; (6) extend PC leases/utilize free software; (7) reduce departments line items in training and professional services; and (8) eliminate 12 full-time employees (currently vacant positions). This totals $1.3 Million.

He asked for the following policy guidance from Council: (1) what is the appropriate balance between budget cuts and revenue enhancements for Fiscal Year 2006-07; (2) should we continue to raise fees while reducing reliance on property tax, or vice versa; (3) should we

reduce/eliminate low priority services; (4) should we employee short-term (or one-time) budget balancing strategies, for recurring expenditures; (5) should funding and support for the City's external partners take precedence over City services and internal operations; and (6) should we continue to delay capital improvements in order to balance the budget in the short-term.

Mr. Durant summarized the Civic Center Fund, the Festivals Fund, the Golf Fund, the Parking Fund, the Transit Fund, the Stormwater Fund, and the Water Fund.

Next steps include the (1) Revenue & Finance Committee reviews/recommends proposed fee adjustments and outside agency funding requests; (2) Council reviews unfunded expansion and Capital Improvement Plan detail requests; and (3) Council provides feedback to budget staff for completion of proposed budget by April 28, 2006.

Throughout Council discussion and their individual comments, Mr. Durant obtained direction from Council, as well as responded to various questions/comments, some being, but are not limited to: are we tracking the funds from the Housing Trust Fund used for Hurricane Katrina efforts; better documentation of the operating costs in the Parking Fund; what is the Consumer Price Index; what is the percentage increase in our revenues this year vs. last year; can the City initiate an employment tax and do other cities in North Carolina have such a tax; why is the method of paying for motor vehicle license fees being requested for change; need to define what the core services are for city government; what is the long-term result when we delay capital improvements; need to find a way to eliminate the subsidies going to the Civic Center Fund and the Golf Fund; does the City have a privatization analysis; request for figures for police, fire and public works regarding festivals; support for a revenue neutral tax rate; request for the appraised value of the Civic Center; is the Housing Trust Fund meeting a realistic need; request list of what capital improvement plan items would be deferred as a potential cost reduction; request for additional information on what the right-of-way maintenance reduction would consist of; request for more information on what the Parks & Recreation Department reductions would be; request for additional information on what things would be reduced in the Community Oriented Government Program; request for additional information on what businesses would be impacted in the privilege license changes; request for more information on how the fees and permit increases would impact small businesses; how does this preliminary budget impact our sales tax if we go revenue neutral; is this preliminary budget projected at revenue neutral; need to review each parcel of land fully to make sure selling it would be in the best interest of the City; can the City raise the motor vehicle fee; need to issue some bonds and increase the $8.2 Million capital improvement request not in the budget for Water Fund infrastructure; what do other cities across the state charge for their transportation systems; need to find additional $425,000 for portion of pay plan recommended by Fox Lawson consultants; comments about a 5-year budget; need more detail about possible reduction/elimination of low priority services and how our citizens would see that impact; and request that all cost savings that we get this year from budgets go directly into the General Fund instead of automatically being reallocated to those departments, and request for that total amount.

Mr. Durant said that he will be contacting Council members next week to arrange a time to review what the budget scenario will look like after staff takes the Council's comments and works to close the gap.

After discussion, Mayor Bellamy asked that before staff prints the proposed budget, that Council be given another preview session like this on May 8, 2006, with the requested information from this session, in order to give staff final direction. In addition, it was the consensus of Council to allow public comment at May 8 worksession on the proposed budget, in addition to the public hearing scheduled on June 13, 2006.

Mr. Durant said that he would review the state statutes to determine the timeframe in which he needs to have a formal proposed budget available for City Council, the City Clerk, and public inspection.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that we can expand the public communication distribution of information, including posting the information on our website.

City Manager Jackson said that staff will use these comments as base information and start showing more staff recommendations that are consistent with a revenue neutral budget. It will then be clear to Council what is not included in a revenue neutral budget and then Council can determine if that stalls or furthers Council's long-term objectives. In the interim, Council will receive the detail of what is in those unfunded items because you will see that most significant initiatives that move many of the strategic goals identified by Council fall into those categories.

It was the consensus of Council to send to Mr. Durant and/or City Manager Jackson any Council initiatives that have budgetary impacts by May 8, 2006.

At 8:11 p.m., Mayor Bellamy announced a short recess.

Water Fund

Director of Water Resources David Hanks reviewed with Council the Water Department's expenses in the Fiscal Year 2006-07 budget: In detail he reviewed the operations & maintenance – in the amount of $15.45 Million; debt service – in the amount of $5.2 Million; and capital improvement projects – in the amount of $8.2 Million – totaling $28.85 Million for the annual water system expenses.

Mr. Hanks then reviewed the capital improvement projects funded by the CIP fee for Fiscal Year 2006-07 and Fiscal Year 2007-08: water treatment plant, distribution system projects, neighborhood projects, transportation improvement projects and water facility.

He reviewed in detail the CIP fee impact on average customer bills; the recommended uniform rate structure water rates by customer class; the combined impact of CIP fee and uniform rate structure; the impact of phasing for uniform rate; the impact of reduced rate for minimum volume usage; the combined impact of CIP fee and minimum volume rate; and the wholesale customer rates (Town of Woodfin, Town of Biltmore Forest and Town of Black Mountain).

Throughout Council members voicing their opinions, Mr. Hanks responded to various questions/comments from Council, some being, but are not limited to: what are the largest water users; have any manufacturers expressed concern over possible CIP fee; is this in line with the Brown & Caldwell report; request to identify the $4.5 Million of distribution system projects; request for average utility increases, e.g., gas, electricity, etc.; request for information about how many manufacturers are outside the City limits with significant employees; what is the reasoning behind bringing the Bee Tree facility back on line; has there been an analysis that shows what severity of drought would be necessary to occur that would max out North Fork Reservoir and the full capabilities of the Mills River Treatment Plant; how long would it take to put the Bee Tree facility on line; why isn't City staff recommending the minimum volume rate at this time; and does staff anticipate an annual rate increase of the CIP.

Council members felt that it would be prudent to be sensitive about harming our manufacturers with any increase.

Mayor Bellamy spoke in favor of the $15-20 Million debt capacity so we can begin work on our Capital Improvements Plan. She supported the CIP fee, but since this is our first year with

the system, she didn't think the uniform rate should begin. She felt we need to strengthen our accountability to our community and distribute them more information on our water system and how the fee will help with the infrastructure.

Councilman Mumpower understands that Henderson County has a strong interest in working again with the City of Asheville in finding a way to put the expensive water treatment plant Henderson County to good use. He felt the City should not look at putting Bee Tree on line, but work with Henderson County.

City Manager Jackson understood that the majority of Council has provided staff with direction to proceed with the CIP fee.

Councilman Newman felt that since water is a big issue in the community and felt a stand-alone public hearing (without being included in the 2006-07 Annual Operating Budget public hearing), should occur. City Manager Jackson responded that if Council is ready to proceed with the CIP before the annual budget public hearing that can be accomplished. However, he felt that in the long-term management of a utility that it makes sense to annually review the cost of service and the rate structure in order to get into a regular cycle.

It was the consensus of Council to instruct City Manager Jackson to contact Henderson County and possibly other surrounding counties to begin a process to explore possible water purchasing negotiations.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on April 25, 2006. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Central Business District Revisions

Urban Planner Alan Glines, with the assistance of Mr. Peter Alberice and Mr. Pat Whalen, members of the Asheville Downtown Commission, explained that this is the consideration of (1) an amendment to the Unified Development Ordinance ("UDO") to strengthen the requirements for projects located in the Central Business District ("CBD"); and (2) an amendment to the UDO to adjust the review thresholds for minor and major works for the Downtown Design Review program; (3) a resolution to adopt the Key Pedestrian Streets Map to be used to support the Central Business District zoning; and (4) an ordinance to expand the design review boundary map.

This proposed amendment is drafted to update the Code of Ordinances regarding projects located in the Central Business District. The City is experiencing continued growth and development in the downtown Central Business District. The Downtown Commission was appointed by City Council to recommend policy and to support downtown revitalization. They have carefully considered the proposed wording changes for nearly three years. As downtown's stock of existing buildings have been renovated to new uses, opportunities for new construction have shifted to under-developed infill lots in and around the periphery of the downtown core. This expansion from the core area will be the growth areas of the central business district. The proposed wording amendments to the UDO will provide additional requirements for new construction to ensure an urban style of development in the downtown area. Development along specific key pedestrian streets would have some additional requirements to improve the character of the street and strengthen the sense of place. The Key Pedestrian Streets Map, first developed for the City Development Plan 2025, is being submitted for adoption along with these ordinance

amendments. An additional item that is being submitted for consideration is a minor expansion of the boundary map, which outlines the coverage area for the Downtown Asheville Design Guidelines. The expansion seeks to include all parcels zoned CBD into the design review area. The Downtown Asheville Design Guidelines were adopted in the late in 1980's. The guidelines provide direction for new construction or major renovations in the downtown area. The program is administered by the Downtown Commission under a mandatory review and voluntary compliance authority. The current proposal seeks to amend this design review area to expand and include the entire area of the central business district (CBD zoning district). In order to balance out the need for a wider design coverage area and clearer requirements for new construction, the Downtown Commission is recommending that the design review program match City development review thresholds that are already in place. This means that instead of reviewing all projects greater than 5,000 square feet as currently provided for in the UDO, the Downtown Commission will review projects that are Level II and Level III projects. Staff will provide compliance review for Level I projects in a similar fashion as is done currently for projects under 5,000 square feet. This change in threshold requires an amendment to the UDO section that covers the downtown design review program. In summary, the proposed changes to the Central Business District section of the UDO, the Key Pedestrian Streets Map, the amendments to the Downtown Asheville Design Guidelines and review thresholds are expected to enhance and maintain the redevelopment that has occurred in downtown and provide direction, maintain the character and reinforce the urban form for new construction.

Pros –

- The ordinance amendments protects existing downtown development as new projects are proposed.
- The requirements for new construction ensures that new projects will add to the character of the downtown area and strengthen the urban form.
- Because the major part of downtown's stock of existing older buildings are renovated, new growth will be in the form of new in-fill construction. The amendments will be in place in time to positively affect this new development
- The dense development pattern of the core area of downtown will expand out to the edges of the Central Business District.

Cons –

- Some older businesses may find that their use would be a better fit in a more suburban setting.
- New development will place greater pressure on existing infrastructure.

The Downtown Commission voted to recommend approval of the proposed changes to the UDO covering the Central Business District. Staff concurs with this recommendation. In addition, at the Planning & Zoning Commission's February 12, 2006, meeting the Commission voted 6-0 to recommend approval of the proposed amendments with several minor changes that have been incorporated into the current ordinances contained herein.

City staff recommends City Council approve (1) an amendment to the Unified Development Ordinance ("UDO") to strengthen the requirements for projects located in the Central Business District ("CBD"); and (2) an amendment to the UDO to adjust the review thresholds for minor and major works for the Downtown Design Review program; (3) a resolution to adopt the Key Pedestrian Streets Map to be used to support the Central Business District zoning; and (4) an ordinance to expand the design review boundary map.

Councilwoman Cape felt we needed clarify on how we write our codes and suggested moving towards a form code.

Upon inquiry of Councilman Mumpower, Mr. Alberice said that in Phase II a form code will be addressed, along with discussion of height limits, affordable housing and other incentives to allow for higher and more dense development.

Mayor Bellamy asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

STATE LEGISLATIVE PROGRAM

City Attorney Bob Oast said that this is the consideration of requests for legislative action for the 2006 "short" session of the North Carolina General Assembly

Perhaps the most important factor in Council's consideration of the matters it wishes to submit for legislative consideration is that the legislative session for 2006 is a "short" session – in essence, a continuation of the 2005 "regular" session. Under the rules of the General Assembly only certain matters are eligible for consideration in the short session:

1. Bills that passed one house but not the other when the 2005 General Assembly adjourned (crossover bills);
2. Bills affecting pensions or retirement;
3. Bills making appointments;
4. Bills dealing with governmental reorganization;
5. Bills dealing with State budgetary matters;
6. Study bills;
7. Non-controversial local bills.
8. Other bills of a procedural nature may be introduced, as may bills that are introduced pursuant to a joint resolution.

Of the matters eligible for consideration, the provision for local bills is of most relevance to the City. Our legislators have advised in the past that "non-controversial" means not only that the proposal must have unanimous Council support, but also that the greater community is in general agreement with it.

The General Assembly reconvenes on Monday, May 9. In order to be eligible for consideration, any local bill must be submitted to the Bill Drafting Division by May 17, and introduced (House) or filed for introduction (Senate) by May 24.

1. LEGISLATIVE ACTION NEEDED. There have been several matters in the last year or so when it was recognized that legislative action was needed or desirable.

   A. Settlement agreement with Progress Energy regarding Lake Julian. Near the end of last year, the City and Progress Energy reached an agreement settling the 2000 litigation involving the attempted annexation of Progress Energy's Lake Julian power generating facility. Pursuant to this agreement, the City would cease attempts to annex Progress Energy's Lake Julian facility, and Progress Energy would continue to pay the City a utility franchise tax. This essentially amends an earlier (1994) agreement, formalized by legislation, settling a dispute (and threatened litigation) over the utility franchise tax.

   This settlement agreement was discussed with the legislative delegation prior to Council acting on it back in the Fall. The delegation has indicated that this matter is appropriate for consideration in the short session, and that they will take the appropriate steps to have it enacted into law.

B. Voluntary / legislative annexation in South Asheville. The area between the southern City limit and Henderson County is developing rapidly. For a variety of reasons, some of the commercial developments in this area wish to be annexed into the City of Asheville. Under current law, however, voluntary annexation is complicated because those areas are closer to Fletcher than they are to Asheville's primary corporate limits, even though Fletcher cannot expand into Buncombe County. Last year, legislative action was required in order to annex some commercial properties in the new development near the airport. This year, a similar situation has arisen with other commercial properties, and legislative action will likely be required again.

It may be possible to address this issue by reaching an annexation agreement with Fletcher, but legislation may provide a more long term solution.

C. Annexation of I-26 corridor. This corridor connects Asheville's primary corporate limits with its major satellite (the Airport), and with the rapidly developing (and voluntarily annexing) areas south of town, as described above. Construction work along I-26 and increased traffic, much of it local, make a municipal level of traffic enforcement in this area desirable. We have discussed this with DOT, and they have indicated support for this corridor being incorporated into the City. We have not discussed this with members of the delegation, but it is a possibility for action.

II. OTHER MATTERS: The City has in recent years considered seeking, and in some cases has sought, legislative action on several other matters. Some matters that may be of continuing interest to Council are:

A. Dedicated revenue for Civic Center. This discussion has typically centered on an occupancy or hotel tax, a prepared food and beverage tax, or a local sales tax.

B. Camera enforcement of red light violations. This is permitted by local act in several jurisdictions around the State. Currently, there is litigation pending on the proper use of the proceeds from the civil penalties.

The reasons why these matters have not moved forward include:

1. lack of uniform support on Council
2. lack of support among our delegation
3. insufficient information on how the revenue will be used (Civic Center)
4. inability to certify that the measure is not controversial.

It is unlikely that these measures would qualify for introduction or action in this short session.

III. NEW MATTERS. In addition to the above listed items, there may be matters that the Council wishes to propose for legislative consideration. Those would be subject to applicable rules regarding consideration in the short session. Also, we always look at proposed legislation affecting other local governments for consideration of whether Asheville should be included among the localities to which it applies. We will advise you if we see any items that are of potential interest to Asheville,

We are anticipating that we will proceed with requesting action on the settlement agreement with Progress Energy and we recommend that the legislative action be requested as

to voluntary annexation of developing areas to the south of town, and as to the I-26 corridor. We will prepare the appropriate information, depending on Council's direction.

Councilman Newman explained his following proposals: (1) Asheville be allowed to increase our local hotel occupancy fee from 4% to 6%, with the new 2% revenue being available for (a) operate and repair the Civic Center; (b) promote and support events in Asheville that increase visitor room nights in Asheville; and (c) create workforce housing in Asheville, focusing on the needs of workers who make at or near minimum water. If our local delegation will not increase our hotel occupancy rate, then request that the existing 1% which is dedicated to local tourism product development be re-allocated to City Council to be dedicated to the operation and repair of the Civic Center; (2) If additional funds beyond the hotel occupancy fee are needed to operate and repair the Civic Center, then request the ability to charge a local fine-dining tax – in the form of prepared food and beverage tax but would exempt meals which cost less than $35; (3) due to the deeply regressive nature of sales tax, Asheville should oppose any new sales tax; and (4) allow local governments to decide if they want to create public financing for local elections. Legislation has been introduced to allow cities over 50,000 to establish public financing of municipal elections.

Councilman Mumpower explained his following proposals (1) criminal justice system reform; and (2) repeal of Sullivan Acts II and III. He suggested we approach our legislative delegation know of our specific needs regarding the Civic Center and ask them for the best way on creating a revenue stream.

Councilman Davis felt our local delegation expects the City to come with them with a plan and he didn't believe that could be accomplished with the short time-frame for this short session. In addition, he said that this is the first time the Tourism Development Authority has committed (with a good plan) to ask the local delegation for a percent to be added.

Vice-Mayor Jones explained her proposal that we ask the local delegation to increase the child care reimbursement rate for Buncombe County.

After each Council member expressed their support or opposition for various legislative items, it was the unanimous support of Council to submit the following for the state legislative program (1) settlement agreement with Progress Energy regarding Lake Julian; (2) voluntary/legislative annexation in South Asheville; (3) support for presenting the legislation with a menu of options, with the exception of the local sales tax, for a dedicated revenue stream for the Civic Center; (4) child care subsidy; (5) criminal justice system reform; and (6) repeal of Sullivan Acts II and III.

At the request of Councilman Newman, Mayor Bellamy said that if Council has other broader public policy issues, that Council should circulate that additional information prior to the next formal meeting at which time the issues will be voted on separately.

Mayor Bellamy asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to appoint Jessica Leaven as an Alternate Member to the Board of Adjustment.

It was the consensus of City Council to ask the City Clerk to extend the application deadline for another month in order to obtain more applications for a vacancy on the Buncombe County Tourism Development Authority.

It was the consensus of City Council to ask the City Clerk to arrange the following interviews for a vacancy on the Asheville Transit Commission: Bruce Emory, Hanna Miller and Yuri Koslen.

OTHER BUSINESS

Vice-Mayor Jones announced that the Tourism Development Authority will be holding a 2-day charette for the community to get input on how to utilize the product development dollars.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:25 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – April 25, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF SILVER WELL WORKPLACE AWARD

Mayor Bellamy recognized and praised Ms. Destiny Mattsson, the City's Wellness Coordinator, on receipt of the Silver Well Workplace Award from the Wellness Councils of America.

B. PROCLAMATION PROCLAIMING MAY, 2006, AS "MOTORCYCLE AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming May, 2006, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Roger Williams who briefed City Council on some statistics regarding motorcycle accidents and some activities taking place during the month.

II. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda items "I" and "J" be removed from the Consent Agenda, with Consent Agenda "I" being removed for an individual vote. She said that Consent Agenda Item "J" will be considered after consideration of a resolution amending the Housing Trust Fund guidelines (under New Business).

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 11, 2006, AND THE WORKSESSION HELD ON APRIL 18, 2006

B. RESOLUTION NO. 06-77 - RESOLUTION OF INTENT TO CLOSE ALL STREETS IN THE AREA KNOWN AS CITY-COUNTY PLAZA AND SETTING A PUBLIC HEARING FOR MAY 23, 2006

Summary: The consideration of a resolution of intent to close all streets in the area known as City-County Plaza and setting a public hearing for May 23, 2006.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Buncombe County and the City of Asheville have requested the City of Asheville permanently close all streets in the area known as City-County Plaza as bounded by College Street on the north, Davidson Street on the east, Marjorie Street on the south and South Spruce Street on the west (a/k/a Court Plaza, City Hall Drive North, City Hall Drive South, City Hall Circle and any and all other names such streets may have from time to time been titled).

Public Works Department staff has researched and determined all streets in the area known as City-County Plaza are City maintained. Closure of these street will not deny any of the adjoining property owners reasonable means of ingress and egress as the City of Asheville and Buncombe County are the only adjoining property owners. The owner of the Hays Hopson Building, although not an adjoining property owner, will be provided a courtesy notice of the intent to close

Pros:

- The closure is necessary for the successful completion of the redesign of Pack Square.
- Closure of the streets will facilitate the timely completion of the Pack Square Project.
- The closure of the streets will still facilitate pedestrian movement from one location to another in downtown Asheville. There will be no future compromise of ingress/egress to other property.
- Ties in with City Council's Strategic Operating Plan

Cons:

- Staff can find no potential challenges.

This action ties in with the City Council Strategic Operating Plan in Focus Area: Sense of place, heritage and arts, Goal 3, Task 3, by promoting downtown revitalization, assisting in the implementation of the Pack Square Renaissance Project.

City staff recommends that City Council adopt the resolution setting a public hearing for May 23, 2006, to close all streets in the area known as City-County Plaza.

RESOLUTION BOOK NO. 29 – PAGE 436

C. RESOLUTION NO. 06-78 - RESOLUTION ACCEPTING AN AWARD FROM CATERPILLAR CORPORATION FOR THE RETROFIT OF 16 ORION TRANSIT BUSES WITH POLLUTION CONTROL DEVICES

Summary: The consideration of a resolution accepting an award from Caterpillar Corporation for the retrofit of 16 Orion transit buses with pollution control devices.

The Asheville Transit System has received an award from Caterpillar Corporation for the retrofit of 16 Orion transit buses with Diesel Oxidation Catalysts to lessen emissions from the buses diesel engines. The award was made in conjunction with the Diesel Technology Forum, an industry group dedicated to the extension and promotion of clean diesel technologies.

The Diesel Oxidation Catalysts will chemically oxidize particulate matter into water vapor and other gases such as sulfur dioxide and carbon dioxide. This technology will provide a 20 to 50 percent reduction in particulate matter, a 60 to 90 percent reduction of hydrocarbons, and more than a 90% reduction in carbon dioxide. This is equivalent to removing approximately 18 tons of particulate matter from the air and is accomplished without a loss in engine efficiency.

The entire cost of the project including materials and installation will be born by Caterpillar International. Installation will be through the local caterpillar dealer, Carolina Cat.

The benefits to the City of Asheville are:

- Cleaner air, and an advancement of transit strategy of moving towards clean diesel and eventually hydrogen power.
- Equipment will remove about 18 tons of particulate matter from air
- There is no cost to the city for the equipment or retrofit (The value of the project is unknown as Caterpillar would not disclose, preferring to frame discussion in terms of pollution removed from the air.)

There are no disadvantages or costs to the City of Asheville.

City staff recommends City Council formally accept the award from Caterpillar Corporation for the retrofit of 16 Orion transit buses with pollution control devices.

RESOLUTION BOOK NO. 29 – PAGE 437

D. RESOLUTION NO. 06-79 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES FOR AUDITING SERVICES FOR FISCAL YEAR 2005-06

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2005-2006.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

Based on our review of a proposal submitted by Dixon Hughes, staff recommends retaining their services for Fiscal Year 2005-2006. We have worked with Dixon Hughes in the past and they have consistently provided a quality audit for the City.

The base fee has been proposed at $84,500. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2005-2006

RESOLUTION BOOK NO. 29 – PAGE 438

E. RESOLUTION NO. 06-80 - RESOLUTION DECLARING PROPERTY AT 8 CEDAR STREET AS SURPLUS AND ESTABLISHING THE MINIMUM PRICE

Summary: The consideration of a resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price.

The City owns property at 8 Cedar Street (PIN No. 9657.07-58-4903) which it does not need and proposes to sell using the process provided in N. C. Gen. Stat. sec. 160A-269, negotiated offer and advertisement for upset bids.

The property at 8 Cedar Street is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It was acquired by the City in December, 1999, for the purpose of realigning the Cedar Street/Fairview Road and Liberty Street/Fairview Road intersections in order to eliminate one of two "back to back" traffic signals. Since that time the amount of traffic on Liberty Street and Cedar Street has diminished significantly due to the closing of Crayton Road and the alternative access between Tunnel Road and Sweeten Creek Road via I-240 and I-40 at Exit 51. Realignment of the intersections is no longer needed based on current and anticipated traffic flow.

The property is zoned RS-8 and improved with a single family residential structure. The lot is 0.1745 acre, rectangular in shape and level to street grade with typical residential landscaping, fencing, etc. The structure is a circa 1926 two story Dutch Colonial with white clapboard siding containing 1,674 square feet. It is structurally sound and in fair to good condition, but it does need some repairs in order to obtain a Certificate of Occupancy. Marketability prospects for the property are very good.

The property has been appraised by CDN Appraisals at $128,000 and by BRB Appraisals at $165,000. The appraisals were reviewed by the City's Real Estate Manager and based on that review $158,600 is recommended as a minimum price for the property. The proceeds from the sale of the property will be general fund revenue.

The positive aspects of marketing the property are:

- The property will be marketed at the appraised value using the upset bid method of sale to ensure a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.
- It is an efficient use of resources, because un-needed property will return to private ownership.
- It will make available moderately priced housing in a fully serviced neighborhood.

The one negative aspect is that if traffic improvements at the Cedar Street/Fairview Road intersection were ever needed the property may have to be reacquired.

Approval of the resolution will authorize marketing of the property through the process provided in N. C. G. S. 160A-269 and establish a minimum price of $158,600.

At the March 14, 2006, City Council meeting, Council referred this item to the Housing & Community Development Committee. At the Committee meeting on April 10, 2006, they reviewed this proposed sale and determined that the subject property was not suitable to be designated as affordable housing.

City staff recommends City Council adopt the resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price of $158,600.

RESOLUTION BOOK NO. 29 – PAGE 439

F. RESOLUTION NO. 06-81 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT

Summary: Ms. Cheryl Johnson has declined the appointment as an Alternate member on the Board of Adjustment, thus leaving an unexpired term until January 21, 2009. This resolution will appoint Ms. Jessica Erwin Leaven, 52 Gracelyn Road, Asheville, N.C., to serve as

an Alternate member to the Board of Adjustment, to serve the unexpired term of Ms. Johnson, term to expire January 21, 2009, or until her successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 440

G. RESOLUTION NO. 06-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON DUNDEE STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Dundee Street.

A bid has been received from Robert Simon in the amount of $26,200 for the purchase of land on Dundee Street.

The land on Dundee Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped lot comprising 0.115 acre±. It has a moderate slope downward from the street. It is zoned RM-8 and it is suitable as a home site. The bid from Robert Simon is in the amount of $26,200. We have in file an appraisal prepared by Joseph F. Moore dated September 13, 2005, estimating the market value of the property at $26,200. Mr. Simon proposes to acquire the property next door to live in and eventually build on the subject parcel

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

There is no negative impact.

City staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 29 – PAGE 441

H. ORDINANCE NO. 3348 - BUDGET AMENDMENT TO FUND WEB SITE DESIGN AND CONTENT MANAGEMENT SOFTWARE IMPLEMENTATION SERVICES

Summary: The consideration of a budget amendment, in the amount of $29,320, from the City Manager's contingency to fund web site design and content management software implementation services.

Pursuant to a memorandum sent to City Council on December 20, 2005, city staff is pursuing a web site redesign project along with developing a new process for updating and maintaining the city's web content.

This project was bid competitively at the local level, providing prospective vendors with a simple set of desired features. Notification of the bid was provided utilizing a local industry mailing list as well as posting on the City web site. A one week deadline was utilized because of the time-sensitive nature of this project. (Staff is now projecting that this project will be completed at the end of August rather than in July.) No local participation was received within the deadline.

The goal of the project is to design and structure a user-friendly site with intuitive navigation that will focus on reprioritizing and reorganizing information based on users' needs and perspectives. The project will make more efficient and effective use of the city's external web site as a tool for sharing information with the public by: (1) enhancing the ability to add, update and remove information from the site; (2) restructuring the information architecture to improve navigation and ease of use, and; (3) updating the look and feel of the site to reflect the organization's brand and professionalism.

A key component of the project is the implementation of content management software, which will make it easier for non-technical staff within each city department to add content to the city's web site, resulting in a more streamlined process that produces current, up-to-date and relevant information on the web site. The city is using Ektron CMS 400 software for this application.

COMSYS, an IT solutions company with extensive government experience, works as a partner with Ektron to implement the content management software as part of the redesign process. The budget amendment from the city manager's contingency will fund: web site design and architecture services; software installation and configuration; on-site training and support, and; the migration of priority content from the city's current site to the redesigned site.

Pros:

- Contingency funds will expedite the project's schedule for completion this fiscal year.
- The content management system will automate and streamline web management efforts, making more efficient use of staff time and resources.
- Efforts will result in a more user-friendly site based on citizen needs and feedback.
- The city will redesign its site so that a finite set of web templates provide a consistent and professional look across the organization
- The vendor has a proven track record of project success with other municipal governments.

Cons:

- Loss of the ability to use these contingency funds for other purposes in FY 2005-06.

Given City Council's commitment to improved communications and citizen service, city staff requests City Council adopt a budget amendment appropriating $29,320 from the manager's contingency to find the web site project.

ORDINANCE BOOK NO. 22 – PAGE 435

I. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WEDDING AND RECEPTION ON MAY 13, 2006**

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS ON MAY 19, JUNE 16 AND JULY 21, 2006

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG RED CHILI COOK-OFF ON JUNE 17, 2006

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WINGS & STRINGS: WNC BUFFALO WING COOK-OFF ON JULY 15, 2006

These items were removed from the Consent Agenda for an individual vote.

J. RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES FOR CROWELL PARK APARTMENTS

This matter was removed from the Consent Agenda in order to be discussed after consideration of a resolution amending the Housing Trust Fund guidelines (under New Business).

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 06-83 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WEDDING AND RECEPTION ON MAY 13, 2006

RESOLUTION NO. 06-84 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS ON MAY 19, JUNE 16 AND JULY 21, 2006

RESOLUTION NO. 06-85 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG RED CHILI COOK-OFF ON JUNE 17, 2006

RESOLUTION NO. 06-86 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WINGS & STRINGS: WNC BUFFALO WING COOK-OFF ON JULY 15, 2006

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: Wedding and reception on May 13, 2006; Asheville Downtown Associations' Events on May 19, June 16 and July 21, 2006; Big Red Chili Cook-Off on June 17, 2006; and Wings & Strings: WNC Buffalo Wing Cook-Off on July 15, 2006.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- A renewal of wedding vows and a reception on May 13, 2006, in the grassy knoll area of Pack Square, with indoor accommodations located at Windows on the Park, A Restaurant for Private Events.

- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation Department the Downtown After Five series to bring both

citizens and visitors to the downtown area. This year, only the first three events will be held in Pack Square, due the Pack Square Conservancy construction. They will be held on May 19, 2006, June 16, 2006, and July 21, 2006.

- The Big Red Chili Cook-Off, hosted by Season to Season Promotions, is a fundraiser for the Humane Society. This event will be held on June 17, 2006, in Pack Square.

- Wings & Strings: WNC Buffalo Wing Cook-Off, also hosted by Season to Season Promotions, is another fundraiser for the Humane Society. This event will be held on July 15, 2006, in Pack Square.

The Asheville Parks and Recreation Department recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: Wedding and reception on May 13, 2006; Downtown After Five events on May 19, June 16 and July 21, 2006; Big Red Chili Cook-Off on June 17, 2006; and Wings & Strings: WNC Buffalo Wing Cook-Off on July 15, 2006.

Councilwoman Cape moved to adopt Resolution Nos. 06-83, 06-84, 06-85 and 06-86. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 06-83 - RESOLUTION BOOK NO. 29 – PAGE 442
RESOLUTION NO. 06-84 - RESOLUTION BOOK NO. 29 – PAGE 444
RESOLUTION NO. 06-85 - RESOLUTION BOOK NO. 29 – PAGE 446
RESOLUTION NO. 06-86 - RESOLUTION BOOK NO. 29 – PAGE 448

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT OAK PARK ROAD AND SKY VIEW ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL ZONING TO PERMIT CONSTRUCTION OF TWO DUPLEX BUILDINGS AND THREE SINGLE-FAMILY BUILDINGS

Mayor Bellamy stated that on Tuesday, April 18, 2006, an e-mail was received from Mr. Gerald Green, representing the applicant, stating that "the Laibsons are withdrawing their appeal of the Planning and Zoning Commission's recommendation for denial of the conditional zoning of property located on Oak Park and Sky View Roads. Mr. and Mrs. Laibson have agreed to sell the property to a neighboring property owner rather than pursue the development plan."

B. PUBLIC HEARING ON THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2006-07

RESOLUTION NO. 06-88 - RESOLUTION APPROVING THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2006-07

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously. Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Vice-Mayor Jones opened the public hearing at 5:12 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a public hearing on the City's Consolidated Annual Action Plan for 2006-07 and consideration of a resolution approving said Plan. This public hearing was advertised on April 14 and 21, 2006.

The City expects to have available $1,933,833 in CDBG funds and $1,418,821 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2006. The City's Housing and Community Development (HCD) Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 35 projects. Allocations are consistent with the draft Consolidated Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME and CDBG funding will assist 528 housing units Consortium-wide (including 262 units at Pisgah View Apartments that will have a new security system). CDBG funds will also help more than 3000 low-income City residents obtain homeless services, housing counseling, business assistance, and other needed services.

Funding for the CDBG and HOME programs has been impacted by reductions in federal funding. In common with communities nationwide, Asheville's CDBG and HOME grants have been reduced by 9% from last year, and by 15% over two years. As a result many existing programs will receive less funding in this year's plan and six applications will receive no funding. After careful consideration, the HCD Committee has recommended closing the City's long-standing housing rehabilitation program, because we cannot afford the cost of staffing and funding it at an effective level. However, increased funding for Mountain Housing Opportunities' emergency repair program will provide urgently needed repairs for very low income, elderly, and disabled homeowners.

A summary of the draft Action Plan and notice of this public hearing was published on March 28, 2006. The Plan is due to be submitted to HUD by May 12, 2006.

Advantages:

- Allocates $3,352,654 in compliance with federal rules and enables the City to utilize these funds
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium
- Directly addresses most of the priorities set out in the Strategic Plan
- Leverages other funding in the ratio of $5.49 for every $1 of CDBG and HOME funds

Disadvantages:

- It is not possible to fund all of the applications received at the level requested.

City staff recommends City Council approve the City's Consolidated Action Plan for 2006-07 and subsequent submission of that Plan to the U.S. Dept. of Housing & Urban Development.

Vice-Mayor Jones closed the public hearing at 5:14 p.m.

Vice-Mayor Jones said that members of Council have previously received a copy of the resolution and it would not be read.

Ms. Caplan responded to various questions/comments from Council, some being, but are not limited to: what does the CD Administration cost consist of; what project is for the allocation to the micro-business development program; and are some of these funded programs competing for outside agency funds.

Councilman Mumpower said that a lot of the allocations represent a significant increase over last year and feels they are pretty well directed to a core group of non-profit agencies. He was disappointed that there was no recommendation made to fund waterline infrastructure. And, he understands that it is a struggle to put the document together, but philosophically he does see some waste of those hard-earned dollars. He could not support the resolution.

Upon inquiry of Councilman Davis, Ms. Caplan said that ten programs in the Consolidated Plan will, in various ways, impact the 10-Year Plan to End Homelessness. Councilman Newman explained how the recommended funding to the Affordable Housing Coalition does move us forward towards implementation of the Plan.

Councilman Davis felt it might be beneficial to have an update of the 10-Year Plan for discussion during the budget process.

Councilman Newman, Chair of the Revenue & Finance Committee, welcomed Council's input on budgetary direction for the outside agency funding.

Vice-Mayor Jones, Chair of the HCD Committee, discussed the process for allocation of the CDBG funds and HOME funds. She pointed out the good regional cooperation by the Regional Housing Consortium in allocating the HOME funds.

Councilman Newman moved for the adoption of Resolution No. 06-88. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

Vice-Mayor Jones turned the meeting over to Mayor Bellamy.

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C. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE

Mayor Bellamy opened the public hearing at 5:36 p.m.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened right-of-way off of Carroll Avenue. This public hearing was advertised on March 31, April 7, April 14 and April 21, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Martin Barnes of Brooks & Medlock Engineering, PLLC representing the property owner Farwood Properties, Mike Farmer, President of Farwood Properties, has requested the City of Asheville to permanently close to the public an unopened right of way off of Carroll Avenue as shown on Plat Book 6, Page 6, Block "C" in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened right-of-way is not a City maintained street. Closure of this unopened right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There is one parcel that abuts this section of right-of-way, owned by Farwood Properties. It is identified by PIN No. 9648.07-68-1457.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution permanently closing the unopened right-of-way off Carroll Avenue.

He said that Carroll Avenue has existing drainage problems and there has been concern expressed that the development proposed in that area will only make the drainage problems worse. However, he said that the closure of the right-of-way will not affect the drainage within the proposed development because that right-of-way will be kept as open green space. He said that the development itself will have an impact on the drainage and various City departments are working on that concern.

Mayor Bellamy closed the public hearing at 5:39 p.m.

Mayor Bellamy said that the homeowners in the area were allegedly told that the closing had already been approved by City Council. She was concerned about that misinformation and felt it would be appropriate for City Council to postpone action on this closing until the conditional zoning matter comes before Council on the proposed development.

Ms. Jenny Farmer, representing Farwood Properties, said that when they met with the neighborhood for the conditional zoning issue, they had the design work already done, and felt that perhaps the neighbors assumed that the closing had already been approved by Council. She said that they are working hard with the neighborhood to resolve the issues concerning drainage and even asked for a continuance from the Planning & Zoning Commission meeting in order to work with them. This right-of-way is not used in their calculations for density, it will not be graded, and it's not required for the project, however, it is to clean up the paper street and make it a clear property line.

Councilwoman Cape moved to postpone this matter until June 27, 2006, at which time the conditional zoning public hearing will be before Council and this matter can be voted on as well. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 452

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING A PORTION OF PROPERTY LOCATED ON 430 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING TO PERMIT THE RENOVATION OF THE EXISTING BUILDING AND AN ADDITIONAL PARKING AREA FOR A DOCTOR'S PARK

ORDINANCE NO. 3349 - ORDINANCE TO CONDITIONALLY ZONE A PORTION OF PROPERTY LOCATED ON 430 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING TO PERMIT THE

RENOVATION OF THE EXISTING BUILDING AND AN ADDITIONAL PARKING AREA FOR A DOCTOR'S PARK

Mayor Bellamy opened the public hearing at 5:49 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone a portion of property located on 430 McDowell Street from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning to permit the renovation of the existing building and an additional parking area for a doctor's park. This public hearing was advertised on April 14 and 22, 2006.

Ms. Hamel said that the subject property is located off of McDowell Street across from Asheville High School. The lot consists of 1.33 acres and is currently zoned RS-8. The applicant is requesting a rezoning of a portion of this lot to Institutional District in order to convert the existing building, formerly used as a daycare center, to an office use. The portion of the parcel fronting St. Dunstan's Road will remain RS-8 and will be subdivided into two or three residential lots.

Surrounding land uses and zoning include the Asheville High School zoned Institutional to the west across McDowell Street; retail business zoned Institutional and a single-family dwelling zoned RS-8 to the north across Grindstaff Road; single family dwellings zoned RS-8 to the east; and vacant property owned by the N.C. Dept. of Transportation zoned RS-8 to the south fronting McDowell Street.

The parcel, in its current configuration, is considered both a through lot and a corner lot with street frontages on McDowell Street, Grindstaff Road and St. Dunstan's Road. The topography is steeply sloped from the top of the property towards the west (McDowell Street). The portion of the site to be rezoned to Institutional District currently houses a vacant building that was used as a daycare center. Access to the existing building and parking area is located off of Grindstaff Road.

The conceptual site plan proposes a conversion of the existing 3, 700 square foot building to an office. The building will function as a podiatry office and may also include one other general office use. The site plan illustrates use of the existing parking area off of Grindstaff Road that will consist of 6 spaces. The project also proposes construction of a new internal driveway that will connect the existing parking area to a new seven space parking lot located at the side and rear of the building. A 20-foot, Type B landscape buffer is required around the perimeter of the site where the property abuts residential uses. The applicant, Asheville Day Nursery School Inc., is meeting this requirement, except along the eastern side of the property where the buffer width has been reduced to install a privacy fence and other plantings; a fence can be installed to reduce buffer width and that is what is proposed in this case. In addition to the fence, alternative compliance has been requested for an area along the eastern side of the property where the proposed driveway, that connects the two parking lots, encroaches into the buffer. The applicant has stated that they would like to work with the adjoining property owners on providing them with an amendable planting plan. The mature vegetation shown along the west and north sides of the property will be maintained and credited towards the street tree requirements.

On Monday, March 18, 2006, the Technical Review Committee (TRC) approved the project subject to the conditions outlined in the TRC staff report. The applicant indicated at that meeting that the developer was not prepared to pursue Phase II of the project and asked that it be removed from the project review. Subsequent to the TRC meeting, the applicant provided staff with the information necessary to determine the number of parking spaces and type of landscaping required for the project. These items have been addressed on the revised plans.

On Wednesday, April 5, 2006, the Planning and Zoning Commission reviewed this request and unanimously voted to approve the project with the conditions outlined in the TRC staff report and with an added condition that the applicant complete the minor subdivision of the lot as proposed on the concept plan within 90 days of City Council approval.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by the TRC and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The property will be developed with minimal disturbance to the site and existing vegetation. The only land disturbing activity that will occur on site will be the construction of the proposed parking area on the south side of the building and the installation of required landscaping. This area of the site is relatively flat. Additionally, renovations required for the conversion of the building to office space will be confined to the interior of the structure.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This property has been used commercially as a daycare facility. The proposed use of the property to an office is considered a low impact use and it not expected to injure the value of adjoining or abutting properties. The project will require the installation of landscape buffers where adjacent to residential uses and also parking lot landscaping that will assist in mitigating any potential negative impacts.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This project proposes a rezoning only on the portion of the lot that is currently developed. The office will be housed within the existing structure on site. The remaining portion of the property will remain RS-8 and be subdivided from the main tract in order to create two to three residential infill lots that will be located off of Dunstan's Road.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project supports pursuit of compatible redevelopment and adaptive reuse of an existing structure with a low impact use. Traditional neighborhood development patterns are also recognized through the creation of several residential infill lots located within the core of the neighborhood.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar**

facilities. This project site is located within the City Limits and has access to all City services including water, fire and police protection and waste disposal. The project site is located on McDowell Street that is serviced by public transportation, including a transit stop located on the corner of McDowell Street and Grindstaff Road.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project has been reviewed by the City's Traffic Engineer who indicated that the office use would not cause undue traffic congestion or create a traffic hazard.

Pros

- The former use of the building as a daycare center was considered a non-conforming use. The building has been used commercially since 1956. Interior and exterior commercial up-fits to the building make it an unlikely candidate for the use to convert back to residential. A rezoning to Institutional District will allow a conforming use to occupy the lot.
- The proposed split zoning on the lot and creation of two residential parcels off of St. Dunstan's Road assists in protecting the integrity of the neighborhood by preventing access to the commercial portion of the existing parcel; and adds to the character of the neighborhood by creating additional single-family infill lots.
- Adaptive reuse of an existing structure.
- The conditional zoning process allows neighbors an opportunity to have a clear idea of how the property will be used.
- A medical office is provided on currently underutilized property in the close vicinity of other medical uses.

Cons

- Additional traffic may occur along St. Dunstan's Road in order to utilize the traffic signal at the corner of St. Dunstan's Road and McDowell Street.
- The rezoning could be viewed by some as an encroachment of nonresidential uses into a residential area.

Staff recommends approval of the project subject to the conditions outlined in the TRC staff report and with the following conditions: (1) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (2) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (3) The minor subdivision of the lot, as illustrated on the concept plan be completed within 90 days of City Council approval; and (4) The developer shall meet with neighboring property owners in developing the design of required landscape buffers where alternative compliance is proposed.

Mr. Gerald Green, representing Asheville Day Care Nursery, spoke in support of the conditional zoning. It is their hope to preserve as many existing trees as they can near the back parking lot as they construct the privacy fence. Because of existing trees and rocks, they asked that in lieu of a constructing a sidewalk along McDowell Street, that they build a transit shelter, noting that there is an existing sidewalk on the other side of McDowell Street. He asked for the ability to work with City staff on this option.

Mayor Bellamy closed the public hearing at 5:56 p.m.

Mr. Green responded to various questions/comments from Council, some being, but are not limited to: will there be any major renovations to the outside of the building; and what is the access to the property.

In response to Mayor Bellamy's concern about the buffering be decreased because of the fence, Mr. Green said that they will try to save as many existing trees as they can and will supplement the fence with additional trees, as well as shrubs.

There was a brief discussion about the need for a sidewalk in that area.

Upon inquiry of Mayor Bellamy, Planning & Development Director Scott Shuford said that there is not an issue with changing the use from residential to Institutional/Conditional Zoning regarding the access onto Grindstaff Road.

Upon inquiry of Councilman Newman, Ms. Hamel said that there is an opportunity for flexibility on the sidewalk construction and will meet with the project engineer to look at the possibilities.

Councilman Newman agreed with the statement made by Ms. Hamel that the project conforms with the City's Comprehensive Plan and moved for the adoption of Ordinance No. 3349, to conditionally zone a portion of property located on 430 McDowell Street from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning to permit the renovation of the existing building and an additional parking area for a doctor's park, subject to the following conditions: (1) all conditions outlined in the TRC staff report; (2) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (3) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (4) The minor subdivision of the lot, as illustrated on the concept plan be completed within 90 days of City Council approval; (5) The developer shall meet with neighboring property owners in developing the design of required landscape buffers where alternative compliance is proposed; (6) that a sidewalk be constructed for property frontage along McDowell Street; and (7) encourage the developer to preserve existing vegetation and work with City staff to plant additional trees to the buffer area in the back of the property. This motion was seconded by Councilman Mumpower and carried unanimously.

In response to Councilman Mumpower, Mr. Green said that he felt sure the developer would be amenable to help provide the labor for a Top-A-Stop at the site where the transit shelter would have been constructed.

Vice-Mayor Jones noted that Asheville Day Nursery provided a great service of affordable child care for over 50 years.

ORDINANCE BOOK NO. 22 – PAGE 437

E. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3350 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO STRENGTHEN THE REQUIREMENTS FOR PROJECTS LOCATED IN THE CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3351 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADJUST THE REVIEW THRESHOLDS FOR MINOR AND MAJOR WORKS FOR THE DOWNTOWN DESIGN REVIEW PROGRAM

RESOLUTION NO. 06-89 - RESOLUTION ADOPTING THE KEY PEDESTRIAN STREETS MAP TO BE USED TO SUPPORT THE CENTRAL BUSINESS DISTRICT ZONING

ORDINANCE NO. 3352 - ORDINANCE TO EXPAND THE DESIGN REVIEW BOUNDARY MAP

Mayor Bellamy opened the public hearing at 6:15 p.m.

Urban Planner Alan Glines said that this is the consideration of (1) an amendment to the Unified Development Ordinance ("UDO") to strengthen the requirements for projects located in the Central Business District ("CBD"); and (2) an amendment to the UDO to adjust the review thresholds for minor and major works for the Downtown Design Review program; (3) a resolution to adopt the Key Pedestrian Streets Map to be used to support the Central Business District zoning; and (4) an ordinance to expand the design review boundary map. This public hearing was advertised on April 14 and 21, 2006.

This proposed amendment is drafted to update the Code of Ordinances regarding projects located in the Central Business District. The City is experiencing continued growth and development in the downtown Central Business District. The Downtown Commission was appointed by City Council to recommend policy and to support downtown revitalization. They have carefully considered the proposed wording changes for nearly three years. As downtown's stock of existing buildings have been renovated to new uses, opportunities for new construction have shifted to under-developed infill lots in and around the periphery of the downtown core. This expansion from the core area will be the growth areas of the central business district. The proposed wording amendments to the UDO will provide additional requirements for new construction to ensure an urban style of development in the downtown area. Development along specific key pedestrian streets would have some additional requirements to improve the character of the street and strengthen the sense of place. The Key Pedestrian Streets Map, first developed for the City Development Plan 2025, is being submitted for adoption along with these ordinance amendments. An additional item that is being submitted for consideration is a minor expansion of the boundary map, which outlines the coverage area for the Downtown Asheville Design Guidelines. The expansion seeks to include all parcels zoned CBD into the design review area. The Downtown Asheville Design Guidelines were adopted in the late in 1980's. The guidelines provide direction for new construction or major renovations in the downtown area. The program is administered by the Downtown Commission under a mandatory review and voluntary compliance authority. The current proposal seeks to amend this design review area to expand and include the entire area of the central business district (CBD zoning district). In order to balance out the need for a wider design coverage area and clearer requirements for new construction, the Downtown Commission is recommending that the design review program match City development review thresholds that are already in place. This means that instead of reviewing all projects greater than 5,000 square feet as currently provided for in the UDO, the Downtown Commission will review projects that are Level II and Level III projects. Staff will provide compliance review for Level I projects in a similar fashion as is done currently for projects under 5,000 square feet. This change in threshold requires an amendment to the UDO section that covers the downtown design review program. In summary, the proposed changes to the Central Business District section of the UDO, the Key Pedestrian Streets Map, the amendments to the Downtown Asheville Design Guidelines and review thresholds are expected to enhance and maintain the redevelopment that has occurred in downtown and provide direction, maintain the character and reinforce the urban form for new construction.

Pros –

- The ordinance amendments protects existing downtown development as new projects are proposed.

- The requirements for new construction ensures that new projects will add to the character of the downtown area and strengthen the urban form.
- Because the major part of downtown's stock of existing older buildings are renovated, new growth will be in the form of new in-fill construction. The amendments will be in place in time to positively affect this new development
- The dense development pattern of the core area of downtown will expand out to the edges of the Central Business District.

Cons –

- Some older businesses may find that their use would be a better fit in a more suburban setting.
- New development will place greater pressure on existing infrastructure.

The Downtown Commission voted to recommend approval of the proposed changes to the UDO covering the Central Business District. Staff concurs with this recommendation. In addition, at the Planning & Zoning Commission's February 12, 2006, meeting the Commission voted 6-0 to recommend approval of the proposed amendments with several minor changes that have been incorporated into the current ordinances contained herein.

City staff recommends City Council approve (1) an amendment to the Unified Development Ordinance ("UDO") to strengthen the requirements for projects located in the Central Business District ("CBD"); and (2) an amendment to the UDO to adjust the review thresholds for minor and major works for the Downtown Design Review program; (3) a resolution to adopt the Key Pedestrian Streets Map to be used to support the Central Business District zoning; and (4) an ordinance to expand the design review boundary map.

Ms. Julia Brant wondered if there may be a conflict of interest of some members of the Downtown Commission since some are developers. She expressed the following three concerns: (1) balconies should not encroach on the public space; (2) height limitations should be based on the existing streetscape; and (3) developers should be responsible for providing their own parking, since there are no requirements for off-street parking.

Alan Ditmore explained why he felt that all projects should be reviewed on a square footage basis, regardless of whether they are residential or commercial structures.

Mayor Bellamy closed the public hearing at 6:23 p.m.

Mr. Peter Alberice, Chair of the Downtown Commission, assured Council that any time a project is brought before the Commission in which a member has a conflict they have asked to be excused.

After discussion surrounding whether the projects should be reviewed on a square footage basis only, it was the consensus of Council to accept the recommendation of the Downtown Commission at this time and ask that the Commission take Council's comments into consideration and re-visit this in their next phase of review. In addition, this matter can be discussed further at the May 16 worksession regarding land use issues.

Planning & Development Director Scott Shuford said that sometime ago Council asked Planning staff to look at making adjustments to our general thresholds to the three levels based on whether the developments achieve the variety of Council goals. Their review did include some exemptions for downtown development that does increase the threshold. As a result of this discussion, he said that in advance of the May worksession, he will send that code amendment to Council for their initial review.

In response to Councilwoman Cape, Mr. Alberice said that City Council has control over balconies since that issue will be handled in the conditional use permit public hearing.

Upon inquiry of Councilwoman Cape about the height limitations, Mr. Alberice said that the Downtown Commission spent an enormous amount of time in trying to come up with a way that could be quantified in the zoning ordinance that anyone could understand. As they were not able to come up with the height that was satisfactory to those proposing a mandatory height limit and those who want a height limit with more flexibility, the Commission decided to move that forward to the next phase of the Commission's review.

In response to Councilman Freeborn about no parking requirements, Mr. Alberice said that if they required parking, older buildings would be demolished to create surface parking in order to meet that requirement. He explained that most residential projects have provided parking in order to make their project marketable.

Upon inquiry of Councilwoman Cape about a fee in lieu of parking spaces, City Attorney Oast said that there are a number of vehicles available in the statutes for special tax districts and if Council is interested in pursuing those on a long basis he would look into those.

Councilman Newman was hesitant to support any additional regulations on parking, but would be interested in the Downtown Commission looking at ways to incenticize parking.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and ordinances and they would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3350. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 441

Councilman Davis moved for the adoption of Ordinance No. 3351. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 449

Councilman Freeborn moved for the adoption of Resolution No. 06-89. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 452

Councilman Freeborn moved for the adoption of Ordinance No. 3352. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 453

At 7:01 p.m., Mayor Bellamy announced a short recess.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION FINDING THAT AN UNOPENED 5-FOOT WIDE RIGHT-OF-WAY OFF FAIRMONT ROAD IS NOT PART OF AN ADOPTED STREET PLAN

Mayor Bellamy said that she has received the following request today from Mr. Jason Kraus, Counsel for the petitioners: "Please continue the matter involving the withdrawal of the 5-foot strip off of Fairmont Road to the May 9, 2006, formal Council meeting. This request is based upon the need of counsel for the petitioners, Mr. and Mrs. Chad Rundell, to conduct further investigation as it relates to a waterline crossing the 5-foot strip."

Therefore, Councilman Davis moved to continue this matter until May 9, 2006. This motion was seconded by Councilman Mumpower and carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

B. RESOLUTION NO. 06-90 - RESOLUTION AMENDING THE HOUSING TRUST FUND GUIDELINES

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the Housing Trust Fund (HTF) guidelines

The Housing and Community Development (HCD) Committee is undertaking a thorough review of the policy and procedures for the City's Housing Trust Fund, which were established in September 2000 and last updated in October 2004. At its April 10, 2006, meeting, the Committee noted the following issues which it felt needed immediate action.

1. Loan Limits

The current limit on any one loan is $250,000. While this is adequate for most developments, for those few proposals that involve large numbers of affordable units, this limit can greatly restrict the effective subsidy per unit. For example, for an 80-unit project the loan amount would be only $3,130 per unit, and the benefit in terms of increased affordability less than $200 in price, or $10-$15 a month in rent.

Staff recommends that the limit be increased to $500,000 for development of 30 units or more that offer a high degree of affordability and leverage.

2. Sales price limits

The current limits were adopted in October 2004. Rapid inflation of construction costs has made these limits out of date. Permit data suggests that construction costs are currently increasing by about 8% a year. Both for-profit and non-profit developers tell us that they can no longer build a 3-bedroom single family home on an infill lot to sell for the current limit of $135,000, and we have not received an application for HTF funds for homes for sale since February 2005. Applications for fee rebates through March 2006 are 70% down on the same period last year. The same price limits apply to both programs.

Staff recommends the following new price limits, effective immediately, which should remain realistic through Fiscal Year 2007:

Size	Existing Limit	Proposed Limit
0-bedroom (efficiency)	95,000	105,000
1-bedroom	110,000	115,000
2-bedroom	120,000	140,000
3-bedroom	135,000	160,000
4-bedroom	150,000	180,000

Staff further recommends that the same limits be considered for the fee rebate program, either immediately or on July 1, 2006, after passage of the City budget.

3. Exception to the price limits.
Some non-profit developers have pointed out that they are often able to make the homes they build more affordable by bringing in other forms of subsidy. These subsidies usually require sale to households with less than 80% area median income, a market that for-profit developers are barely able to serve. The non-profits have requested exemption from the HTF price limit provided that the home is made affordable to a household below 80% AMI. The HCD Committee has recommended this exception.

The Committee has also instructed staff to prepare more far-reaching proposals, which would modify some of the fund's basic policies. Staff expects to have these ready for Council's review in the summer.

Advantages:

- Larger loans to assist the largest and most affordable developments will increase the impact of the fund.
- Increased price limits will restore the fund's availability to developers.
- Price limits will not be a barrier where additional subsidy is available to serve low-income homebuyers.

Disadvantages:

- Larger loans will mean less funds available for small developments
- Homes priced close to the new limits will be less affordable, since incomes are increasing more slowly than land and construction costs.
- Less pressure on developers to build smaller, more basic homes.

Staff recommend approval of the new loan limits and sales price limits, and the exception to the sales price limits in the case of buyers under 80% AMI.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that the per unit subsidy is important and explained why he felt the 3-bedroom unit sales price should be $150,000 not the proposed $160,000.

Mr. Walter Plaue felt that MHO is a great leader in providing affordable homes, but voiced concern about putting the annual available money for the HTF in "one pot" and felt there may be some sense of impropriety in that MHO is the first one who would benefit from the HTF guidelines proposed today.

Mayor Bellamy requested that the three proposed changes be discussed and voted on separately.

Councilman Newman spoke about how the HCD Committee has worked hard on making the HTF as useful as possible. He said that considering the needs in the community, we need to have tools to support the big projects that deliver "a lot of mileage."

Councilman Mumpower explained why he felt the HTF should be re-visited in its entirety for possible dissolution.

Vice-Mayor Jones, Chair of the HCD Committee, offered to make a presentation about the value of the HTF if the majority of Council wishes.

Ms. Caplan responded to Councilman Freeborn when he asked how many dollars have gone into the community as a result of the HTF and how many affordable units have been created.

Because discussion began in an area which Mayor Bellamy would have a conflict of interest, she asked to be excused. Therefore, Councilman Newman moved to excuse Mayor Bellamy from participating further in this matter due to a conflict of interest. This motion was seconded by Councilwoman Cape and carried unanimously. Mayor Bellamy turned the meeting over to Vice-Mayor Jones and left the meeting room.

After Council members voiced their concerns/support for the three proposed changes, Councilman Mumpower moved to send the sales price limits change and the exception to the price limits back to the HCD Committee for further review and consideration, taking into consideration Council's comments. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Jones moved to amend the HTF guidelines to increase the loan limit to 500,000 for development of 30 units or more that offer a high degree of affordability and leverage. This motion seconded by Councilwoman Cape and carried on a 4-2 vote, with Councilman Mumpower and Councilman Davis voting "no."

RESOLUTION BOOK NO. 29 – PAGE 454

C. RESOLUTION NO. 06-87 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES FOR CROWELL PARK APARTMENTS

Even though Mayor Bellamy did not re-enter the meeting room, Councilman Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Freeborn and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving a $500,000 Housing Trust Fund loan for the development of 73 units of affordable rental housing on Crowell Road in West Asheville.

Mountain Housing Opportunities (MHO) has requested a Housing Trust Fund (HTF) loan in the amount of $500,000 for a proposed $7 million Low Income Housing Tax Credit (LIHTC) development. They also plan to use $395,700 in HOME funds.

The available balance in the Housing Trust Fund is currently $562,000

The application was evaluated by a panel of outside experts and staff and scored very well against the HTF criteria. MHO has an excellent track record with similar tax credit projects in Asheville. This development will be targeted to working families with income below 50% of the area median income and LIHTC rules guarantee 30 years of continued affordability. The HTF investment per unit is only $6,850.

The requested loan amount of $500,000 is above the current HTF loan limit of $250,000. The HTF investment will allow the developer to meet the additional property taxes after annexation to provide an urban level of services (a condition of the zoning permit) and will also enable it score additional points in the tax credit competition. However, the request is based on a calculation of property taxes that assumes continuation of the current tax rate. If the tax rate is rolled back as a result of the recent re-valuation, the operating costs will be reduced and the project may be over-subsidized.

The Housing and Community Development Committee reviewed the application on April 10, 2006, and has recommended awarding an HTF loan in the amount of $500,000 with provisional terms of 0% interest and principal payments amortized over 15 years. Final terms will be subject to negotiation after July 1, 2006, and may include an interest rate above 0% and/or an accelerated repayment of principal to prevent over-subsidizing.

Advantages:

- Creation of 73 units of affordable housing for low income working families
- Long-term affordability (at least 30 years)
- Increased of almost $6,000,000 in the tax base
- Increased chance of winning Low Income Housing Tax Credits for Asheville

Disadvantages: This loan will exhaust most of the remaining Housing Trust Fund cash balance for this fiscal year. No other significant project can be funded until additional funds are available.

City staff recommends City Council approve a $500,000 Housing Trust Fund loan to Mountain Housing Opportunities.

Ms. Cindy Weeks, representing MHO, spoke in support of the loan.

Mr. Walter Plaue felt the City should concentrate on infill development.

Ms. Weeks responded to several questions from Council, some being, but are not limited to: how does MHO sustain affordability for the units; explain the zero interest rate; and when would the project break ground.

Councilman Newman moved to adopt Resolution No. 06-87. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

Vice-Mayor Jones then turned the meeting back over to Mayor Bellamy when she re-entered the meeting room.

RESOLUTION BOOK NO. 29 – PAGE 450

D. RESOLUTION NO. 06-91 - RESOLUTION ADOPTING THE STATE LEGISLATIVE PROGRAM

City Attorney Oast said that this is the consideration of adoption of a resolution for approving legislative action in the 2006 session of the North Carolina General Assembly.

At the Council work session on April 18, 2006, the City's legislative requests were considered by Council. Based on that consideration, Council indicated a desire to proceed with the following items as indicated:

A. Settlement agreement with Progress Energy regarding Lake Julian. Near the end of last year, the City and Progress Energy reached an agreement settling the 2000 litigation involving the attempted annexation of Progress Energy's Lake Julian power generating facility. Pursuant to this agreement, the City would cease attempts to annex Progress Energy's Lake Julian facility, and Progress Energy would continue to pay the City a utility franchise tax. This essentially amends an earlier (1994) agreement, formalized by legislation, settling a dispute (and threatened litigation) over the utility franchise tax.

This settlement agreement was discussed with the legislative delegation prior to Council acting on it back in the Fall. The delegation has indicated that this matter is appropriate for consideration in the short session, and that they will take the appropriate steps to have it enacted into law.

City Attorney Oast has been in discussions with Progress Energy's attorney, former Mayor Larry McDevitt, about this matter, and he indicates that he has been in discussion with our delegation, and they are ready to act on the request.

When the settlement was initially approved back in November, it was contemplated that a detailed review of information might result in slight revisions to the area included in the coverage of the Agreement. This detailed review has been completed, and the map showing the properties to be included has been slightly revised. However, this revision has no financial consequence to the City under the Agreement, and amounts to a technical correction. For a further explanation of the revisions, see my memorandum dated April 21, 2006.

Council direction: Resolution to proceed with finalization of settlement agreement.

Note: Because Mr. McDevitt's office will take the lead in working with the delegation on this matter, no further action by the City, other than cooperating with Mr. McDevitt, should be necessary.

B. Voluntary / legislative annexation in South Asheville. The area between the southern City limit and Henderson County is developing rapidly. For a variety of reasons, some of the commercial developments in this area wish to be annexed into the City of Asheville. Under current law, however, voluntary annexation is complicated because those areas are closer to Fletcher than they are to Asheville's primary corporate limits, even though Fletcher cannot expand into Buncombe County. Last year, legislative action was required in order to annex some commercial properties in the new development near the airport. This year, a similar situation has arisen with other commercial properties, and legislative action will likely be required again.

Council direction: Resolution to seek legislative action as necessary to enable properties in this area to voluntarily annex into the City of Asheville without specific legislative approval.

C. Revenue for Civic Center: Although this matter may be more appropriate for consideration in the 2007 session than in this short session, Council indicated that it wished to work with the delegation in considering the menu of options available to provide needed funding for the Civic Center. This request coincides with the approval by the Civic Center task force of alternatives for renovation / expansion of the Civic Center, and the transmission of those recommendations to the Council for action. Since Council action will necessarily involve some consideration of funding, Council wishes to begin that consideration sooner rather than later, and to request appropriate assistance and direction from the legislative delegation. Council indicated that it was open to any funding mechanism except a sales tax. A detailed discussion of available options is beyond the scope of this staff report, but more information will be available and developed as the options emerge.

Council direction. Resolution to seek assistance and appropriate action as necessary to develop a funding source for this regional facility.

D. Repeal of Sullivan Acts: This was not discussed in detail on April 18, but has been the subject of much consideration in the last 18 months, and there is a wealth of information available from a variety of sources.

Council direction. Resolution requesting repeal of the Sullivan Acts.

E. Child care reimbursement: There is concern within the community that Buncombe County does not receive its fair share of funds for reimbursement for child care services provided for low/moderate income families. Consideration should be given to the adoption of the 2005 Market Rate Study, and increasing overall funding.

Council direction. Resolution requesting legislative review and action as necessary to address funding inequities and insufficiencies.

F. Funding of criminal justice system: There is concern within the community that the State's criminal justice system is not adequately funded, especially with respect to drug-related offenses. This has the effect of allowing offenders – sometimes repeat offenders – to get back on the street with little or no deterrent action.

Council direction. Resolution requesting legislative review and action as necessary to address criminal justice system funding issues, particularly as they may affect Asheville.

The 2006 session is a "short" session, meaning that there are limits on what can be considered by the General Assembly. There is also a fairly narrow window for submission of requests; the deadline for submission of material to the Bill Drafting division is May 17.

Councilman Newman introduced for Council's consideration for inclusion in the legislative package (1) campaign finance reform – allow local governments to decided if they want to create public financing for local elections; (2) concern regarding cable franchise fees – statement that Asheville is concerned about the state-wide video franchise bill which would cap PEG access fess at $16,000 per community and delegate responsibility to the Attorney General's Office for handling citizen complaints about local TV providers (historically, local governments have laced a leading role in these issues); (3) raise the minimum wage – statement that Asheville asks our legislators to raise the state minimum wage to $7 per hour; (4) homestead exemption – reduce property taxes on low-income senior citizens who live in their own home, expand the homestead exemption act and index it for inflation; and (5) Land for Tomorrow initiative – place the Land for Tomorrow bond referendum on the ballot for consideration by the people of North Carolina.

City Attorney Oast said that the following four specific items for local legislation (settlement agreement with Progress Energy regarding Lake Julian; voluntary/legislative annexation in South Asheville; revenue for the Civic Center; and repeal of the Sullivan Acts), will require unanimity (which our delegation requests) from the Council before the legislative delegation will introduce them. The other items are relevant to the City of Asheville, but since they are not specific pieces of legislation, he was not certain unanimity by Council was necessary.

Mayor Bellamy said that this is a short session, which needs to have non-controversial items and items with unanimity of Council. She recalled that during the regular session, other items of endorsement have been submitted with the vote of Council. The majority of Council can change that process.

Councilwoman Cape moved to include items that are not unanimous to move forward, but presented separately from the items that are unanimous, in the short session of the City's

legislative package items. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Councilman Mumpower felt that even though the items are not unanimous, is gives us an opportunity to educate our legislative body on some of Council's interests, whether we chose to pursue those interests or not.

Councilwoman Cape moved to include the following three items specifically relating to the City of Asheville to the City's legislative package: (1) settlement agreement with Progress Energy regarding Lake Julian; (2) voluntary/legislative annexation in South Asheville; and (3) repeal of the Sullivan Acts). This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no".

Because there was unanimity by City Council at the worksession for all the items City Attorney Oast just reviewed, Councilman Mumpower moved to include the following six items to the City's legislative package: (1) settlement agreement with Progress Energy regarding Lake Julian; (2) voluntary/legislative annexation in South Asheville; (3) revenue for the Civic Center; (4) repeal of the Sullivan Acts); (5) child care reimbursement; and (6) funding of criminal justice system. This motion was seconded by Councilman Freeborn.

There was a brief discussion regarding the Civic Center, noting that the Civic Center Task Force will be bringing forward their options to Council on May 9, 2006.

Councilman Newman is not supportive of a sales tax as an option for revenue for the Civic Center and requested more analysis on the different options, e.g., hotel occupancy fee, fine dining tax, etc., available for Civic Center revenue.

The motion made by Councilman Mumpower and seconded by Councilman Freeborn to move forward on all six items carried unanimously.

After each Council member voiced their opinion on the campaign finance reform item, Councilwoman Cape moved to move that forward to the legislative delegation. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

After each Council member voiced their opinion on the cable franchise fees item, Councilwoman Cape moved to move that forward to the legislative delegation. This motion was seconded by Councilman Freeborn and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

After each Council member voiced their opinion on raising the minimum wage item, Councilman Newman moved to move that forward to the legislative delegation. This motion was seconded by Councilwoman Cape, and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no." Mayor Bellamy requested a report from the City Manager on our employee salaries.

After each Council member voiced their opinion on the homestead exemption, Councilman Davis moved to move that forward to the legislative delegation. This motion was seconded by Councilwoman Cape, and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

After each Council member voiced their opinion on the Land for Tomorrow initiative, Councilwoman Cape moved to move that forward to the legislative delegation. This motion was

seconded by Councilman Freeborn and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 458

E. RESOLUTION NO. 06-92- RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TRANSIT COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee said that Councilman Bryan Freeborn has resigned as a member of the Asheville Transit Commission, thus leaving an unexpired term until December 31, 2006.

At the City Council worksession on April 18, 2006, City Council instructed the City Clerk to arrange interviews for Mr. Yuri Koslen, Ms. Hanna Miller and Mr. Bruce Emory.

After Council spoke highly of the candidates, Vice-Mayor Jones said that the Boards & Commissions Committee will review the structure for possible expansion of the Board. The voting was as follows: Yuri Koslen received one vote, Hanna Miller received six votes, and Bruce Emory received no votes. Therefore, Hanna Miller was appointed to serve the unexpired term of Councilman Freeborn, term to expire December 31, 2006, or until his successor has been appointed.

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VI. OTHER BUSINESS:

Councilwoman Cape suggested that when an item is withdrawn from the Council agenda that a notice be placed on the Council Chamber door for those who may not have been in the Chamber when that action happened.

City Council recognized Mr. Yuri Koslen for his efforts on Strive Not To Drive Day.

Vice-Mayor Jones announced the three upcoming board and commission vacancies.

The following claims were received by the City of Asheville during the period of March 31 – April 20, 2006: BellSouth (Water), Harriett Riddle (Sanitation), Emily Kinsella (Sanitation), Steve Earle (Water), David Wilson (Streets), Sherri Adkins (Water), Mildred Miller (Police) and Travis Smith (Police). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Bruce Deile spoke to Council about the denial of medical treatment due to high costs. He also brought to Council's attention that an older homeless man who can't take care of himself was kicked out of the Salvation Army. Mr. Deile said that A-Hope staff said they can't force this man into a state run agency. Mayor Bellamy said that she would follow-up on this.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:15 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 9, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING 2006 AS "YEAR OF THE MUSEUM"

Mayor Bellamy read the proclamation proclaiming 2006, as "Year of the Museum" in the City of Asheville. She presented the proclamation to Frank Thomson, Cassie Moore, Kelly Miller and Robert Sipes, all representing the Asheville Art Museum, who thanked City Council for this designation.

B. PROCLAMATION PROCLAIMING MAY, 2006, AS "PRESERVATION MONTH"

Councilman Davis read the proclamation proclaiming May, 2006, as "Preservation Month" in the City of Asheville. He presented the proclamation to Mr. Jim Coman, President of the Preservation Society, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MAY, 2006, AS "DISABILITIES AWARENESS MONTH"

Vice-Mayor Jones read the proclamation proclaiming May, 2006, as "Disabilities Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Liz Huesemann, Executive Director of the Irene Wortham Center, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda Item "E" be pulled from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 25, 2006

B. RESOLUTION NO. 06-93 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 23, 2006, TO CONSIDER THE VOLUNTARY ANNEXATION AT 3820 SWEETEN CREEK ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on May 23, 2006, for property located at 3820 Sweeten Creek Road.

John W. Couch has petitioned the City of Asheville for the annexation of one lot located at 3820 Sweeten Creek Road containing approximately .72 acres. The area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31 such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed.

This property contains a single-family home and is zoned R-1 under Buncombe County's Limestone Township Zoning Ordinance.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be June 30, 2006.

Considerations:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council accept the petition and adopt the resolution setting the date for a public hearing on the annexation petition for May 23, 2006.

RESOLUTION BOOK NO. 30 – PAGE 1

C. RESOLUTION NO. 06-94 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 23, 2006, TO CONSIDER THE VOLUNTARY ANNEXATION OF FOUR LOTS ON ROCKWOOD ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on May 23, 2006, for properties located on Rockwood Road.

Hankins Properties, LLC, has petitioned the City of Asheville for the annexation of four lots located along Rockwood Road in South Buncombe County (off of Airport Road) containing a total of approximately 6.54 acres. The area, while contiguous to other non-contiguous ("satellite") properties in the City of Asheville, is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in N. C. Gen. Stat. sec. 160A-58.1.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be June 30, 2006.

Considerations:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council accept the petition and adopt the resolution setting the date for a public hearing on the annexation petition for May 23, 2006.

RESOLUTION BOOK NO. 30 – PAGE 3

D. RESOLUTION NO. 06-95 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY ON DUNDEE STREET TO ROBERT SIMON

Summary: The consideration of a resolution authorizing the Mayor to convey land on Dundee Street to Robert Simon.

On April 25, 2006, City Council authorized advertising for upset bids pursuant to a bid from Robert Simon for land on Dundee Street in the amount of $26,200. The advertisement was published on April 28, 2006, and no upset bids were received.

The land on Dundee Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped lot comprising 0.115 acre±. It has a moderate slope downward from the street. It is zoned RM-8 Residential Multi-Family Medium Density District and it is suitable as a home site. The bid from Robert Simon is in the amount of $26,200. We have in file an appraisal prepared by Joseph F. Moore dated September 13, 2005, estimating the market value of the property at $26,200. Mr. Simon proposes to acquire the property next door to live in and eventually build on the subject parcel.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

There is no negative impact.

City staff recommends adoption of the resolution authorizing the Mayor to convey land on Dundee Street to Robert Simon in the amount of $26,200.

RESOLUTION BOOK NO. 30 – PAGE 6

E. RESOLUTION SUPPORTING CONTINUATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

This item was pulled from the Consent Agenda for an individual vote.

F. RESOLUTION NO. 06-97 - RESOLUTION AMENDING THE 2006 CITY COUNCIL MEETING SCHEDULE TO DELETE THE BUDGET WORKSESSION SCHEDULED FOR MAY 22, 2006

RESOLUTION BOOK NO. 30 – PAGE 8

G. RESOLUTION NO. 06-98 - RESOLUTION OF COMMITMENT TO THE PRESERVATION OF OUR COMMUNITY'S CULTURAL AND NATURAL HERITAGE ASSETS

Summary: The consideration of a resolution to be included with the Preserve America designation application package, reconfirming the City's commitment to the preservation of its cultural and natural heritage assets

Preserve America is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation and the U.S. Department of Interior, Commerce, Agriculture and Housing and Urban Development. The program recognizes and designates communities that celebrate and protect their cultural heritage. Asheville has been invited to seek designation as a Preserve America Community based on its embodiment of the goals and spirit of the Preserve America Initiative. The adoption of a resolution by the local governing body, indicating commitment towards preservation of the community's heritage assets is required as part of the application package.

As a designated Preserve America Community, Asheville will not only be eligible to apply for a Preserve America matching grant, but will also benefit from increased community visibility and pride for its preservation efforts. Other benefits include: White House recognition, a Preserve America Community road sign, authorization to use the Preserve America logo, inclusion in national and regional press releases and the opportunity to receive one of four Presidential awards.

This program is consistent with the goals for preservation as indicated in the 2025 Plan. It is also a great opportunity for Asheville to further its reputation as a community dedicated to the preservation of its valuable cultural heritage.

Pros

- Eligibility to apply for matching grants
- Increased visibility and pride

Cons:

- Staff can find no potential challenges with this program

City staff recommends that City Council adopt the resolution reconfirming our commitment to the preservation of our cultural and natural resources.

RESOLUTION BOOK NO. 30 – PAGE 9

H. MOTION SETTING A PUBLIC HEARING ON MAY 23, 2006, TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE," LOCATED OFF HIGHWAY 240 EAST, TO "RESORT DRIVE"

Summary: The consideration of a motion setting a public hearing for May 23, 2006, to consider renaming the existing street of "Holiday Inn Drive," located off Highway 240 East, to "Resort Drive."

The owners of Crowne Resort have petitioned the City of Asheville to rename "Holiday Inn Drive" to "Resort Drive." City staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any street is to facilitate emergency response. Staff researched the street data and has

determined that this name is not duplicated. The adoption of the new street name is to enhance emergency response to these citizens.

Pros:

- The street will be utilized to access the existing hotel golf resort.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Cons:

- There are no negative affects of for assignment of "Resort Drive" to this existing road.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the city's strategic operation plan. This action complies with the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council set a public hearing for May 23, 2006, to consider renaming the existing street of "Holiday Inn Drive," located off Highway 240 East, to "Resort Drive."

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 06-96 - RESOLUTION SUPPORTING CONTINUATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Summary: The consideration of a resolution in support of the Community Development Block Grant (CDBG) Program.

The President's draft budget for federal Fiscal Year 2007 proposes a 25% cut to the CDBG program.

The City of Asheville has used the CDBG program since its start in 1974 to revitalize blighted city neighborhoods, renovate many hundreds of units of housing, provide land and infrastructure for several hundred new homes, invest in downtown economic development, and support key social service programs. Aside from downtown economic revitalization, all funds have been used to benefit low income individuals and low-income neighborhoods. A fact sheet is attached on the City's CDBG accomplishments in 2004-05.

Between 2004 and 2006, federal funding for the CDBG program was reduced by 15%. This has caused significant cuts in Asheville's program, including closing down our long-standing housing rehabilitation program, and cutting funding to several well-established and successful social service programs operated by local non-profits. A further 25% cut would cause further cuts in these programs and serious setbacks in the progress we are making to provide low-income people with decent housing and economic opportunities and to address homelessness.

Advantages:

- Authorizes the Mayor to express the City's concern to our Congressional representatives
- Adds the City's voice to that of the National League of Cities and US Conference of Mayors, who have set this as a top priority issue in 2006.

Disadvantages: None

City recommends approval of the resolution supporting renewed federal funding for the CDBG program at $4.3 billion nationwide, the same level as in Fiscal Year 2004.

Councilman Mumpower said that we do try to use these federal dollars to good use, but philosophically he had a hard time about borrowing this money on our children's lives. He would have to speak against the misuse of the system that does good upfront, but charges us very heavily on the backside.

Vice-Mayor Jones spoke strongly in support of the CDBG Program. She felt this is one of the programs that actually invests in our community where you can see tangible returns. She felt this is a federal tax dollar investment that is actually giving back substantially to our community.

Councilman Newman moved to adopt Resolution No. 06-96. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 7

III. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING THE APPROVAL OF THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE CONTRACT FOR THE CONSTRUCTION OF TWO FIRE STATIONS, THE REPLACEMENT OF A ROOF ON A CITY FACILITY, ACQUISITION OF VEHICLES AND PUBLIC SAFETY RADIOS

RESOLUTION NO. 06-99 - RESOLUTION AUTHORIZING THE INSTALLMENT FINANCING OF TWO FIRE STATIONS, A CIVIC CENTER ROOF, VEHICLES AND EQUIPMENT

Mayor Bellamy opened the public hearing at 5:12 p.m.

Chief Financial Officer Ben Durant said that this is the consideration of a resolution authorizing the installment financing of two fire stations, a Civic Center roof, vehicles and equipment. This public hearing was advertised on April 28, 2006.

The current capital improvement program (CIP) includes funds previously appropriated by City Council to finance (1) the construction of two fire stations and a civic center roof at an approximate cost of $6,777,000 and (2) the acquisition of large vehicles and the upgrade of the 800 mhz public safety radio system at an approximate cost of $2,523,000.

The Finance Department sought proposals from six firms to finance the purchase of the construction of the fire stations and the roof and to purchase vehicles and equipment. Five proposals were received, the best of which was submitted by Bank of America at an interest rate of 3.92% per annum for the stations and the roof and 3.84% per annum for the vehicles and equipment.

Federal tax laws make it advantageous for banks to lend to "bank qualified" governmental borrowers. As a result, banks can provide lower rates for loans to their "bank qualified" borrowers. For a local government to be "bank qualified" it must not contemplate issuing more than $10,000 000 in tax-exempt debt in the calendar year in which the loan is made. The City is currently bank qualified for 2006.

Upon approval of this resolution, the final step in the process is to receive approval from the Local Government Commission and to close the loan with the bank. We anticipate these steps taking place within the first two weeks of June.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Bank of America for the fire stations, a roof, vehicles and equipment; approves a deed of trust and provides for other related matters.

City staff recommends City Council adopt the resolution authorizing the installment financing of two fire stations, a Civic Center roof, vehicles and equipment

Mayor Bellamy closed the public hearing at 5:13 p.m.

Upon inquiry of Councilman Mumpower, Mr. Durant said that the Civic Center roof is approximately $1 Million and that was approved as part of the current budget.

Regarding the financing for the Civic Center roof, Councilman Mumpower said that as long as we can stay flexible and not commit ourselves to a process that may be redundant (e.g. re-configuring the Thomas Wolfe Auditorium in the near future which would result in another new roof), and as long as we have a reasonable period of time to make decisions he would be comfortable in going forward with this action. Mr. Durant explained that the financing will be secured and the funds will be placed in escrow, but we won't requisition those funds until we actually start spending them. The City won't pay interest until we actually draw down the money and start using the funds. If Council decided not to build a new roof, we would not requisition the funds and they would be returned to the bank, however, there may be some penalty for not using the money. He said he would verify this. In addition, City Attorney Oast said that any change of that nature may require an amendment to the agreement.

City Attorney Oast also stated that he didn't think the City is obligated to spend all the money, but that money is not available for other purposes. He said the City would pay interest only on the money that we use.

Councilman Davis said that regardless of which option Council chooses to go with regarding the Civic Center (to be discussed later in the meeting), the Thomas Wolfe Auditorium needs a new roof.

Councilman Newman suggested that we approve this resolution because when we put the money in our budget cycle, we knew there was going to be more discussion on what is gong to happen with the future of the Civic Center and we committed ourselves to start the process. He felt we should also ask City staff to not take additional steps to draw down the funds for at least another 60 days and hopefully over the next 60 days we will reach a direction on how we want to move forward. If it's clear that we are moving in a direction that would result in us having to fix the roof twice, then a decision could be made to not draw down the money.

Mr. Durant said that the City won't officially close until we get Local Government Commission approval which is slated for the first two weeks in June. He hoped that Council would have some final direction at that point.

When Vice-Mayor Jones asked what the cost of the contract was, Mr. Durant said that the annual debt service payments are estimated at a little over $900,000 a year, and our legal counsel on this financing is approximately $15,000.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-99. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 10

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 06-100 - RESOLUTION ESTABLISHING MEMBERS FOR THE HUB PROJECT'S POTENTIAL COMMUNITY AND ECONOMIC ALLIANCE BOARD OF DIRECTORS

Economic Development Director Sam Powers said that this is the consideration of a resolution establishing members for the HUB Project's potential Community and Economic Development Alliance Board of Directors.

The governance structure for the HUB Project has previously been discussed by City Council at their January 10, 2006, meeting. At that time, Council asked that discussions be conducted between the City and County about a possible governance structure and the Mayor has met with the Chairman of the County Commission. Consequently, the following make-up of the HUB governance has been provided by the County Manager and proposed for consideration by City Council:

Members based on their Position in the Community

1. Asheville Mayor
2. Asheville City Council Planning and Economic Development Committee member
3. UNCA Chancellor
4. Asheville Buncombe Technical Community College President
5. Mission Hospitals CEO
6. Asheville Citizen Times President
7. Department of Transportation Board Member
8. National Climatic Data Center CEO
9. Buncombe County Chair
10. Buncombe County Economic Development Coalition Representative

Ex-Officio members

1. Asheville City Manager
2. Buncombe County Manager
3. Buncombe County Schools Superintendent
4. Asheville City Schools Superintendent
5. Other ex-officio to be named

At-Large

Fourteen spots to be split between City Council and County Commissioners.

If Council agrees with the proposed governance structure of the HUB, adoption of the resolution is recommended.

Mayor Bellamy said that in light of the over $100 Million in projects by the N.C. Dept. of Transportation they wanted to make sure they had a seat on the Board and for them to be involved in the up-front planning process.

At the suggestion of Vice-Mayor Jones, it was the consensus of Council to have 10 at-large members (not 14) to be split by the City Council and County Commissions, with the four other members being appointed by the Board itself.

There was a brief discussion initiated by Councilman Newman's concern that the Board may be too large, however, after discussion, it was determined that it will be a functional group.

When Councilwoman Cape wondered if it might be more appropriate to have the organizations select the best person in their organization to be appointed to the Board, Mayor Bellamy said that they were intentional in the actual position being appointed to the Board because they are the ones who can move things forward.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-100, with the following amendments: (1) five at-large members being appointed by the Asheville City Council; (2) five at-large members being appointed by the Buncombe County Commissioners; and (3) four members being appointed by the Board itself, once the Board is established. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Bellamy stated that the board and commission vacancy process will be used for the City Council five at-large members.

RESOLUTION BOOK NO. 30 – PAGE 13

V. NEW BUSINESS:

A. RECOMMENDATION FROM THE CIVIC CENTER TASK FORCE

RESOLUTION NO. 06-101 - RESOLUTION ACCEPTING THE CIVIC CENTER TASK FORCE REPORT

Councilman Davis, Chair of the Civic Center Task Force, said that The Civic Center Task Force was created by City Council to examine the options for the Civic Center. He thanked various people for their contributions in reaching this point including, but not limited to the former City Council members, present City Council members, Mayor Bellamy, former Mayor Charles R. Worley, Ms. Sasha Vrtunski, City Manager Gary Jackson, Civic Center Director David Pisha, all the Task Force members and their alternates, and the hundreds of people who have expressed their desire for the community.

Ms. Vrtunski summarized by saying that in October, 2005 City Council held a special worksession on the Civic Center in response to the proposal brought forward by the Asheville Area Center for the Performing Arts. At the worksession, Council agreed that the Civic Center should be a multi-purpose facility and remain downtown if at all possible. City Council then created the Task Force to further investigate options and bring back recommendations to Council. Task Force members are: Mayor Terry Bellamy, Councilman Jan Davis, City Council; Max Alexander, Civic Center Commission; Sidney Powell, Asheville Area Center for the Performing Arts; Bill Stanley, Buncombe County Commission; Ron Storto, Tourism Development Authority; and Charles Worley, former Mayor.

The report reviews the work of the Task Force over the past six months and brings several recommendations forward for Council to consider. The Task Force has looked at different options for the Civic Center building and events and narrowed the field to two main options. The first option is to build a new arena, and then build a performing arts and media center inside the current arena. The second option is to build a new performing arts hall and media center, and then refurbish the existing arena. Both options propose making Thomas Wolfe a flat-floor facility, which adds space for hosting a number of events and could be tied into existing events that need more space.

In addition, staff expects the economic impact study to be completed at the beginning of June. This will show what the impact of the Civic Center is on our local economy.

During the Task Force process, the Asheville Area Center for the Performing Arts organization offered to pay for professional services to examine the feasibility of a performing arts center on the Parkside site (which is on the lot next to City Hall). It is expected that this analysis would take between 30 to 60 days.

Advantages:

- The report brings forward several options for City Council's consideration and holds exciting possibilities for our community.
- Further examination of the Parkside site will help illuminate the potential of the site and funding possibilities.

Disadvantages:

- Two of the three options coming forward are large projects and will require the participation of other partners and multiple sources of funding.

City staff recommends that City Council: (1) receive the report and take it under advisement while waiting for the final economic impact analysis to be reported (early June); (2) accept the offer of $10,000 from the Asheville Area Center for the Performing Arts to further investigate the feasibility of the Parkside site; and (3) plan a worksession to discuss a preferred model options once the economic impact analysis and Parkside feasibility analysis are completed.

Ms. Vrtunski then briefed Council with the following: In August, 2005, the Civic Center Commission held a public forum about the future of the Civic Center. In September, 2005, the Asheville Area Center for the Performing Arts presented to City Council & Council formed the Civic Center Task Force (TF). In October, 2005, the Civic Center Task Force began meeting and collecting data. And, in March, 28806 – the Task Force worked on finalizing the best options and funding plan for those options to bring back to City Council.

Several policy questions arose. Those include, does Asheville need to host a multi-purpose facility; what is the preferred location for each component; total budget; phases; sources of funding; desired partners/coalition; and what trade-offs are acceptable to secure support.

The Task Force data gathering included: overview of the Civic Center operations and finances; panel of facility users (AC Entertainment, Asheville Symphony, WNC Productions, Broadway in Asheville, Palace Sports); comparisons of other facilities; presentations of building proposals (Heery, Highland Group report, PBC+L Architects, Asheville Area Center for Performing Arts ("AACPF")); review of hotel occupancy and food & beverage taxes collected in North Carolina; review of funding strategies; review of potential new arena sites; review of cost estimates; review of Parkside potential; public input at all meetings, and extensive public input at January 18, 2006, meeting.

Key data and findings included: 67% of the revenue of the Civic Center is generated by the Arena; staff does the best they can with the facility and funds they have; received many compliments from event producers; the Civic Center has met needs for diverse community and needs to continue to do so; there is very strong support in the community for a performing arts center, especially as Asheville is an arts destination; and the downtown businesses feel that the Civic Center is very important to them, especially the multi-day events, and arena events.

The Task Force reached the following findings: the Thomas Wolfe Auditorium cannot be renovated for a performing arts venue; doing nothing is not an option; multiple sources of funding are needed, there is no one source that will pay for it; and the City should not be the sole funder of improvements.

Two main options rose to the top: (1) Build a new arena and then build Performing Arts Center and Media Center inside the existing arena; and (2) Renovate the arena and build a new performing arts center on the lot next to City Hall (Parkside). Both options include making Thomas Wolfe a flat floor facility.

Option 1 major design concepts include: (1) Convert existing arena into 2400 seat Multiple Purpose Performing Arts Center – enhanced support; resolved load-in; and ample lobby space; (2) Convert Convention Space into Theatre Support and Media Center – performer support and equipment storage; and studio and classroom spaces; and (3) Convert Thomas Wolfe Auditorium Space into a flat floor banquet/conference/reception center - flexible, divisible space; full service catering support; and ability to use stage as rehearsal or open up to room for special presentations/dais/ or dinner theatre venue.

A combination performing arts and media has synergies, opportunities and efficiencies. Organizations benefit from co-location – share common infrastructure, share common support spaces, share content, and share exposure to patrons. The Civic Center becomes a public service resource, building on the foundation of the arts, education and media.

Sites studied included the current Civic Center site, Patton Avenue downtown gateway, south of City-County Plaza – "Parkside", Innsbruck Mall, Biltmore Square Mall, and Brevard Road at I-40 & I-240.

Option 2 would be to build a new performing arts center (and media center) on the lot next to City Hall (Parkside) and refurbish the arena.

Development challenges and opportunities for the City Hall parking lot include: City doesn't own entire block or Hayes-Hopson building; context issues – Mt. Zion, EMS, Pack Square design guidelines, parking logistics are excellent, considerable developer interest, proximity to Pack Square Renaissance, and possible linkage with other downtown properties.

The Parkside development potential for the performing arts center and media center also has the potential for residential units, commercial space and 600-700 space garage.

She showed an example of a parking deck wrapped with development with housing.

The process for redevelopment would include a (1) feasibility analysis to determine scope, cost of project, recommend financing strategy; (2) RFQ/RFP process to identify qualified master developer; (3) design process with master developer: community input and final approval of design; and (4) begin construction in phases.

Preliminary Cost Estimates: (a) Option 1: New Arena, AACPA - Estimated cost $107,700,000 - $128,000,000; and (b) Option 2: Renovate Arena, New PAC - Estimated cost $131,380,000 - $140,730,000. Estimates are rough, and could be more or less.

Potential funding alternatives; Hotel Occupancy Tax 1% = $1.3 million/year; private contributions: proposed $10 million -$15 million; County contribution; ½% Sales Tax *(generates $15 million/year);* Food and Beverage Tax; other State & Federal contributions; and Tax Increment Financing.

The Civic Center Task Force voted as follows: Task Force voted 2-2-2 on proposals - 2 in favor of Option 1 (Powell, Stanley); 2 in favor of Option 2 (Davis, Worley); and 2 in favor of either option. (Alexander, Storto). The Task Force is bringing these options forward to City Council for input.

The following steps are recommended (Item 1 which has been accomplished): (1) The Task Force processes and weighs options and criteria; (2) Economic Impact Study investigation of Parkside site; (3) Council determination of a preferred option; (4) coalition building and funding strategies; (5) management programming and operation plan; and (6) begin construction.

She felt the next steps would be: (1) accept the report; (2) receive the economic impact analysis in early June; (3) direct staff to flush out details of how the $10,000 will be used with the input of the AACPA and to bring those details back to Council with the Economic Impact Study is completed; and (4) plan a worksession in at a later date to discuss the results of the feasibility analysis and economic development study.

Councilman Davis said that two really good options have been presented. A third option that was not formalized is the fall-back position. If nether options 1 or 2 is approved, then the City needs to spend money for capital improvements. We can't just let that building sit.

Mayor Bellamy said that the information presented is more for Council to receive as a first step, understanding that partnerships will need to be developed, a funding package determined, and dialogue regarding other ownership possibilities.

Ms. Sidney Powell, President of the AACPA, said that "as a member of the Task Force and on behalf of the Asheville Area Center for the Performing Arts, I thank the City Council for convening the Task Force, Councilman Jan Davis for chairing it, and individual members: Mayor Bellamy, former Mayor Worley, Commissioner Bill Stanley, Max Alexander and Ron Storto, for donating their time to address these important issues. I also thank TDA for its expression of willingness to use 1% of a hotel occupancy tax, which would amount to an anticipated contribution of $26 million to this project, and I thank the many citizens who attended our meetings. They have provided excellent suggestions and comments, along with the countless citizens who have written each of you—making plain the community's support for a new center for performing arts. All of this effort has brought us to the critical point NOW of having two thoughtful choices for Council—choices that give Council the opportunity to bring Asheville *alive* with exciting economic, cultural and educational development.

"The Board of Directors of the Asheville Area Center for the Performing Arts (AACPA) acknowledges and supports the two potentially viable options for a new Performing Arts Center: 1) the adaptive reuse of the current arena in the Civic Center into a modern Performing Arts Center with the construction of a new arena elsewhere; or 2) the construction of a new Performing Arts Center at the Parkside site adjacent to City Hall. The Board has studied option one extensively, and it has offered funding to the City to assist in the evaluation of the recently proposed option two.

"The AACPA is a private, non-profit 501(c)(3), formed to explore and develop a performing arts center for all of the residents of Asheville; indeed, the WNC region. This need was identified by the City over a decade ago and confirmed again in the recent HUB economic development plan, as the City has continued to struggle to maintain and provide services in our venerable but aging, inadequate, and deteriorating facility. AACPA first examined and preferred building a stand-alone performing arts center that would face the new Pack Square Conservancy Park. When it became apparent that a solution to the Civic Center problem was compelling, and the option of a stand-alone facility near Pack Square seemed to be foreclosed, we fully explored and then presented the proposal for adaptive reuse of the Civic Center.

"Since learning of the possibility of the Parkside site a few weeks ago, AACPA has also undertaken its own initial evaluation of the land adjacent to City Hall and believe it offers real potential. Although a stand-alone, multi-use Performing Arts Center might provide less square footage than would be created through an adaptive reuse of the Civic Center, we anticipate that it would still be capable of most of the planned uses, including allowing the integration of media arts, technology, and education with the performing arts in a way that would allow Asheville to build on existing strengths while placing it at the forefront of the arts in this exciting merger of mediums. It would also allow the existing Civic Center to be renovated to enhance and enlarge the exhibition/trade show/ and conference space available by renovating the current auditorium, providing added economic benefit as indicated in tonight's Task Force Report.

"If the City Council decides to proceed with the Parkside Option, AACPA offers the following proposal for Council's consideration:

1. That the non-profit AACPA expand its board and be made solely responsible for designing, constructing and managing the operation of a new performing arts center on the Parkside site. The expanded governing Board of the organization would provide broader representation of interested elements of the community, similar to boards of other successful projects in the City.

2. That the Parkside site proposed by the City of approximately 2.43 acres (including any private parcels) be leased at a nominal sum to the AACPA for not less than 55 years for the construction of a stand-alone center for the performing and media arts.

3. That the City provide a parking structure as needed replacement and for area parking contiguous to the 2.43 acre site, which would provide daytime/weekday parking for public and area businesses.

4. That the new Performing Arts Center would be designed and completed as an independent structure that acts as a cornerstone for redevelopment of the adjacent area.

5. That the non-profit organization, AACPA, would commit to fundraising millions in private donations and grants toward the construction, and work to assemble and secure the balance of funding needed from other sources, recognizing the value of the land and shared parking being provided by the City.

6. That the AACPA would develop an endowment fund and other fund sources to underwrite the operation of the PAC.

"Alternatively, to provide <u>two</u> new facilities to the community, the AACPA Board continues to believe that the adaptive reuse of the current Civic Center as a Performing Arts Center and the construction of a new arena at a separate location is a viable and financially feasible option. We

have presented that alternative fully to the City Council previously, and to the Civic Center Task Force with supporting data. The facilities that this proposal represents would allow for:

- a new code-compliant and fully capable 2400-seat performance theatre, black box theatre, chamber music space, and classroom space;
- a new Great Hall for various uses including banquets, conferences, conventions, and trade shows;
- the incorporation of educational, media, and technological arts programs, including involving programs for students K-12, AB Tech and UNC Asheville;
- a new and more flexible entertainment arena and exhibition space at a separate location; and
- phased construction of each facility so that no interruption of current programming and use would be required.

"This proposal has been presented in detail, and it is a cost effective option to provide for both a new Performing Arts Center and new Arena.

"Accordingly, this Council has a choice of two achievable options, either of which will create a substantial economic, cultural and educational development engine for the region. This cannot be accomplished without the vision, dedication, and support of our elected representatives. Upon approval of the Council of either option, AACPA is prepared to commit its full effort in collaboration with the Park Conservancy, Art Museum, Diana Wortham, Media Arts Project, and our entire community to create a sparkling new centerpiece for this special place we all call 'home.'"

Mr. Chuck Tessier, Chair of the Sustainable Economic Development Advisory Committee, said that "for years our community has debated the future of our civic center and the potential development of a performing arts center and arena. Where should it go? Who will do it? How will we pay for it? Many people have spent countless hours trying to resolve these issues only to be frustrated by the lack of a community consensus on how to proceed.

"If we are to proceed with actually completing something, it is important to understand that great things are possible through the cooperative efforts of all parties, moving step by step, in a consistent direction for a long period of time. It is also important that all parties understand their respective limitations and that each party have confidence that together they can accomplish the mission.

"Perhaps looking back at how our community has accomplished three major civic projects, Pack Place, the Grove Arcade and the new Pack Square Park, in the past twenty years, will give some insight on how we might accomplish the task at hand. All three projects were financed and built by a private non-profit coalition assisted by some public funding on publicly assembled property.

"Pack Place was developed by Pack Place Education, Arts and Science Center, Inc. on land assembled by the City with funding provided through private philanthropy, foundations, a City bond issue, the State of NC and the County. The parking was built in partnership with a private developer using a UDAG grant from the federal government. It was completed in 1991, cost $14,000,000 and took seven years to develop.

"The Grove Arcade was developed by the Grove Arcade Public Market Foundation in a building given to the City by the Federal Government. Funding was provided through private philanthropy, foundations, Federal Grants, historic tax credits, Progress Energy and private bank financing. It opened in 2003, cost over $30,000,000 and took 15 years to develop.

"Pack Square is being developed by the Pack Square Conservancy on property owned by the City and County. It is being funded through private philanthropy, foundations, and grants from the Federal government and Buncombe County. The new park will open in 2008, will cost $17,500,000 and will take eight years to develop.

"The Civic Center Task Force has met on this issue and has recommended that a new Performing Arts Center be built. This would represent a fourth major civic project and should become the top priority of the community's agenda following the completion of the Park. The Asheville Area Center for the Performing Arts has been working diligently on this project for over five years and are willing to sponsor the project taking the lead to raise the necessary funding. As have the three projects preceding it, this will take a mix of public and private sources to accomplish and will first require that a site be secured.

"The Task Force has presented two options for the location of a new theater. One is to build it within the current civic center arena. The other is to build it fronting the new park. The first option requires that a new arena also be built before work could begin on the theater. This doubles the money necessary because it absolutely requires that two new facilities be built. We currently have a functioning arena, downtown, that provides 65% of the current civic center revenue. This facility can continue to function with some improvements for years to come while we finance, design and construct a new performing arts theater to replace the obsolete Thomas Wolf Auditorium. Down the road, if another group wants to sponsor and finance a major new sports arena then it can happen at that time.

"The second option provides the best possible location in the City for a new theater. It would front our new park on City/County Plaza. Parking would be below it with easy access off South Charlotte Street. The parking would also serve during the day the City Hall, County Courthouse, Pack Place and other businesses in the area. The parking component should be primarily self funding through parking revenues. It would provide a catalyst in that area for new development on other public property facing the Block and South Charlotte St. This new associated development need not be lumped into the same project but could be leveraged with Tax Increment Bond Financing to offset part of the project cost.

"A new state of the art performing arts facility is essential to Asheville's national image as a leading arts destination. It is essential to attracting both wealth and the creative class to our City. It must provide a "show" that will appeal to the wide spectrum of entertainment interests in our community. Combined with our new world class park it would be a key anchor in the economic development of the region.

"Likewise Asheville needs a "civic center". For years, this facility at the end of Haywood Street, has provided a home to the Mountain Folk Festival and the Southern Highlands Craft Show, high school graduations and concerts. Adding a new theater does not eliminate our need to continue to provide facilities for the full variety of events that currently use the civic center. The relocation of Thomas Wolf Auditorium will allow space in the civic center for other groups to use the facility that currently do not have a home. It will allow for additional exhibit and banquet space to be developed. The current civic center has been an anchor in our community for years and can continue to function for years to come. With a decision made, the City can proceed immediately to establish a capital facility plan to repair and improve their existing facility rather than continue to let it deteriorate while they debate the alternatives.

"In summary, it is our recommendation that (1) The City assemble the site fronting the park and make it available for the development of a new Performing Arts Center; (2) As a part of this project the City should agree to develop and fund, using parking revenues and TIF financing, a parking facility sufficient to meet the long range parking needs of the area; (3) The City should enter into a long term lease of said property to The Asheville Area Center for the Performing Arts

provided they are expanded to provide for the leadership and community representation necessary to sponsor this project and are able to raise the necessary funds for both its construction and operation; (4) The City should recognize that the Civic Center will need to continue to be an integral part of the cultural opportunities of this community for many years to come and as such the City has a responsibility to provide for its maintenance, repair, operation and improvement; and (5) The City explore other private development opportunities in the area around the new performing arts center to provide for additional tax base but that the development of the parking and Performing Arts Center not be contingent upon a larger private development project.

"We have proven time and time again that as a community working together we are able to accomplish significant civic projects. If each project can be isolated into manageable steps and funding can be distributed among a number of public and private resources then great things are proven possible. Too often false hope or trying to accomplish more than is feasible at any one time can stall a project. We hope that these recommendations can provide the roadmap to allow this project to finally get moving."

Former Mayor Charles R. Worley thanked the Task Force and Councilman Davis for the outstanding job he has done as Chair. He said that both options presented are good but he favored Option 2. He believes that Option 2 provides the most flexibility in terms of meeting other City needs, e.g., housing, creation of a public/private partnership with the development of the project. He cautioned Council about the cost estimates. A big problem with the results presented from the first Task Force was the estimated large dollar amount. He felt that amount slowed down and stopped that process. He stressed these numbers are pure guesses and some estimates. He pointed out that some of these things can be done at a lower cost. In any event, the options are costly and we know we cannot put that cost on the back of the Asheville taxpayer. There are multiple sources of funding but the only way we can get those is by working with our legislative delegation. He felt the economic benefit report will prove again the benefit to Asheville in ways that we don't really think of. He felt Council needs the determination to move forward and seek funding. The time is now.

Mr. Dennis Justice has heard that if the renovating of an existing building would cost more than half the cost of constructing a new building, then you would be better off in the long run of building the new building. He felt Option 1 is the only option that will not disrupt any scheduling. In addition, he felt that Council needs to talk about flexible rates for parking.

Councilman Mumpower felt we are heading down another dead-end with the two proposals presented. He agreed we need a community gathering place that will be practical, affordable, pleasant and useful. However, we have "hotdog pocketbooks and steak visions." In both options presented, there will be two facilities, which equals two staffs, two budgets, and two potential dark holes (due to that type of facility and expense). We now have the lowest deficit of any facility he is aware of, and there is a reason we do well – we don't have a tremendous debt service. He felt that Option 3 would be to do a cursory repair job on what we have – with the Heery Study estimate of $10 Million, understanding that all the numbers are estimates. He, however, is concerned with the numbers because they can cause great harm is we are not extremely careful. He suggested an Option 4, which would be to upgrade the Civic Center. This would not be easy, but there is a potential to fix what we have, e.g., have a design competition. If we can get the 1-cent room tax, that would fund roughly $26 Million in debt service. The middle ground between the proposals is approximately $30 Million and that is a point of realism for a City of 75,000 people. A lot of people in the County talk about a bigger and better Civic Center, but the bottom line is the Asheville taxpayers carry the ball and we have to be fair to them. He noted that the some of the example projects mentioned by Mr. Tessier did not require a large participation by the City of Asheville that this project will require. When he looks at the people who will be paying the majority share of this and then looks at the other needs in the City, e.g.,

infrastructure, affordable housing, tax relief, etc., the proposals presented represents a step towards an elitist solution not practicable to our pocketbooks, especially when there are other options available. Because he felt it would be a terrible mistake to not look closely at all of our options, he requested the Task Force to look at the option of a bare-bones upgrade of our facility to keep it going, and an option of a more moderate renovation which will take it into the next 15-20 years.

Councilman Davis said that the Task Force is asking is for Council to accept the Task Force Report because it is the report of the people. The Report is thinking "outside the box." He personally didn't think this is something that the City taxpayer should shoulder either. The Task Force is asking that City Council take the Report on advisement until our economic impact study comes in June. Then we can determine if it is useful to spend the generous offer of $10,000 to get real figures about the feasibility of the Parkside site. The Task Force is just asking Council to give them the opportunity to prove whether or not the Report is flawed in its thinking or is genuine in its thinking. The third option of $15 Million (from the Heery Report of four years ago which was $10 Million, but $15 Million at today's costs) would be a genuine remodeling, making the Civic Center ADA compliant and making it usable. That option was looked at, however, the Task Force felt compelled to bring this Report forward after six months.

Councilman Davis moved to accept the recommendations of the Civic Center Task Force on advisement until the economic impact study is brought forward and that in the meantime staff be directed to flush out those details of how the $10,0000 offered by the AACPA will be used in determining the feasibility of using the Parkside site. This motion was seconded by Councilwoman Cape.

Vice-Mayor Jones hoped that in the next level, the feasibility study will have information about the private development aspect of it. She pointed out that she has a real problem using the sales tax as a funding tool and felt we needed to be looking at other creative solutions.

Upon inquiry of Councilman Freeborn about the need for a new arena opposed to renovating our existing arena, Councilman Davis said that the floor space will have to be remodeled. The Heery Report recommended $25 Million, but we don't envision something of that magnitude. The size of the arena is good and effective, but not for ice hockey. We do have ADA problems and load-in problems, but that can be fairly readily remedied. We also need a full-service kitchen, which renovation would improve our revenue stream. In combination with those renovations and the Thomas Wolfe Auditorium becoming a flat floor, we would have another venue to improve our revenue stream. In summary, he felt like if we do a rehabilitation of our arena (between$10-15 Million) we could be very effective, but that is an integral portion of Option 2 and those figures would have to be fleshed out.

Councilman Newman felt that in addition to Options 1 and 2, Council needs to look hard at Option 3 as well. He felt we needed to put the effort of determining the future of the Civic Center within the context of other community priorities and our financial realities, e.g., infrastructure needs, safe and affordable housing, and need to attract good jobs for our community that pay a living wage. An important priority for him is that with the kind of economy that we have of an increasingly high cost of living and we don't have that many jobs that pay good wages, we must be careful to not increase the tax burden that middle class and low income families in our City pay. In addition to looking at these three different options for what is possible, we need to do some additional analysis of the revenue options themselves. His level of support for choosing different revenue options will be predicated on how they affect the middle class and low income families. With regard to the Parkside option, he is looking forward to exploring that and the other options. However, with the way our downtown is unfolding, that piece of property is an extraordinarily valuable asset to the City of Asheville – the tax value is approximately $8 Million now. If we sold the property and put it on the tax rolls, that by itself would generate

approximately $400,000 a year just in property taxes. He felt we should look at the public-private opportunities, but be very careful about what we do with that property, because those resources could address a range of community needs.

Councilman Mumpower suggested Council turn this back to the Task Force and ask you to at least explore the other two options and give us your recommendation about possibilities.

Councilman Davis explained some of the concerns regarding the Thomas Wolfe Auditorium renovations have been explored by Mr. Richard Fort. He stated that if Council requests the Task Force to come up with other options, he was confident they can do it. But, they have come with these two options and they would like to do a little more study on them and a third one, if Council chooses.

In response to Councilwoman Cape, Councilman Davis explained the scope of the $12,000 economic impact study. In response, Councilwoman Cape said that there is a real shift in what economic impact is within cities. It's no longer simply the old manufacturing model of attracting large factories to employ people. It is the quality of life and health, and what amenities you have in that community that you can offer people. Those are kind of ways you incenticize building economic bases onto which you have people employed. She hoped that kind of information will be available in that study.

Mayor Bellamy said that we do have a lot of issues impacting our community, however, when we look at the vision of our community, we need to remember the Civic Center is a long-term vision. It's important that we don't make a decision based on our short-term peril. We need to look at where we want to go as a community and how do we get there. She believes that is in partnerships and looking at how we can partner with the groups in the Chamber as well as the Buncombe County Commissioners and our legislators, understanding it can't be only the City taxpayers as it has been in the past. When this Council has the opportunity to cast a vision and see it through, it necessitates the need for us to come together. We need to look beyond where we are in our budget cycle and understand that what this Task Force has presented to Council is a bigger vision. She supported investigating the Parkside option in more detail and felt there should be some refurbishment of our Civic Center. We should look at all funding mechanisms and not close any doors. She didn't envision Council coming back in 60 days with a preferred option, because she felt Council (1) needed to take their time to make sure they are talking to the right people in the coalition building; (2) will need to review the economic impact study; (3) make sure we have the feasibility study for the Parkside option; and (4) investigate if there is a coalition of individuals who want the champion arena. She supported accepting the Report understanding that there is more work to be done in order for us to build a coalition, get a good sense of the community and to cast and follow-through the vision of our community.

The motion made by Councilman Davis and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Newman voting "no."

Councilman Newman said that he had planned to vote for accepting the Task Force Report, but at the every end of the discussion he became concerned that a vote for it may be a vote to just explore the two options recommended. However, it sounds like there are other opportunities for taking a genuine hard look at the less expensive, fix-it oriented scenario. Again, he was supportive of exploring the two options, but hoped that they take a genuine look at the other option as well.

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At 7:19 p.m., Mayor Bellamy announced a short break.

B. RESOLUTION FINDING THE UNOPENED FIVE-FOOT RIGHT-OF-WAY OFF FAIRMONT IS NOT PART OF AN ADOPTED STREET PLAN

Mayor Bellamy said that an e-mail was received on May 3, 2006, from Jason D. Kraus, attorney representing the applicant, stating "I respectfully request that you remove from the Council's agenda Mr. Rundell and his request for withdrawal of the 5-foot right-of-way."

C. RESOLUTION NO. 06-102 - RESOLUTION AMENDING THE 2006 CITY COUNCIL MEETING SCHEDULE TO ADD A PLANNING, DEVELOPMENT AND GROWTH MANAGEMENT FORUM

Mayor Bellamy said that at the *Goals for Asheville* forum held on January 13, 2006, citizens rated growth and development as their top community priority. In addition, growth and development was the only priority area that every participating focus group held in common. In order to gain additional citizen feedback and input regarding this focus area, City Council is planning to host a second forum in the *Goals for Asheville* series focusing on planning, growth and development priorities. This forum meets City Council's goal to have continued forums that provide citizen the opportunity to give input on specific focus areas.

The purpose of this memorandum is to provide a suggested framework for planning City Council's May 30 forum. This preliminary plan is meant to serve as a starting point for City Council's discussion and input. The final plan for the upcoming event will be modified according to Council's direction received at the May 9 worksession.

Community Forum Preliminary Plan

- Logistics: The forum is scheduled for Tuesday, May 30 at 6 p.m. Staff is working to determine if Asheville High School (419 McDowell St.). Asheville High is accessible via public transportation, has adequate parking and can accommodate a large number of citizens. The May 30 date falls on a fifth Tuesday within City Council's typical rotation for community meetings.

- Format: The proposed format for the May 30 forum is modeled after the nominal group process used at the *Goals for Asheville* forum on January13.

  (1) Citizens will gather in the auditorium for welcoming remarks, a brief update on current process improvements and other relevant information about the forum.
  (2) Participants will then be divided into small focus groups where citizens will be charged with developing consensus on their top three goals in the planning, development and growth management area. To develop consensus, the groups will list all ideas, vote on the top three goals and develop a final list the group believes the city should adopt as priorities.
  (3) Focus groups will assemble at the end of the program to share results through a selected speaker from each group.

- Promotion: Invitations will be sent to all city boards and commission members, Citizens Academy graduates and current participants, organized groups (CAN, CIBO, etc.), contacts from the city manager's development forum, neighborhood association presidents and other key stakeholder organizations (Chamber of Commerce, Land-of-Sky Regional Council, etc.). The event will also be promoted via press release, in the city's eNews, on the city's web site and through newspaper advertisement.

Based on the success of the January 13 *Goals for Asheville Forum*, staff believes a similar format can produce meaningful results. However, staff would recommend implementing

some process improvements based on lessons learned from the January13 forum (e.g., improving the efficiency of sign-in procedures, etc.). In addition, this preliminary plan is open for City Council's ideas and will be modified to achieve Council's goals.

City staff recommends City Council schedule a Planning, Development and Growth Management Public Forum on Tuesday, May 30, 2006, at 6:00 p.m. at Asheville High School, located at 419 McDowell Street, Asheville, N.C.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-102. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 15

VI. OTHER BUSINESS:

Mayor Bellamy said that Council continued the budget worksession on Monday, May 8, 2006, until this meeting to receive additional information. After City Manager Jackson summarized the major outstanding issues regarding business licenses and outside agency funding, Council briefly discussed the issues and gave City staff further direction. At 7:56, Mayor Bellamy then closed the budget worksession.

Councilman Mumpower thanked several individuals and groups for tackling the newest design for the Top-A-Stop at the top of Livingston Street and Victoria Road.

The following claims were received by the City of Asheville during the period of April 21 – May 4, 2006: Cimarron Villas (Sanitation), Nathaniel Woods (Water), James E. Wilson (Sanitation), Russ Thomas (Parks & Recreation), Elizabeth Duvall (Streets), Hearns Bicycle (Water), and Azalee Jackson (Police). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Homelessness Report

Mr. Scott Rogers, Executive Director of the Asheville-Buncombe Community Christian Ministry (ABCCM), representing the Rescue Mission, Salvation Army and ABCCM, presented City Council the demographics of the homelessness, in which Asheville estimates 2,000 a year. He reviewed with Council the characteristics of homelessness, along with the treatment programs available. Mr. Rogers outlined the current beds available in each shelter, the shelters scope of services, their accountability in services, and employment statistics in 2005 for the three shelters.

Mr. Rogers said that the ABCCM, Salvation Army and Rescue Mission all agree with the points that are made in the 10-Year Plan to End Homelessness, but ask the City, County and State leaders to reconsider the priorities to match existing realities in services: (1) policy changes; (2) incentives for collaboration; (3) prevention; (4) adult crisis intervention and social detox; (5) build capacity with existing providers; and (6) annual report on benchmarks of progress.

In summary, Mr. Rogers said (1) the organizations who are doing a tremendous job could do more with the support from everyone; (2) give law enforcement the policies, procedures and ordinances to enforce personal responsibility and punish criminal behavior so that our homeless

are not victimized by criminals or misperceived as criminals; (3) give the technology tools that improves coordination and collaboration to all providers; (4) support building on existing services; (5) support expanding homeless prevention and homeless services that lead to responsible and productive residents in our country; and (6) support the services financially. The community has already invested many thousands of dollars into these faith-based organizations who exemplify the most cost effective services and produce stellar outcomes in the number of lives that are changed each year. While there may be cause to develop new systems of care or create new organizations to address similar needs, we as that the City, County and business leaders prioritize their funding, resources and strategies around ways to strengthen our existing providers who have demonstrated the competency, capacity and commitment to care through a combined 127 years of service to this community.

Mayor Bellamy thanked Mr. Rogers and the Joint Task Force members for their hard work on this effort. With the approval of Council, Vice-Mayor Jones, Chair of the Housing & Community Development Committee, said that this issue will be reviewed at the next meeting of the Committee.

Pritchard Park Homeless Ministry

Mr. Adam Ripley, Director for the Pritchard Park Homeless Ministry, said that he serves the homeless breakfast on Saturday mornings in Pritchard Park since September 2005 and was removed from the Park on May 1, 2006, due to a safety concern, which he disagrees with. He had already obtained an open flame permit from the Fire Department, and no one told him he needed a use permit. However, someone from the Downtown Commission advised Mr. Ripley that he needed a use permit as well. He then contacted the Parks & Recreation Department to obtain a use permit for Pritchard Park but was told he would not apply for Pritchard Park, but was given an application for a use permit for the City Hall parking lot. He felt that removing his group from the Park was nothing more than discrimination towards those who are not as prominent and successful in our community. He felt the new location is inaccessible for multiple reasons. In light of Council's 10-Year Plan to End Homelessness, he felt that removing the group from the Park, the City has reduced their capacity to care for the poor and also have removed them from the public eye. Many of his volunteers were people walking by on the street and offered to help in that way – so moving them to the parking lot, that opportunity has been eliminated. Regarding the safety concern, he agreed that they sometimes serve up to 300-400 people, but they do not serve them all at one time in the Park. He asked Council to examine the decision by the Director of Parks and Recreation to relocate his group to the City Hall parking lot. In summary, he will apply for the use permit for Pritchard Park and if he is denied the permit, he feels it is just a prejudice against the poor.

There was a brief discussion about the need to be consistent and fair in applying our policies. Ultimately, Assistant City Manager Jeff Richardson suggested Council allow him the opportunity to meet with Mr. Ripley and the Director of Parks and Recreation to collect more information, which he will report back to Council on Friday.

Affordable Housing Coalition

Mayor Bellamy recognized Mr. Philippe Rosse, Executive Director of the Affordable Housing Coalition of Asheville and Buncombe County, who said that in December, his Board unanimously approved their becoming the lead entity for the 10-Year Plan to End Homeless. He then introduced Ms. Amy Sawyer, 10-Year Plan Coordinator for the Program, who was optimistic about moving forward with the Plan.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:30 p.m.

Magdalen Bowlson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – May 16, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

ASHEVILLE HIGH SCHOOL'S ENHANCED SERVICE BILL – ASHEVILLE TRANSIT SERVICES

Ms. Alicia Funderburk, Ms. Leah Downey Mr. Zach Cobb and Ms. Alice Royer presented City Council with their proposed enhanced service bill regarding the Asheville Transit Services. They proposed that this local legislation should be enacted with the purpose of improving the Asheville transit system through the means of making it more accessible for citizens.

To achieve this goal, the transit times would be changed to a more suitable and practical schedule. Also, the routes of the buses would be re-evaluated to reach a larger percentage of the constituents. Finally the marketing and publicity of the transit system would be drastically increased to raise awareness of this new opportunity.

This legislation will not only benefit the citizens choosing buses over cars but it will benefit all the people of Asheville. By allowing more people to ride the buses this legislation will be reducing the number of cars on the road and thus the amount of greenhouse gas emissions. Also, the new buses purchased will be diesel based, and therefore allowing them to be run on bio diesel.

The local head of transportation and transit system would head up this legislation and determine what is necessary for implementation. In addition to this legislation would call on the congress representatives of North Carolina to use their franking privilege in order to promote this opportunity to the citizens.

To be able to reach more citizens, this legislation would call for the purchase of 6 new buses at $16,500 each to be added to the present available fleet. In addition to this, there will also be a cost to cover the wages for the added bus drivers. If we increase the route times from 5A.M. to 12 A.M, this will cost approximately 1 million dollars, if regular scheduling is maintained. In order to pay for these expenses we would be increasing the average fare to one dollar, and the transfer fare to 25 cents. Federal grants based upon environmentally-friendly transportation can also be taken advantage of.

Finally this legislation would help all of the people Asheville either directly or indirectly and therefore it is our job as congress people to pass it to better our constituents.

Using a powerpoint presentation, they said that the problem is (1) Currently Asheville Transit Services is not easily accessible for all citizens of Asheville; and (2) This is because of inconvenient times for necessary transportation, such as to and from work.

The impact on everyday people will (1) save people money (a) spend less on gas; and (b) little cost to get around; and (2) help the health (a) less pollution; and (b) decrease asthma and other respiratory diseases.

Economic benefits include (1) Using the local Bio Diesel pump will feed Asheville economy; (2) Protect Asheville from drastic economic impacts as gas prices continue to rise; and (3) Fares put money back into Asheville city system, which will help all citizens.

Environmental impacts include: (1) Cleaner air (a) Less cars on road; and (b) Bio Diesel buses; and (2) Bio Diesel Buses (a) Cost more now; (b) Reduce cost later; (c) Less emissions; (d) Use less gas; and (e) Fill up station already in Asheville; (3) Less Cars on road; (a) Less emissions; and (b) Less gas; (4) Gas will run out (a) Limited supply; and (b) In Middle East (poor relations); and (5) Look to alternatives (a) Gives us more time.

Proposed legislation costs would be to increase buses on 6 routes based on demand (a) At $16,500 per bus this will cost $99,000 (1 bus per route); (b) These will be diesel run buses to allow for the use of bio-diesel fuel; (c) They will also be smaller (16 passenger) buses to use on less frequented routes; (d) To provide for bus driver wages for the first year it would cost approximately 1 million dollars; (e) This cost based upon full scheduling from 5 am until 12 am (our proposal is not based upon full scheduling); and (f) According to our proposal, routes and times will be based upon demand.

Proposed Funding would include: (1) fares raised by 25 cents to $1; (b) Transfer fairs raised by 15 cents to one quarter; (c) During major festivals, such as Bele Chere, fares would be reduced in half to encourage more people to ride; and (d) Federal funding is also available in the form of grants based on environmentally-friendly transportation.

We feel that this proposed legislation would benefit all of Asheville's citizens by decreasing the amount of emissions and encouraging more citizens to use the buses as alternatives to private vehicles.

The students responded to various questions/comments from Council, some being, but are not limited to: what compelled you to bring this legislation forward; where did you research the prices for buses; they you look at the feasibility of the City purchasing hybrid City vehicles; what is the amount of grants being offered and by what agencies; have you researched what the bus would add in the affordability of each family or car owner, taking into account the cost of car insurance, gas, car maintenance; and have you researched other angles of view.

Upon inquiry of Mayor Bellamy regarding the next steps for the students, Ms. Downey hoped that there could be a student representative on a committee. Councilwoman Cape also encouraged the students to attend a Transit Commission meeting.

Mayor Bellamy asked the Boards & Commissions Committee investigate the possibility of tapping into the student representative resource on some of our committees.

Councilman Newman said that Council will be looking at things to market our transit system and hoped that the students would work with other young people to encourage ridership. He felt that the word-of-mouth kind of community outreach would be great.

Councilman Freeborn encouraged the students to utilize the student summer pass system and asked that if they see something good or something that needs improvement to contact our Transit Services Director Bruce Black.

Councilman Mumpower said that he would be interested in talking with some ways students can help with the Top-A-Stop Program.

Mayor Bellamy said that City Council is considering some components of what was recommended in the presentation. And, on behalf of City Council, Mayor Bellamy commended the students and their instructor Jotwan Daniels for their research in presenting this proposed legislation to City Council.

LAND USE ISSUES

Mayor Bellamy said that this is an opportunity for Council to present information and give direction on items they would like for City staff to work on, including amendments to the Unified Development Ordinance (UDO) and policies on growth and development. This will begin setting the stage for the workload of the Planning & Development Department over the next 12-18 months. This is the first step setting the tone for growth and development, with the second step being the community forum on this issue on May 30, 2006.

Councilman Davis' comments are as follows:

1. What is going well?
   - Staff response to developer, neighborhood groups and public boards.
   - Public process that includes Technical Review Committee (TRC), Planning and Zoning, review and hearings of Level III projects and zoning applications by Council.
   - The UDO, though cumbersome, is a development guide that is specific and readily adaptable to change.
   - Planning and Economic Development Committee
   - Corridor planning
   - Continued improvement in Permitting and Inspections

2. Areas that need improvement.
   - Enforcement
   - Permitting
   - Communication
   - Continued improvement of UDO
   - Adequately staff Planning Department for the workload they are handling.
   - Ridgetop, hillside protection

In response to the question "If we can only accomplish one thing in the area of planning, development and code enforcement during the next year, what would it be?", Councilman Davis' response was to find the balance that makes Asheville attractive to development, that offers good jobs and tax base, without compromising quality of life.

Mayor Bellamy's comments are as follows:

1. What is going well?
   - Planning & Zoning Commission's comprehensive look at development
   - Signage of Planning & Zoning hearings
   - Staff's ability to meet with developers in advance of putting in an application in for rezoning
   - Recent Downtown Commission recommendations and process they completed to make the recommendations
   - Corridor updates from staff
   - Comprehensive nature of the 2025 Plan

2. Areas that need improvement.
   - Public relations around issues that have been addressed
   - Clarify on how to address concerns

- Need for enforcement on a consistent basis
- Permitting time
- Need for additional staff members
- Communication between departments on permitting issues
- General nature of the evolution of planning documents

Guiding principles: The UDO is the City's development manual; however, it is missing guiding principles. We live in Asheville, N.C., which is located in the mountains of Western North Carolina. Our UDO should have guiding principles that keep in mind our sense of place – which is of major concern for many residents who come to Council to dispute a proposed development. City Council and staff should work with the community to develop guiding principles for the UDO, which will assist with planning future development in our community.

Small Area Plans: Work to create additional small area plans that are created by neighborhood residents in collaboration with business owners, property owners in and around the neighborhood, city staff and other interested parties. These plans will serve as a neighborhood's vision for their area. The West End/Clingman Avenue (WECAN) neighborhood residents created a plan that is a guide for development in their neighborhood. The developers wishing to develop in the WECAN area or any other neighborhood with a neighborhood plan will have an understanding of what the neighborhood envisions for their area, while at the same time neighborhood residents will understand that the vacant lots that are in their area today may not always remain undeveloped. The plan will be a guide but not a mandatory tool for a project. This could potentially reduce a significant amount of negative response to development in and around neighborhoods.

Affordable Housing: I support the creation of a comprehensive affordable housing plan to effectively address the growing affordable housing problem in the Asheville community that looks at density bonuses, zoning regulations and financial support in a comprehensive manner. For example, (1) Increase density bonuses for developers who develop affordable housing; (2) Provide density bonuses to developers who build affordable housing on and near transportation routes and on or near the City's major corridors; and (3) Encourage more mixed income housing. Provide density bonuses for developers who put affordable housing in with market rate housing.

Councilwoman Cape's briefly reviewed with Council her ideas about how Council might accomplish some of the provisions from the text of our guiding document – the Asheville City Plan 2025:

1. Update UDO to include form based codes and contextual design for each distinct district.
    a. Traditional neighborhood development patterns should be recognized and encouraged via our zoning districts
        i. Codify existing neighborhood plans
        ii. Determine if other definable neighborhoods should organize for community plans, i.e. Merrimon Corridor Group and support their development and work
        iii. Look for opportunities to create transition points, e.g., a roundabout or entry marker where land use character changes, where a commercial area stops and a neighborhood begins. A land use node that demarks the transition from one neighborhood
        iv. Manage transitions between higher and lower density neighborhoods with step down heights
        v. Add pedestrian friendly design requirements to developments, wall heights, fenestration, etc.
        vi. Instead of "mandatory review and voluntary compliance" of design plans for downtown development projects, require "mandatory review and

mandatory compliance" to ensure that new development is consistent with what the City wants for downtown.

vii. Putting more design requirements into the zoning regulations (UDO) will also help accomplish this.

2. Specify maximum square footage of disturbance based on slope steepness
   a. Steep sloped and environmentally sensitive areas should be identified and preserved while allowing alternatives to development that protect private property rights
      i. Efforts must be made to preserve sensitive areas, such as steep areas, flood plains, and other unique natural areas, as well as limited agricultural lands and open spaces
      ii. Permit duplexes and low intensity multifamily development meeting design and spacing requirements are as use by right subject to special requirements in single family zoning districts.

3. Make changes in our standards about the maximum square footage of a building instead of the number of units
   a. Create an option to incorporate duplexes and multi family where single family once existed if it is within the same footprint as the neighborhood context
   b. Create an ordinance allowing cottage developments within residential neighborhoods, modifying the subdivision rules for cottage developments

4. Remove loopholes /update and clarify UDO
   a. Single-family homes currently are not guided at all in addressing issues of storm water run off/parking requirements/slope disturbance, height requirements, footprint, size, etc.
   b. For primary buildings in CDB I and II
   c. For drive throughs
   d. For buffering requirements
   e. For loading zone and street access requirements
   f. Attached signs
   g. Clarify and enforce remodeling and renovation requirements
   h. Consider the creation of pattern books to help streamline construction and planning processes

5. Utilize smart growth codes, form based code models, district overlays, etc to achieve goals
   a. Direct staff to develop new zoning tools to promote (smart growth)
   b. The City should assure that new development and redevelopment is of high quality, complementing and adding to the character of the City of Asheville.
   c. Revise standards to require connectivity between parcels and development projects. Connectivity should include vehicular connections, frontage or service roads, alleys, and/or pedestrian connections.
   d. Establish standards for building orientation through the development of building templates that address build-to lines and site relationships.
   e. Develop design templates for structures that promote contextual design
   f. Through revision of development standards, the City should eliminate the opportunity for suburban development in urban settings.
   g. The City should identify areas for development focus, identifying and establishing standards for the type of development appropriate for the areas.
   h. The City should develop design standards for multi-family structures and non-residential uses in single-family areas.

l. The City should develop plans, programs, regulations and incentives for upgrading developed sites to meet new development standards.

6. Increase funding for sidewalks/greenways and bike path initiatives through bonding mechanism or similar option like fee in lieu from new development. Explore impact fees for infrastructure enhancements for new developments and permits.

7. Consider the establishment of neighborhood councils for the ETJ areas to give them a voice in their governance

8. Encourage redevelopment along commercial corridors to encourage mixed use housing options/commercial/ live work/etc… I.e. Patton Avenue, Tunnel road, etc.
    a. Mixed use redevelopment and infill development efforts must be concentrated on corridors where land values are greater than the value of the improvements on the land
    b. A minimum residential density of 8.16 units per acre is necessary to support transit;
    c. Development must be located in those areas where infrastructure exists or can be easily
    d. Major corridor and Brownfield redevelopment incentives for mixed use redevelopment
    e. Consider the development of a flexible zone that would permit higher density at appropriate locations within a five-minute walk of transit stops. The higher density development should be in accordance with design standards tailored for these areas.
    f. Residents and visitors must be offered viable transportation options for moving around the City
    g. Existing road systems must be used more efficiently due to the constraints on building new roads and widening existing ones;
    h. The City should permit and encourage transit supportive density (8-16 units per acre minimum) along and adjacent to major corridors and at logical transit nodes
    i. The City should revise its development standards for corridors to ensure that the corridors are developed in an urban manner.
        l. Development standards should be prepared for primary corridors that address the need to increase density along the corridors. The standards should provide incentives for mixed-use development that incorporates residential uses.
        ii. Minimum setbacks (or build-to. lines) should be required, with buildings permitted to front on the street.
        iii. Prepare design guidelines for corridor development. Guidelines should promote an urban style (multi-story, pedestrian oriented) of architecture along the corridors.
        iv. Create opportunities for the retrofitting of single use commercial and retail developments in to mixed use communities
        v. Invest city infrastructure in the redesigning of corridor areas to encourage reurbanization
        vi. Invest city infrastructure in existing neighborhood business districts

9. Create incentives for green/energy efficient buildings, neighborhood design compatible and affordable housing
    a. streamline the permitting process for projects that fit specific guidelines
    b. support tax incentives for green/efficient affordable and design compatible building

10. Support assimilation of public green space throughout the city via fee in lieu for green space lot requirements
    a. The City should ensure that the environmental quality and natural beauty of the area is protected as tracts of undeveloped land
    b. Revise the City's open space standards to require the incorporation of more well-defined open space into the City 's land use pattern
    c. Provide an option for the payment of a fee-in-lieu-of providing open space in developments.
        i. Incorporate conservation/open space design standards into the City's subdivision regulations. This alternative design template should be available to all subdivisions and required for those above a certain size and/or proposing development of sensitive lands (steep slopes, unique natural features, wetlands and flood plains, etc.)\
        ii. The City should identify sensitive areas and steep slopes that should be treated with caution during development and prepare additional regulations that promote their protection while reasonably respecting private property rights; such regulations may include transfer of development rights
        iii. The City should revise its standards to permit clustering of buildings in residential developments in order to avoid steep areas, ridge tops, wetlands, and other sensitive areas.
        iv. The City's open space standards should require the connection of open space areas where feasible and logical.
        v. The City should develop a resource conservation zone that provides incentives for the protection/preservation of important natural resources during the development process.
        vi. The City should develop an estate zoning classification requiring very large lots to apply to selected areas when such a development pattern is already a part of the neighborhood or to protect critical environmental or open space areas.

11. Pursue statutory authority rights to give the city greater development flexibility
    a. Pursue stricter ridgeline control authority
    b. The City should pursue statutory authority for a greater variety and range of development tools in order to actively promote development and redevelopment within the City and its ETJ.
        i. The City should pursue statutory authority for transfer of development rights in order to provide an opportunity to protect environmentally sensitive areas, scenic lands and farmland through a market-based regulatory incentive program.
        ii. The City should further investigate the benefits of land value taxation, and, determine if useful for our community for community development goals, i.e. greenways, parks, appropriate infill development
        iii. The City should pursue legislation authorizing inclusionary zoning for larger residential developments
        iv. The City should pursue statutory authority for mandatory design review for areas other than local historic districts in order to promote a Smart Growth development pattern by overcoming land use compatibility objections

12. Requirements for wildlife/sensitive plant relocation

13. .Salvage requirements for demolition projects.
    a. Preserve and reuse historic materials in public works projects.

b. Reduce reusable construction materials going to landfill

14. Enhancement of existing density bonus provisions for preservation of key environmental features.

15. Close loopholes in size of commercial structures in the HB districts.
    a. Set maximum size at 50,000 sq feet.
    b. Prohibit Blank walls, no uninterrupted length on any façade in excess of a specified amount,
    c. codify fenestration of at least 60 %,
    d. building must be in scale and character with traditional neighborhood/urban design and no more than 50% of parking between the building and the street
    e. The City should refine its development guidelines for large retail uses to ensure that the site and building design for these uses are reflective of the natural and architectural heritage of Asheville.

16. Create River way development plan in conjunction with stakeholders that includes a full range or commercial/mixed use/residential/work live units etc.
    a. City should take the lead as the voice for a river redevelopment vision
    b. consider flex zoning to allow developers/property owners to easily supply space in response to changing market/community needs
    c. utilize TIF funding mechanisms for redevelopment

17. Create a comprehensive citywide street plan in conjunction with Neighborhood Districts, the Greenways committee, the transit committee, and the DOT
    a. The City should work with property owners, institutions, and public and private agencies to enhance the streetscape along streets and roads in the City.
    b. The City should prepare streetscape design plans to serve as guide for development and treatment of the City's streetscapes.
    c. The City should reevaluate how the public right-of-way is used. As part of this reevaluation, the following should be considered
        i. Revision of the City's engineering standards to require street trees between the street and the sidewalk.
        ii. Permitting on-street parking on most streets.
        iii. Eliminating private use of the public right-of-way unless approved through a process
        iv. As new development is proposed, encourage/provide incentives for developers to incorporate streetscape terminating vistas (public art, buildings) as part of their developments.
        v. The City should work with TDA/ NCDOT and (neighborhood stakeholders) to identify gateway areas and develop a streetscape/landscape plan, including signage, for each gateway that emphasizes each area as an important entrance to the City
        vi. The City should work with utility companies to bury overhead utility lines as funding becomes available.
        vii. The Planning and Development Department staff should continue to work with the City's Urban Forester on better selection, placement, and care of street trees
        viii. The City should develop an ordinance requiring tree pruning to be done according to accepted professional standards and practices.
        ix. Rename streets where necessary for ease of identification and travel
            Wilma Dykeman Riverway
            Hwy 25 Merrimon/Broadway/Biltmore
            Broadway/Lexington

Patton/College/Tunnel

x. The City should work with local artists and community organizations to incorporate public art throughout the City of Asheville, such as Downtown, the river district, historic districts, and urban and neighborhood corridors. The streetscape plans should work to beautify these areas, reduce the environmental impacts of development, encourage pedestrian activity, and uniquely identify these areas. The streetscape design plan should provide for the following:
    a. an inventory of street trees.
    b. a schedule and policy for replacement of street trees.
    c. Streetscape design templates for different areas/categories of streets.
    d. Appropriate setbacks and building heights for different areas/categories of streets.

She questioned if we have the comprehensive conservation map of the city and extraterritorial jurisdiction area in the year 202, and what is the status of our architectural inventory identified in the 2025.

Vice-Mayor Jones said that there is basically a cultural and organizational change that is happening within the City of Asheville's operations in terms of planning & development and building safety. Anytime you have that type of cultural change, it takes time, and we are now beginning to feel some of those impacts. The Planning & Economic Development Committee had an update on the implementation of the Development Review Task Force recommendations and it is incredible what has been implemented in less than 12 months. We are getting some positive feedback from the developer community. We are also poised to have that type of input from the community at large. The benchmarking of that shift and openness is going well.

She felt that opportunities for improvement have to do with building public trust. That will play out in issues of enforcement, in issues of telling the stories of what we are doing, in owning our mistakes when we make them, and in building a neighborhood liaison. She agreed that most development things are going fine, but it appears that the big mistakes are with the high profile things. She hoped that we will continue to work on our mistakes.

In response to the question "If we can only accomplish one thing in the area of planning, development and code enforcement during the next year, what would it be?", Vice-Mayor Jones' response was how do we as a City incenticize our community needs around affordable housing – places where our working people can afford to live.

Councilman Newman briefly reviewed with Council his thoughts as follows:

1. What is going well?
    - Changes in the permitting process
    - Asheville is blessed to have visionary developers
    - Strong green building community

<u>Potential policy options to encourage healthy community development in Asheville</u>

Key goals:
- Attract and retain good jobs in Asheville
- Create incentives for use of green building practices in Asheville
- Create stronger incentives for builders to create affordable and work-force priced homes
- Strengthen enforcement of development standards and communication between neighborhoods and the city.

- Support in-fill development that is in character with our community.
- Encourage energy savings and reduce fuel costs.

Economic development policy

Discontinue policy of giving special grants to select companies who propose locating or expanding here. Develop specific criteria and give property tax rebates to all manufacturing businesses and developers who meet the criteria.

- Manufacturing companies—20% annual tax rebate; perpetual; contingent on company paying a living wage to very high percentage of employees.
- LEED/ Healthy Built Home certified buildings—Each level of LEED/ Healthy Built Home certification = 20% tax rebate for five years. – This could apply to new construction or renovations.
- Affordable housing—25%- 75% tax rebate for 5 years depending on percentage of affordable housing included in development.
- Structured parking—50% rebate for 10 years.
- Any HOPE VI-oriented projects—50% rebate for 10 years.

UDO Reforms:

1. Regulation of large retail developments:

- Cap size of retail buildings in Highway Business/ Regional Business at 75,000 but provide density bonuses for green building, innovative design approaches; direct staff to develop specific criteria for density bonuses.
- Close the loophole in the UDO that allows a tenant within a "multi-tenant" development to be larger than a tenant in a "single-tenant" development, which is 75,000 sq. feet. Again, the cap can be exceeded for projects that include green building and innovative design elements.

2. Incentives for green building and inclusion of affordable housing:

- Automatic, use-by-right density bonuses in UDO for projects that include green-building elements, affordable housing and transit orientation. These density bonuses will not trigger City Council review is they exceed the TIER III thresholds. It may be useful to create a "points system" whereby including carious degrees of affordable housing, green building elements, etc will be awarded "points" and the level of density bonus you can get is based on how many points a project receives.
    - Projects that include affordable housing—every 10% affordable = 15% density bonus, up to a 100% maximum.
    - Green building—every level of LEED or Healthy Built Home certification = 15% density bonus.
    - Transit oriented developments can receive a 10- 20% density bonus.
- Create permit fee reduction for green buildings similar to current fee reduction for affordable housing.
- Small scale multi-family allowed as a use by right in all residential areas if they meet design criteria, to be developed by staff. This may include limits on the foot-print size of new developments, or requirements that the buildings can't be larger than most of the other homes in the neighborhood, etc.
    - Duplexes allowed in RS-2 areas.
    - Duplex and triplex allowed in RS-4 areas.
    - 4-plex and smaller allowed in RS-8 areas.

3. Regulation of hill-side development and incentives to conserve green-space:

- Hillside development standards—should there be limits on the size of footprints or alternate setback requirements on steep slope development (even for single family homes?)
- Open space requirements—strengthen the open space requirements but also create a "Fee in lieu" process if developers don't think additional open space makes sense for their project.

Enforcement
- Bump up/ clarify penalties for violations. They should not be punitive but they need to be an effective deterrent to violating our rules.
- Require developers to clearly mark buffer areas and mature trees to be preserved prior to grading or land clearing.
- Support hiring neighborhood liaison position.

Form based codes:
- Codify existing neighborhood plans—i.e. WECAN.
- Explore creation of neighborhood-wide form based codes for each major area of town (i.e. north, south, east, west and downtown).

Green building/ green energy
- All new City of Asheville buildings over 5000 square feet will be LEED certified.
- Include a green building checklist for builders to review during the permitting process, outlining green building options and benefits of green building to developers. No requirement to actually include green building in the project.
- Asheville sets a goal to reduce energy use by local government by 10% within 1-2 years.
- Asheville sets a goal to reduce fuel usage by ___ % over ___ years.

In response to the question "If we can only accomplish one thing in the area of planning, development and code enforcement during the next year, what would it be?", Councilman Newman response was to create a broad range of regulatory and economic incentives, including use-by-right density bonuses, expedited permitting, increasing thresholds for Tier III review, and property tax rebates which include affordable housing, green-building elements, and innovative design elements.

Councilman Mumpower felt that we have a busy City where development is working well for the most part. He felt that some organizations and activists are over-reacting and socializing the problems that we do have. Many people move to Asheville but then want things to stay the same. We live, however, in a world that is dynamic and requires change. He felt the more we control, the more expensive and elite our City becomes. He personally believes that we should approach our UDO as an evolutionary vs. a revolutionary document. We need to be careful with existing neighborhoods and using tax rebates as an incentive for affordable housing issues is a good idea. When you look at all the new construction in our City, there is very little small construction and small is where affordable comes from. We need to ask our staff to come up with incentive packages that encourage real small development because that is how we are going to be able to get people to live in our community. He feels we have a history of being loose and dynamic and we shouldn't walk away from that by trying to over control development.

Councilman Freeborn commented as follows:

1. What is going well?
   - Likes the Asheville City Plan 2025

- Downtown Commission is on target and on time
- Council initiating discussion on land use issue
- City staff doing well with limited resources available

2. Areas that need improvement.
   - Need to put more resources into our corridors (charettes)
   - Planning & Development Department needs public relations skills

Planning & Development Director Scott Shuford said that basically many of the ideas and visions that Council has expressed represent a fundamentally different way of thinking than the UDO. Mayor Bellamy's issue about including a lot of guiding principles into the document seems to indicate a different document than a legally worded set of regulations. There are opportunities to add graphics and other things into the document that would simplify it and get to what Council is looking for. Also, if we can find a way to distill Council's comments and the comments from community down in ways that are more simple, we can end up with a document that might have significantly fewer zoning districts and/or a much more simple set of landscaping standards. The developers can use that document more readily and we can still get the results that we are after, but yet still provide some flexibility on dealing with our unique situation. He was very encouraged with the direction Council is going because he sees opportunities for us to incorporate some things that may actually enable the staff to work more efficiently. He said that his goal will be to have all the information compiled for the June 20 worksession, or at the least by the June Planning & Economic Development Committee.

BOARDS AND COMMISSIONS:

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the Committee:

- Reviewed the following three boards and feel they have outlived their usefulness. The Committee recommended (and City Council concurred) dissolving the Americans With Disabilities Act Compliance Committee; the Taxicab Advisory Board; and the Carriage Permit Advisory Board.

- Begin exploring with City staff the potential of expanding the role of the Greenway Commission to be renamed and to include pedestrian amenities and sidewalks.

- Begin initial conservation with pertinent department heads about including transit and parking.

- Was not supportive of increasing the stipend of the Alcoholic Beverage Control Board.

Councilwoman Cape asked that the Boards & Commissions Committee review the recommendation from the URTV Board to expand their membership from 11 to 13 members.

It was the consensus of City Council to instruct the City Clerk to advertise the Civil Service Board vacancy for an additional month.

It was the consensus of City Council to postpone taking action on the Educational Access Channel Commission until September, 2006, at the request of Chairman Tim Amos who would like to meet with the Commission to discuss restructuring.

It was the consensus of City Council to instruct the City Clerk to advertise the vacancy on the Buncombe County Tourism Development Authority for an additional month.

At 4:20 p.m. Mayor Bellamy recessed the regular worksession and began with the budget worksession.

BUDGET

At 5:05 p.m., Mayor Bellamy recessed the budget worksession and returned into the regular worksession. Councilman Mumpower then moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; Gannett Pacific Corporation d/b/a Asheville Citizen-Times Publishing Company, an Hawaii Corporation; Chesapeake Television, INC., d/b/a WLOS-TV, a Maryland Corporation; and County of Buncombe. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Newman and carried unanimously.

At 6:15 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 6:15 p.m., Mayor Bellamy recessed the regular worksession and continued with the budget worksession.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:10 p.m.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – May 23, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brownie W. Newman

FIT COMMUNITY DESIGNATION

Lt. Governor Beverly Purdue was pleased to unveil Asheville's new "Fit Community" street sign. Ms. Purdue explained that Asheville is the first of 8 cities in North Carolina to receive this designation, which is awarded to communities that promote physical activity, healthy eating and youth tobacco use prevention.

PLEDGE OF ALLEGIANCE

Fourth grade students from Mr. Vince Floriana's class at Claxton Elementary School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF THE SONDLEY AWARD TO STEVE HILL

Mayor Bellamy said that the Sondley Award is given by the Historic Resources Commission of Asheville and Buncombe County to an individual or individuals in the community who by word or deed has kindled among the citizenry of Asheville and Buncombe County an appreciation for the history or historic resources of the area.

Mayor Bellamy then recognized Mr. Curtis Walk, Chairman of the Asheville-Buncombe Historic Resources Commission. Mr. Curtis Walk said that the Historic Resources Commission gives the Sondley Award to an individual(s) in the community who by word or deed has kindled among the citizenry of Asheville and Buncombe County an appreciation for the history or historic resources of the area. He presented this year's Sondley Award to Steve Hill, Site Manager of the Thomas Wolfe Memorial.

II. PRESENTATION OF THE BUDGET

A. PRESENTATION OF PROPOSED FISCAL YEAR 2006-07 ANNUAL OPERATING BUDGET AND SETTING A PUBLIC HEARING ON JUNE 13, 2006, TO CONSIDER ADOPTION OF SAID BUDGET

Chief Financial Officer Ben Durant said that this is the formal presentation of the proposed Fiscal year 2006-07 Annual Operating Budget and consideration of a motion setting a public hearing on June 13, 2006, to consider adoption of said budget.

Mr. Durant reviewed with Council the following budget process highlights (1) Nov. 22: Brown & Caldwell Water Rate Presentation; (2) Jan. 13: Goals for Asheville Forum; (3) Jan. 20: City Council Retreat & Long-Range Financial Forecast, (4) Jan. 31: Water System Policy

Discussion & Public Forum; (5) Feb. 21: Financial Forecast Update & Water Rate Discussion; (6) Apr. 18: Budget Preview/Water CIP Fee; (7) May 8: Budget Update: General Fund; (8) May 16: Budget Update: Enterprise Funds/Fees/CIP; and (9) May 23: Formal Budget Submittal

Regarding property tax, he explained that property tax revenue: largest general fund revenue source; 49% of total; Revenue-neutral rate: 41 cents per $100 of assessed valuation; and Tax Base Growth: 5.4% - Natural growth: 3.5%; and Annexation growth: 1.9%.

He then reviewed the General Fund Revenue Summary.

Mr. Durant briefly explained the General Fund Expenditure Highlights of the (1) Personnel Package (a) 3% Average Merit Increase, 1% COLA; and (b) $450,000 for Market-based Compensation Plan; (2) Operating Costs (a) Operating costs are increasing due to the inflation in utility, fuel & material costs (i) $300,000 due to higher fuel costs; (ii) $167,000 increase in street lighting; and (iii) $152,000 increase for fire annexation contracts; and (3) Capital Outlay (a) Reduced to balance budget. He then reviewed the General Fund Expenditures Summary.

Mr. Durant reviewed the Fund Balance, the Capital Improvement Summary, and the Deferred Investment in Priority Areas.

Other Fund Highlights include the Water Fund (CIP investment plan and surcharge); Transit and Parking (Increased general fund subsidy to transit); Golf Fund (Eliminated general fund subsidy); Festival Fund (Increased revenue from 2nd gated event, fees); and Civic Center (Reduced general fund subsidy by $361,000).

Next steps include the May 23 Budget Submittal – distribution of the budget document; and plan for June 20 worksession (outside agencies, business licenses; transit and parking; and deferred investments in priority areas); June 13 public hearing; June 20 worksession; and June 27 budget adoption.

Councilman Freeborn moved to set the public hearing on the adoption of the Fiscal Year 2006-07 Annual Operating Budget for June 13, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

III. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda Item "M" be pulled off the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 9, 2006, AND THE WORKSESSION HELD ON MAY 16, 2006

B. RESOLUTION NO. 06-103 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 12 S. LEXINGTON AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 12 South Lexington Avenue.

A bid has been received from Centrino LLC in the amount of $2,000 for the purchase of air space at 12 South Lexington Avenue.

The land at 12 South Lexington Avenue was acquired by the City as part of the Pack Square Redevelopment Project. It was sold for redevelopment to Centrino LLC in July, 2004, to construct a multi-story, mixed use building with 43 residential condominiums, 1 office condominium, 1 retail condominium and 49 parking spaces. The project which is nearing 60% complete was approved by the City's Technical Review Committee on July 12, 2004, and included balconies which would project 3 ft. or less over the sidewalk through a required encroachment agreement. Centrino proposes to acquire the air space for the balconies to be able to convey it to the purchasers along with the respective condominiums. The bid from Centrino LLC is to acquire title to the air space for the balconies at fair market value. The air space for the balconies over the sidewalk totals 167.942 ± S.F. and begins at approximately 18 feet above the sidewalk. The appraisal prepared by Joseph F. Moore dated February 26, 2006, estimates the market value of the airspace at $2,000.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by independent appraisal.
- It will provide for a more practical approach to the air space occupied by the balconies.
- It will clarify responsibility and liability for the balconies.

There is no negative impact.

City staff recommends City Council adopt the resolution, which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 30 – PAGE 16

C. RESOLUTION NO. 06-104- RESOLUTION AUTHORIZING THE PURCHASE OF 3,000 DATAMATIC RADIO READ UNITS TO BE USED WITH OUR DATAMATIC AUTOMATED METER READING SYSTEM

Summary: The consideration of a resolution authorizing the purchase of 3,000 Datamatic radio read units, in the amount of $222,000, to be used with our Datamatic automated meter reading system.

The Water Resources Department purchased a Datamatic "Roadrunner" mobile meter reading system and 500 Datamatic "Fire-Fly" radio read units in Fiscal Year 2002 at a cost of $36,635 as a pilot program. These automated meter reading units were installed at locations that were very difficult to access and that posed a safety threat to our meter reading employees. By automating the meter reading at these locations, a serious safety hazard was eliminated. In addition, this pilot program has proven to be very cost effective by reducing the time to read these meters by 85%.

This is a request to purchase an additional 3,000 Datamatic "Fire-Fly" radio read units. These units will be placed in the East Asheville area (Riceville Road, Old Farm School Road, and Warren Wilson School Road) because of the difficulty in manually reading these meters. By purchasing these devices in bulk, the cost is only $74 per unit versus $104 per unit. There is sufficient funding of $222,000 available in the current budget to purchase these devices.

The goal of this department is to implement automated radio reading throughout the water system. This will facilitate the move to monthly meter reading and billing versus bimonthly reading and billing.

PROS:

- Reduce meter reading time by 85%
- Reduce meter reading costs over time
- Reduce the safety hazards of reading meters manually in difficult to access areas
- Reduce the risk of back injuries from having to lift the meter lids to read the meters
- Improve customer service by being able to reduce meter reading errors
- Provide a service to the customer by being able to data-log usage for 72 hours
- Reduce per unit cost of meter reading devices by purchasing devices in bulk

CONS:

- The cost of this purchase is a factor; however, sufficient funding is available and has been set aside for this important project.
- If these devices are not purchased in bulk at a cost of $74/unit at this time, the cost will increase to at least $104 per unit.

Staff recommends City Council approve the resolution authorizing the purchase of 3,000 Datamatic radio read units in the amount of $222,000 to facilitate meeting the Water Resources Department's goal to implement automated meter reading system wide.

RESOLUTION BOOK NO. 30 – PAGE 17

D. RESOLUTION NO. 06-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FUND TO ACCEPT A GRANT FOR A FEASIBILITY STUDY FOR STORMWATER RETROFITS FOR THE DINGLE CREEK WATERSHED

Summary: The consideration of (1) a resolution authorizing the City to enter into an agreement with the Clean Water Management Trust Fund in the amount of $133,000 for design and permitting of water quality improvements to the Dingle Creek Watershed; and (2) a budget amendment, in the amount of $233,000, to accept these funds and budget in a grant fund the $100,000 that the City will be contributing to the project.

In 2005 the City of Asheville requested $579,500 of an $875,000 effort to address stormwater and stream restoration needs in the Dingle Creek watershed in Buncombe County in the French Broad River basin. This watershed is developing, and the impervious surface area is projected to increase from 20% currently to 40% within the next 20 years.

The Board of Trustees approved a reduced grant amount of up to $133,000 to the City of Asheville at its meeting on November 14, 2005, to be used for design and permitting for a specific stormwater project and a specific stream restoration project, and to prepare a feasibility study that includes an analysis of and planning for stormwater retrofits and other Best Management Practices for the most developed parts of the Dingle Creek watershed.

The City of Asheville Stormwater Program has $100,000 budgeted in Fiscal Year 2006 to study the Dingle Creek Watershed. This money will be used to supplement the Clean Water Management Trust Fund Grant to complete the feasibility study.

Considerations:

- The first consideration of this project is the cost the project. The grant is covering approximately 57% of the project cost. The City's portion of the costs is $100,000. This money will be paid from the Stormwater Enterprise Fund. The money was programmed

for this project prior to receiving this grant. The scope of the project has increased to cover water quality issues in addition to flooding problems.

- Additionally, the Clean Water Management Trust Fund has indicated that they will consider funding some of the construction costs for this project once the feasibility study and design are complete.

This action complies with the City Council Strategic Operating Plan in Goal #1 in the focus area of Natural and Built Environment. Goal #1: Enhance and preserve air and water quality through comprehensive efforts. Objective #D Improve water quality.

City staff recommends City Council adopt (1) a resolution authorizing the City to enter into an agreement with the Clean Water Management Trust Fund in the amount of $133,000 for design and permitting of water quality improvements to the Dingle Creek Watershed; and (2) a budget amendment, in the amount of $233,000, to accept these funds and budget in a grant fund the $100,000 that the City will be contributing to the project.

RESOLUTION BOOK NO. 30 – PAGE 18

E. ORDINANCE NO. 3353 - BUDGET AMENDMENT TO ACCEPT A CLEAN WATER MANAGEMENT TRUST FUND GRANT FOR A FEASIBILITY STUDY FOR STORMWATER RETROFITS FOR THE DINGLE CREEK WATERSHED

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 22 – PAGE 457

F. RESOLUTION NO. 06-106 - RESOLUTION ACCEPTING MAPLE SPRINGS ROAD, A PORTION OF BALLANTREE DRIVE AND OLD HAYWOOD ROAD FOR CITY MAINTENANCE

Summary: The consideration of a resolution accepting Maple Springs Road, a portion of Ballantree Drive and a portion of Old Haywood Road for City of Asheville maintenance.

The N. C. Dept. of Transportation (NC DOT) contacted the City approximately one year ago and requested that the City take over maintenance responsibility for approximately twelve NC DOT maintained roadways. The Public Works Department along with the Engineering Department evaluated all the streets and has determined it is in the best interest of the City to take over maintenance of three of the twelve streets.

The criteria we used to make this determination included the following:

- condition on the street;
- volume of traffic on the street;
- location of the street as it relates to the city limits and other city maintained streets;
- desirability of the City to control driveway access, traffic calming, etc., on the street; and
- land use.

The first street identified, Maple Springs Road, is approximately 0.32 miles in length known as State Route 2006. It begins at US 70, Tunnel Road to the end of the pavement. It is a residential street.

The second street identified, Ballantree Drive, is approximately 0.20 miles in length known as SR 3281. This section of Ballantree Drive is from the end of the existing City maintenance to the end of pavement. It is a residential street.

The third street identified is Old Haywood Road know as SR 1404. It is approximately 0.91 miles long and extends from Smoky Park Highway to the end of the existing City maintenance. This roadway is mixed residential and light commercial.

Considerations:

- The City will receive Powell Bill funds from the NC DOT to maintain the roadway.
- These Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends that City Council adopt a resolution accepting Maple Springs Road, a portion of Ballantree Drive and a portion of Old Haywood Road for City of Asheville maintenance.

RESOLUTION BOOK NO. 30 – PAGE 19

G. RESOLUTION NO. 06-107 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF REAL PROPERTY ON WOOD AVENUE FROM THE DAN RIVER FOUNDATION

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Wood Avenue from Dan River Foundation.

The subject property lies west of Wood Avenue between the residential property on Wood Avenue and the River Hills Shopping Center. The right-of-way for Wood Avenue is combined with the I-240 right of way at this point. There are no improvements on the property and it is heavily wooded. The land slopes from South to North. The parcel is about 0.59 acre and is zoned RS-8 Residential Single-Family High Density District. The tax value is $32,100 and the land appears to have some potential for development.

In 1986, the Dan River Foundation, a non-profit organization, executed a deed to the City of Asheville for property along Wood Avenue described as Ward 7, Sheet 13, Lot 78. The parcel is now identified as PIN 9658.18-42-2366. There is no record that the deed was ever recorded, although the tax listing was changed at that time to the City of Asheville. A search of various City records and files did not discover the original deed or any evidence that the deed was ever officially accepted by City Council. Staff has contacted Dan River Foundation and the foundation has executed a new deed to the City of Asheville dated April 19, 2006.

Staff recommends that the deed be accepted and the property be offered for resale.

The positive aspects of the donation are:

- The donor is a non-profit so property is not being removed from the tax base because it is not currently being taxed.
- The proposed donation will create an opportunity for the City to make the property available for infill development.
- The subsequent sale of the property would place it back on the tax rolls.
- The sale of the property would generate revenue for the City.

The negative aspects are:

- The deed from Dan River Foundation is a non-warranty deed, so the City will only be able to convey a non-warranty deed.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept the donation of real property from Dan River Foundation.

RESOLUTION BOOK NO. 30 – PAGE 23

H. ORDINANCE NO. 3354- BUDGET AMENDMENT TO ACCOMMODATE INCREASED TRANSIT FUNDING FROM FEDERAL 5307 PROGRAM AND TO RECOGNIZE STATE FUNDING IN EXCESS OF BUDGETED AMOUNT

Summary: The consideration of a budget amendment, in the amount of $509,863, to accommodate increased funding from federal 5307 program and to recognize state funding in excess of budgeted amount.

The Asheville Transit System is eligible to obtain two funding lines from the federal 5307 program. One is the operations funding which is being phased out beginning in Fiscal Year 2007 but which is available in its entirety in Fiscal Year 2006, and is included in the Fiscal Year 2006 transit operating budget. The other is a reimbursement for a portion of operating maintenance costs which is not presently included in the Fiscal Year 2006 operating budget. The Asheville Transit System will be eligible for this funding line this year and in all future years. This line was not needed in prior years, but is now. The total of the line items is $1,425,917, an increase in the budget of $457,873. The state assistance funding was also $51,990 greater than expected.

This action conforms to City Council's Strategic Operating Plan in Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

The benefit to the City of Asheville is:

- Increased revenue to cover increasing fuel and operating costs

Costs to the City of Asheville:

- None

City staff recommends City Council amend the budget to reflect increased federal funding.

ORDINANCE BOOK NO. 22 – PAGE 459

I. ORDINANCE NO. 3355 - BUDGET AMENDMENT TO APPROPRIATE DEPARTMENT OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS

Summary: The consideration of a budget amendment, in the amount of $7,023, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected $7,023 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the police (patrol) safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action confirms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police officers

Con: None noted.

City staff recommends City Council adopt the budget amendment in the amount of $7,023, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

ORDINANCE BOOK NO. 22 – PAGE 461

J. **ORDINANCE NO. 3356 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of a budget amendment, in the amount of $174,481, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department.

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. To date, the City of Asheville Police Department has received $174,481 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for critical improvements, training, and equipment purchases for the Asheville Police Department.

Among the items slated for purchase with this funding include: 1) a "Hawkeye" drug surveillance camera system, wireless remote interface system and laptop computer, which will allow for covert video and audio taping of illegal drug transactions; 2) "Drug Trak" drug intelligence software and a computer mini-server to store drug intelligence information; 3) ballistic helmets & ammunition for the APD Drug Suppression Unit / Emergency Response Team; and 4) two Segway human transporters for use in patrolling the central business district. The funding will also be used to make improvements to the APD training room and to pay for training and travel expenses for several law enforcement training conferences.

This action confirms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Federal seizure revenue to cover the cost of equipment and training related to street level drug enforcement and community policing

Con: None noted.

City Staff recommends City Council adopt the budget amendment in the amount of $174,481, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department.

ORDINANCE BOOK NO. 22 – PAGE 463

K. RESOLUTION NO. 06-108 - RESOLUTION AUTHORIZING THE EXECUTION OF POWER LINE EASEMENT IN HUMMINGBIRD PARK

Summary: The consideration of a resolution authorizing an easement through Hummingbird Park at Starnes and Cumberland Avenues for an underground electric power line

Progress Energy has requested an easement through Hummingbird Park, located at the intersection of Cumberland and Starnes Avenue, to install an underground power supply line to a new home located adjacent to the Park. The City will receive no consideration for this easement and historically has not received consideration for power line easements. Per State and local law, Progress Energy pays a utility franchise tax. Parks and Recreation staff have reviewed this request, and have no objection to it.

Considerations:

- The easement will not interfere with the City's or the public's use of the Park.
- The electric power supply line will be installed in such a manner as not to be a hazard;
- The line will be installed underground, as opposed to overhead.

If Council approves of this easement, adoption of the resolution authorizing an easement through Hummingbird Park at Starnes and Cumberland Avenues for an underground electric power line is recommended.

RESOLUTION BOOK NO. 30 – PAGE 24

L. MOTION TO FORM THE ASHEVILLE-BUNCOMBE FLOOD REDUCTION TASK FORCE

Summary: The purpose of the Asheville-Buncombe Flood Reduction Task Force is to establish a regional approach in developing a long-range plan based on best practices models to protect our floodplains/ floodways and manage our watershed. Such a plan should integrate objectives of flood control, transportation, economic development, land use and community planning, recreation and environmental preservation.

Objectives:

- To study strategies to reduce future flood levels in the drainage basins in the Swannanoa Basin during heavy rain episodes.
- To study strategies to minimize the economic, environmental and social impacts and the risk to human life when floods occur in the future.
- To analyze whether current development patterns are affecting the severity of flooding during heavy rain events.
- To review the current flood studies underway and assess the feasibility of developing a dynamic and predictive capability to keep abreast of those variables that affect future flood potential.
- To make recommendations to Asheville City Council on these matters
- To act as a citizen advisory board for Stormwater Utility issues, as needed

Structure:

- This is a citizen task force, to be comprised of 12-15 individuals with technical expertise and experience in this topic.

- Staff support will be made available to facilitate the work product (if necessary.
- Staff will be available to present background information to commission, if requested.

Timeline:

- Six months to report back to Asheville City Council
- This time can be extend if needed

M. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE STONELEAF FESTIVAL OPENING GALA ON MAY 26, 2006

This item was pulled off the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEM PULLED OFF THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 06-109 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE STONELEAF FESTIVAL OPENING GALA ON MAY 26, 2006

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Stoneleaf Festival Opening Gala on May 26, 2006.

The below listed group has requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event.

- The Stoneleaf Festival Opening Gala on May 26, 2006, in the grassy knoll area of Pack Square, with indoor accommodations located at Windows on the Park, A Restaurant for Private Events.

The Asheville Parks and Recreation Department recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Stoneleaf Festival Opening Gala on May 26, 2006.

Councilman Freeborn moved for the adoption of Resolution No. 06-109. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 26

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING ALL STREETS IN THE AREA KNOWN AS CITY-COUNTY PLAZA

RESOLUTION NO. 06-110 - RESOLUTION PERMANENTLY CLOSING ALL STREETS IN THE AREA KNOWN AS CITY-COUNTY PLAZA

Mayor Bellamy opened the public hearing at 5:29 p.m.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to close all streets in the area known as City-County Plaza. This public hearing was advertised on April 28, May 5, 12 and 19, 2006.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Buncombe County and the City of Asheville have requested the City of Asheville permanently close all streets in the area known as City-County Plaza as bounded by College Street on the north, Davidson Street on the east, Marjorie Street on the south and South Spruce Street on the west (a/k/a Court Plaza, City Hall Drive North, City Hall Drive South, City Hall Circle and any and all other names such streets may have from time to time been titled).

Public Works Department staff has researched and determined all streets in the area known as City-County Plaza are City maintained. Closure of these street will not deny any of the adjoining property owners reasonable means of ingress and egress as the City of Asheville and Buncombe County are the only adjoining property owners. The owner of the Hays Hopson Building, although not an adjoining property owner, will be provided a courtesy notice of the intent to close

Pros:

- The closure is necessary for the successful completion of the redesign of Pack Square.
- Closure of the streets will facilitate the timely completion of the Pack Square Project.
- The closure of the streets will still facilitate pedestrian movement from one location to another in downtown Asheville. There will be no future compromise of ingress/egress to other property.

Cons:

- Staff can find no potential challenges.

This action ties in with the City Council Strategic Operating Plan in Focus Area: Sense of place, heritage and arts, Goal 3, Task 3, by promoting downtown revitalization, assisting in the implementation of the Pack Square Renaissance Project.

City staff recommends that City Council adopt the resolution closing all streets in the area known as City-County Plaza.

Ms. Regina Ray, probation officer that works in the Hayes & Hopson Building, was concerned that if the roads are closed there will be no access to the Hayes & Hopson Building.

Mr. Grant responded that the Hayes & Hopson is not directly adjacent to the property but still has access on two sides.

Mayor Bellamy closed the public hearing at 5:32 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 06-110. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 20

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 3820 SWEETEN CREEK ROAD

ORDINANCE NO. 3357 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 3820 SWEETEN CREEK ROAD

Mayor Bellamy opened the public hearing at 5:33 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include 3820 Sweeten Creek Road. This public hearing was advertised on April 28, 2006.

John W. Couch has petitioned the City for the annexation of one lot he owns located at 3820 Sweeten Creek Road (PIN 9654.14-34-8944) containing approximately .72 acres. The area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lot currently contains a single-family home. The current assessed valuation for this property, according to the Buncombe County tax records, is $109,400.00.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on June 30, 2006.

Considerations:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing one lot located at 3820 Sweeten Creek Road.

Mr. John Couch, property owner, spoke in support of his request to be annexed.

Mayor Bellamy closed the public hearing at 5:35 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3357. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 465

C. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY ON ROCKWOOD ROAD

ORDINANCE NO. 3358 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY ON ROCKWOOD ROAD

Mayor Bellamy opened the public hearing at 5:35 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance for the voluntary ("satellite") annexation of four properties located on Rockwood Road in South Buncombe County. This public hearing was advertised on April 28, 2006.

Steve Hankins of Hankins Properties, LLC, has petitioned the City for the annexation of four lots owned by the LLC and located along Rockwood Road, off of Airport Road, in South Buncombe County (PINs No. 9643.02-65-7556, 9643.02-65-8378, 9643.02-65-5483, 9643.02-65-5606) containing approximately 6.54 acres.

The lots are adjacent to the new Southridge Shopping Center and the Holiday Inn on Airport Road. The current assessed valuation for this property, according to the Buncombe County tax records, is $4,073,100.00. The area, while contiguous to other non-contiguous ("satellite") parcels in the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N. C. Gen. Stat. sec. 160A-58.1. One of these standards states, "no point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city....." The area proposed for annexation is closer to the corporate limits of the Town of Fletcher. However, since Fletcher's charter precludes them from annexing into Buncombe County, staff has determined that this annexation is not contrary to state statutory requirements. Council may recall that a similar situation arose last year, and legislative assistance was needed for the annexation. We have requested local legislation to address the situation created by Fletcher's proximity.

In accordance with N. C. Gen. Stat. sec. 160A-58.1, the petitioners, in addition to the submittal of the petition, have filed a statement declaring vested rights with respect to the properties. Specifically, the property owner has received approval for four different site-specific development plans from the Board of Adjustment of Buncombe County in accordance with the regulations of the Limestone Township of Buncombe County. The vested rights for two of the plans will remain in effect until April 13, 2010. The vested rights for the other two submittals will remain in effect until December 14, 2010. These four site plans have been submitted to the City Planning and Development Department and can be made available as needed. The City Planning and Development Department has confirmed the validity of the vested rights in accordance with state law.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. Should City Council decide to proceed with this annexation, it is proposed that the annexation become effective on June 30, 2006.

Considerations:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Provides for orderly service provision by the City of Asheville.

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing four properties located on Rockwood Road in South Buncombe County.

Mayor Bellamy closed the public hearing at 5:39 p.m.

In response to Councilman Freeborn, Ms. Cogburn explained the four development site plans.

Upon inquiry of Councilman Freeborn, Ms. Cogburn said that the developer does not have to comply with the City's landscaping requirements. However, Mr. Steve Hankins, property owner, said that they are willing to meet the City's landscaping requirements in the designated landscaped areas. He said he has a big investment in the property and hopes to be a part of the community.

When Vice-Mayor Jones asked why this area was requesting to be annexed, Ms. Cogburn said that that one restaurant would like to apply for a liquor license.

City Attorney Oast said that with respect to this project, there was an issue about the level of police and fire services that were available from the City of Asheville as opposed to either Fletcher or Buncombe County. These are fairly intensively developing commercial areas and they do require a higher level of service that the City of Asheville is able to provide.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3358, specifically noting that he is not asking the petitioner to do more landscaping than already agreed to do with Buncombe County. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 467

D. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

Mayor Bellamy said that the petitioners have requested this public hearing to be continued to July 25, 2006, in order to address street signage. Therefore, Councilman Davis moved to continue this public hearing to July 25, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

E. PUBLIC HEARING TO CONSIDER THE REZONING OF ONE LOT LOCATED ON FAIRVIEW ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3359 - ORDINANCE TO REZONE ONE LOT LOCATED ON FAIRVIEW ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:46 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone one lot located on Fairview Road from Neighborhood Business District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on May 12 and 19, 2006.

The subject site is located in the western part of the Oakley neighborhood, within the City of Asheville corporate limits. The property, 0.2 acres in area, is currently zoned Neighborhood Business, and is undeveloped. The applicant, Carol L. Massey, who is hoping to purchase the property, is seeking a rezoning to RS-8 Residential Single-Family High Density District. The applicant would like to build a single-family home on the property, and under the current Neighborhood Business zoning, residential uses are restricted to parts of a building other than the first floor or street level.

More than half of the surrounding property is zoned RS-8, and the surrounding land uses are primarily residences, with small businesses located to the east. The average lot size in the vicinity is approximately 0.3 acres.

It appears that this property was assigned Neighborhood Business zoning in order to extend the district west to Unaka Avenue. The modification of the zoning district boundary requested by the applicant would create a western limit of the district that would line up on both sides of Fairview Road.

The existing Neighborhood Business district has a total area of approximately 4.4 acres. The intent of the Neighborhood Business district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. This district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but where small neighborhood oriented businesses are useful and desirable. This particular parcel has been on the market for several years, but has not found a buyer for a suitable commercial use.

The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living.

This small parcel's location at the western tip of the district, in a situation such that three of its sides face primarily RS-8-zoned property, makes the rezoning to RS-8 an appropriate modification of the district boundaries. While the parcel is a suitable location for a small business, its failure to attract a buyer for such a purpose provides another argument in favor of the rezoning. The subject site is located in the western part of the Oakley neighborhood, within the City of Asheville corporate limits. The property, 0.2 acres in area, is currently zoned Neighborhood Business, and is undeveloped. The applicant, Carol L. Massey, who is hoping to purchase the property, is seeking a rezoning to RS-8 Residential Single-Family High Density District. The applicant would like to build a single-family home on the property, and under the current Neighborhood Business zoning, residential uses are restricted to parts of a building other than the first floor or street level.

More than half of the surrounding property is zoned RS-8, and the surrounding land uses are primarily residences, with small businesses located to the east. The average lot size in the vicinity is approximately 0.3 acres.

It appears that this property was assigned Neighborhood Business zoning in order to extend the district west to Unaka Avenue. The modification of the zoning district boundary

requested by the applicant would create a western limit of the district that would line up on both sides of Fairview Road.

The existing Neighborhood Business district has a total area of approximately 4.4 acres. The intent of the Neighborhood Business district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. This district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but where small neighborhood oriented businesses are useful and desirable. This particular parcel has been on the market for several years, but has not found a buyer for a suitable commercial use.

The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living.

This small parcel's location at the western tip of the district, in a situation such that three of its sides face primarily RS-8-zoned property, makes the rezoning to RS-8 an appropriate modification of the district boundaries. While the parcel is a suitable location for a small business, its failure to attract a buyer for such a purpose provides another argument in favor of the rezoning.

At the May 3, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend approval. At this meeting, one citizen expressed a desire for the site to allow higher impact use than it is currently zoned for.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposed rezoning is highly compatible with surrounding zoning and uses.
- No indication of neighborhood opposition to such a down-zoning.
- Would eliminate a potential location for a neighborhood business, but:
- Property has not proven attractive to buyers for permitted commercial use.

Based on the analysis above, staff finds no compelling reason for objection to the request, and therefore recommends approval of the rezoning petition. In addition, staff finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy closed the public hearing at 5:49 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3359. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 470

F. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF PROPERTY LOCATED AT 1301 SAND HILL ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

ORDINANCE NO. 3360 - ORDINANCE TO REZONE OF A PORTION OF PROPERTY LOCATED AT 1301 SAND HILL ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

Mayor Bellamy opened the public hearing at 5:50 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone a portion of property located at 1301 Sand Hill Road from Industrial District to Commercial Business II District. This public hearing was advertised on May 12 and 19, 2006.

The subject site is a portion of the Colbond Plant property (sometimes referred to as American Enka or BASF) on Sand Hill Road in Enka, just within the City of Asheville corporate limits. The portion of the property to be rezoned is approximately 1.5 acres in size, less than one percent of the 246 acres owned by Colbond. All of the property owned by Colbond is currently zoned Industrial.

The applicant, American Enka Credit Union, is seeking a rezoning to Community Business II District. For more than half a century, American Enka Credit Union has operated a small financial institution within the industrial site. (Financial institutions are not a permitted use in Industrial zoning districts, so the credit union facility became an existing nonconformity.) The applicant's wish to relocate to a proposed new building closer to Sand Hill Road requires a rezoning in order to establish conformity.

The applicant and the property owner have agreed that if the rezoning is approved, the property will be subdivided so that the zoning district will follow property lines and no part of the property will be split-zoned. Staff has reviewed the geometry of the proposed district (and potential future lot) and verified that it meets City requirements for a minor subdivision.

In the vicinity of the subject site, the north side of Sand Hill Road is zoned Industrial, and the south side is zoned CB-II; hence the proposed zoning would match that across the street. The surrounding land uses are vacant land, industrial operations, and the (non-conforming) current credit union location.

According to the Unified Development Ordinances Article 8, the purpose of the Industrial District is to reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees.

The Community Business District II was established to provide areas for medium-to-high-density business and service uses serving several residential neighborhoods. Such areas may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets which serve multiple residential neighborhoods.

The existing Industrial zoning district in which the subject site is located has a total area of more than 500 acres. Staff feels that the rezoning of such a small area to bring a use into conformance does not constitute a significant loss of industrially zoned land, nor does it

compromise the utility of the larger area for industrial use. Further, staff consensus is that a request to rezone a larger fraction of this area would be unlikely to receive staff support.

At the May 3, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend approval. Staff has received no indication of neighborhood opposition.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Would make a non-conforming situation conforming.
- Proposed zoning district matches the district across the street.
- Down-zoning the property is unlikely to be opposed by neighboring property owners.
- Would cause loss of industrially zoned land (approximately 1.5 acres)

Based on the analysis above, staff finds there are multiple arguments for supporting the request with no significant reason to oppose it, and therefore recommends approval of the rezoning petition. In addition, City staff finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy closed the public hearing at 5:52 p.m.

In response to Councilman Mumpower, Mr. Esselstyn explained why staff is supporting the rezoning from Industrial District since it is in conflict of Council's policy in the Asheville City Plan 2025, which specifically states that industrial land should be preserved for industrial uses.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3360. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 472

G. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF PROPERTY LOCATED ON ROCK HILL ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3361 - ORDINANCE TO REZONE OF A PORTION OF PROPERTY LOCATED ON ROCK HILL ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:54 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone a portion of property located on Rock Hill Road from Commercial Industrial District to RS-4 Residential Single-Family Medium Density District. This public hearing was advertised on May 12 and 19, 2006.

Ms. Tuch said that the property owners, Ronald & Deanna Goldstein, are interested in rezoning approximately 2.23 acres of a 6.39 acre lot. The existing lot currently supports a

commercial-industrial use but leaves approximately 1/3 of the total lot undeveloped at the rear of property. Rezoning this property will provide the opportunity for medium density single-family infill development with frontage on Rock Hill Road which is exclusively residential in character. With over 530 linear feet of road frontage, these 2.23 acres could easily be subdivided to allow for up to 6-7 separate lots. A subdivision of the land is recommended but not required as part of the rezoning; however, a subdivision will be required before any single-family home permits are issued.

Commercial Industrial zoning does allow for residential uses but does not allow single family homes which are the predominant character of Rock Hill Road. It is possible to expand the existing commercial industrial use if desired but expansion would require heavy landscape buffering and the non-residential use would not be able to access the residentially zoned Rock Hill Road, limiting all access to Sweeten Creek Road. Lastly, the existing topographical change would add development challenges and cost to an expansion of the existing business, while access on the alternative through road is clear and level and is not restricted for residential development.

The rezoning proposal as presented would allow for up to seven single-family home lots while retaining the existing commercial-industrial use and zoning on the balance of the property. The residential portion of the property would be located at the rear of the site, adjacent to other single family uses and would access from Rock Hill Road; while the existing commercial-industrial use would remain and would continue to access from Sweeten Creek Road.

- The RS-4 zoning district is designed to establish and promote a suitable and medium density single-family district where public infrastructure is sufficient to support such development.

- The purpose of the Commercial Industrial zoning district is to provide areas for a wide range of commercial and industrial uses where environmental conditions and urban infrastructure are adequate to support commercial and industrial development.

At their May 3, 2006, meeting, the Planning & Zoning Commission voted unanimously to approve the 2.23 rezoning request from Commercial Industrial District to RS-4 Residential Single-Family Medium Density District.

Based on the above findings and the analysis provided in the report, staff concurs with the Planning & Zoning Commission and finds this request to be reasonable.

Considerations:

- Reduces the opportunity for a limited expansion of the existing commercial industrial use.
- Provides the opportunity for new single family residential infill development in an established neighborhood.

Mayor Bellamy closed the public hearing at 5:58 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3361. This motion was seconded by Councilman Freeborn and carried unanimously.

H. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADJUST THE URBAN PLACE ZONING DISTRICT TO ALLOW SINGLE FAMILY DETACHED DWELLINGS AS A USE BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS AND TO PROVIDE GREATER FLEXIBILITY FOR STREET SETBACKS**

ORDINANCE NO. 3362 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ADJUST THE URBAN PLACE ZONING DISTRICT TO ALLOW SINGLE FAMILY DETACHED DWELLINGS AS A USE BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS AND TO PROVIDE GREATER FLEXIBILITY FOR STREET SETBACKS

Mayor Bellamy opened the public hearing at 5:59 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to adjust the Urban Place Zoning District to allow single family detached dwellings as a use by right subject to special requirements and to provide greater flexibility for street setbacks. This public hearing was advertised on May 12 and 19, 2006.

This code amendment is intended to allow greater use and setback flexibility in the Urban Place zoning district by allowing detached single family dwellings and greater street setbacks under certain circumstances.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros –

- Greater opportunity to address specific street setback situations.
- A wider range of land uses would be available to property owners.

Con –

- None noted.

The Planning and Zoning Commission recommended approval of this code amendment on May 3, 2006, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Bellamy closed the public hearing at 6:02 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3362. This motion was seconded by Councilman Freeborn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 476

I. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 919 HAYWOOD ROAD FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MIXED-USE PROJECT**

ORDINANCE NO. 3363 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 919 HAYWOOD ROAD FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MIXED-USE PROJECT

Mayor Bellamy opened the public hearing at 6:03 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located on 919 Haywood Road from Institutional District, RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a proposed mixed-use project. This public hearing was advertised on May 12 and 19, 2006.

Mr. Glines said that the proposed project is located at 919 Haywood Road. The St. Joan of Arc Church currently uses the block-wide site. Over the years several properties were purchased at the rear of the church property for expansion of the church. The church though is relocating further out in west Asheville. The current proposal is a conditional zoning to Urban Place District following the master plan generated during a weeklong charette (a community planning and design process) The charette process provided an opportunity for the neighborhood to participate in the design development of the site. Several evening meetings were held in order for the neighborhood to offer feedback for the schematic plans. The plan provided with the application (now more defined) is the same as was reviewed with the community.

The plan proposes 77 residential units and 33,000 square feet of commercial space (office and retail) on an almost three acre property. The primary building is oriented towards Haywood Road. The building covers the block face and is three stories tall. A section of the building towards the center is 4 stories tall. The four-story section provides a setback from the roofline on Haywood Road and will reduce the perceived height of the building The remaining structures on the site are two stories tall. These proposed buildings at the rear of the site are scaled to be closer to the residential buildings found in the neighborhood. Driveways that are placed across from each other on Mitchell and Blue Ridge Avenues will provide access to the development. They are placed behind the main structure. Each driveway is angled to discourage commercial traffic from turning back into the neighborhood area. At the point that the driveways interact with the neighborhood, there will be a neighborhood gateway feature to provide a transition and signify that drivers are entering a neighborhood area. The primary parking for the project is being handled under the main building. A small amount of surface parking is located within the site. Across the front of the building and at regular intervals around the property, pedestrian access is provided by sidewalk connections and by a major pedestrian corridor through the interior of the building.

In addition to commercial and residential space located in the main building, there are a variety of other structures located internal to the site. There are live/ work units and artists lofts located at the center of the project. Single family and duplex units are located at the rear of the site to offer a transition back into the neighborhood fabric.

The size of the project was developed with the scale and density patterned after the Neighborhood Corridor District. However several challenges were presented during the design process and Urban Place District was thought to be a better fit for this project. The project as proposed does require a wording amendment to the Urban Place District to allow greater structure setbacks and single family uses in the Urban Place District. A wording amendment will accompany this development proposal and should be a condition of its approval.

The Institutional District was developed to set aside areas for major educational and medical facilities and other complementary uses such as office developments and public services. The current zoning causes challenges for the proposed development because of height restrictions next to residentially zoned property and density restrictions. The residential single family and multifamily districts allow single family and multifamily neighborhoods and other limited non-residential uses. Both districts allow a density maximum of 8 units per acre and other commercial uses would not be allowed in the development. This posed a challenge for the current development proposal.

The project was reviewed at the April 17, 2006, Technical Review Committee (TRC) meeting and the comments are conditions of approval. Staff added the comment that the parcels should be recombined into a single parcel if the proposal is approved

The Planning and Zoning Commission reviewed the project at their May 3, 2006, meeting and approved the project unanimously with TRC conditions added as conditions. In addition the Commission recommended the developer provide up to $25,000 for participation in traffic calming measures in the neighborhood following the City traffic calming policy and procedures. In addition because the City process may take some time to complete, any funds would be provided on or before the issuance of a certificate of occupancy. Although the project is not expected generate large amounts of traffic on its own, the developer is willing to help the neighborhood address the existing cut-through traffic problem. The Commission noted that the wording changes for Urban Place District be approved as a condition of the approval of the conditional zoning permit.

The developer has related that he has a contract with the current owners of the property (the Diocese of Charlotte). The Diocese is concerned that should the project be denied by City Council, they will have a required waiting period before a new zoning change can be brought forward. For this reason they are requesting that a special condition be attached to the review, that if the developer does not close on the property by August 31, 2006, then the conditional use permit will become nullified and the property will revert to the former zoning.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project will be built according to City and State code requirements. The developer is interested in providing traffic calming in the neighborhood to reduce the short-cut traffic from Patton Avenue. Working with the City, the neighborhood will benefit from this funding towards traffic calming.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The bulk of the development will occur towards Haywood Road. The buildings are being setback from the secondary streets in order to preserve significant existing trees along both Mitchell and Blue Ridge Avenues. Significant grade changes are not present on this site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This development proposal along this portion of Haywood Road has the potential to be a positive force for change.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The largest building in the development is located along Haywood Road. Although the scale of Haywood Road has historically been one and two story buildings, the area has the capacity for larger structures. The building is primarily a three-story structure with a fourth story section that is setback from the Haywood Road façade. This setback will reduce the perceived height of the building. The scale and massing of the development reduces significantly as the project transitions into the neighborhood. This should mitigate concern about compatibility with the neighborhood and meet the spirit of this consideration.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The comprehensive plan encourages redevelopment of infill sites in a sensitive way. Community planning processes are encouraged to gather stakeholder comments as the plans are being created. Mixed-use centers on commercial corridors are encouraged in the comprehensive plan because of their efficient use of land, support of mass transit, and because they provide variety of choices for housing and commerce. This development style is a preferred pattern for Haywood Road for these reasons and because there is the opportunity to increase community character and pedestrian connectivity.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The site has sufficient infrastructure to support the development proposal. The site is on the City transit line that may be of special convenience to the project. Route One passes directly by the site and Route Nine is a quarter mile away along Haywood Road.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** Traffic concerns have been shared by the neighborhood. The scale of this development is not expected to generate significant traffic on its own. The neighborhood is already experiencing cut-through traffic because of its proximity with Patton Avenue. The developer has expressed interest in assisting with traffic calming measures along these streets.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable. The project meets City goals and planning documents and is aligned with the Asheville City Development Plan 2025.

Considerations:

- A valuable piece of real estate would come back onto the tax rolls
- The development site is an entire block along Haywood Road making it very unique
- An involved planning and design process included neighbors and other community stakeholders to provide comment on the development
- The project has the potential to be a positive catalyst for other development along this portion of Haywood Road
- Traffic entering through the neighborhood has been the primary concern of the neighborhood and some amount of additional traffic may be generated because of this project.
- The developer has expressed willingness to participate in traffic calming following the City procedure for determining traffic calming measures

The Planning and Zoning Commission at their May 3, 2006, meeting voted 5-0 to recommend approval of the conditional zoning permit for 919 Haywood Road with the following: (1) All TRC conditions being met: (2) The developer participate in neighborhood traffic calming measures an amount up to $25,000 following the City process for determining those measures; (3) Because the City process may take some time to complete, any funds would be provided on or before the issuance of a certificate of occupancy; and (4) Wording changes proposed for Urban Place District and needed for this proposal be approved.

Staff concurs with this recommendation with a single addition that City Council address Diocese of Charlotte concerns about the timeframe for the developer to close on the property to be August 31, 2006, or the site zoning revert to the original and the permit be revoked.

Mr. Andy Worley, resident on Blue Ridge Avenue, presented City Council with a petition from the neighbors (62 signatures) which requests the City allow the developer to put in the following "(1) On Mitchell Avenue: (a) Use the standard 5-foot siddwalk, 5-foot setback from Haywood Road to the existing brick driveway; and (b) Use a 6-foot sidewalk that adjoins the curb from the existing brick driveway to the north end of the property; and (2) On Blue Ridge Avenue: (a) use the standard 5-foot sidewalk, 5-foot setback between Haywood Road and the existing stone wall; and (b) Use the existing sidewalk located at the back of curb located along the existing stone wall, only if the stone wall is to be preserved; or (c) Use a 6-foot sidewalk that adjoins the curb from the end of the stoon wall to the north end of the property, except to meander around the large trees." His main concern is that the City's recommendation of a 5-foot sidewalk and a 5-foot setback will damage the trees.

Mr. Allan Wolf, resident on Blue Ridge Avenue, agreed with Mr. Worley in that they want the developer to do what they can to save the trees, one which is a 60-foot sycamore. He said that the neighborhood believes this is a good change, but they want the transition done smoothly while keeping the trees which are the character of the neighborhood.

Mr. Gerald Green, representing the developer, spoke in support of the project noting that they held a design charette in which approximately 125 community members attended. The development team would like for this project to be a model for infill development, both in terms of the extent to which they gathered community input during the planning process and for the quality of construction in trying to blend into the community. They had proposed some on-street parallel parking on Haywood Road, but have just received final word from the N.C. Dept. of Transportation to the effect that on-strete parking on Haywood Road will not happen.

At 6:12 p.m., Councilwoman Cape left the meeting, but noted that she attended the charette was was very impressed by the whole process and the developer's willingness to invest into this community.

Mr. Green said that they will be using modual construction to keep the costs down so it is affordable to a wide range of people. There will be a variety of housing types and sizes. Regarding the design of a sidewalk, they are working with the City on a plan to save the trees. He said that the developer hired an arborist to look at the trees. That arborist stated that the 5-foot planting strip and the 5-foot sidewalk would negatively impact not only the trees, but some historic rock walls. The City's Traffic Engineer met with the developer's staff and came up with one solution – a meandering sidewalk with a varying planting strip that meanders through the trees. He proposed that Council allow them to use a 6-foot sidewalk that abuts the street which does meet the City standard for sidewalks. He noted that they are continuing to work with the neighborhood representatives to make sure the community is involved in the continuing development of this project.

City Traffic Engineer Anthony Butzek said that he feels the staff proposal is appropriate. He disagreed with the characterization of a meandering sidewalk. There are a few transition points at which it would change the transition from a 5-foot setback to a 2-3-foot setback to the back of the curb and one or two trees which was suggested to meander around to save that tree. He feels this provides a safe environment for pedestrians, it avoids a number of existing utility poles and fire hydrants (which would otherwise be in the sidewalk, if they are allowed to do the back to curb sidewalk), and it does preserve the existing trees.

In response to Mr. Butzek stating that traffic on Mitchell Avenue is an existing problem, Councilman Mumpower felt it was generous for the developer to contribute $25,000 to traffic calming in the area.

Mr. Kevin Crump, developer, said that his development will have a $22-25 Million impact and the $25,000 for traffic calming is not that much in the big scheme of things. He said he doesn't feel forced to contribute to traffic calming, but he offered. Regarding the trees, they can put in a 5-foot buffer and a 5-foot sidewalk but feels that the trees will die as a result of root damage within a few years, based on their arborist and their landscape architect. He wants to preserve the trees and is confident that a 6-foot sidewalk that adjoins the curb will save the trees.

Mayor Bellamy closed the public hearing at 6:30 p.m.

After a brief discussion regarding the sidewalks, Planning & Development Director Scott Shuford suggested the following condition: "That the sidewalk design shall be referred to City staff to involve the Asheville Tree Commission members and the City Arborist to ascertain the best alternative that balances tree health, utility considerations, and pedestrian safety." The developer agreed with this condition.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3363 to conditionally zone property located on 919 Haywood Road from Institutional District, RMi-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a proposed mixed-use project, subject to the following conditions: (1) All TRC conditions being met: (2) The developer participate in neighborhood traffic calming measures an amount up to $25,000 following the City process for determining those measures; (3) Because the City process may take some time to complete, any funds would be provided on or before the issuance of a certificate of occupancy; (4) Wording changes proposed for Urban Place District and needed for this proposal be approved; (5) Timeframe for the developer to close on the property to be August 31, 2006, or the site zoning revert to the original and the permit be revoked; and (6) That the sidewalk design shall be referred to City staff to involve the Asheville Tree Commission members and the City Arborist to ascertain the best alternative that balances tree health, utility considerations, and pedestrian safety. He noted that this request is reasonable based on the information provided in the staff report. This motion was seconded by Councilman Freeborn and carried unanimously.

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J. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 37 ARLINGTON STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PARKING LOT

Mayor Bellamy said that on Monday, May 22, 2006, the City Clerk received a letter from Mr. Robert Malkin, agent for Mr. & Mrs. Randall Higgins, doing business as 37 Arlington Street, Asheville, North Carolina. The letter read "we wish to request a continuance of the public hearing now scheduled for May 23 to July 11, 2006, based on a valid protest petition being filed on May 18, together with the absence of Councilman Brownie Newman during this Council meeting on May 23."

Ms. Elizabeth Ann Wyndelts hoped that the petitioner and the neighborhood will halve worked some details out prior to the July 11 meeting date.

Councilman Davis moved to continue this public hearing until July 11, 2006. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Freeborn voting "no."

K. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF ONE LOT LOCATED ON OLD ASHELAND AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL ZONING WITH A DENSITY BONUS FOR PROPOSED AFFORDABLE HOUSING

ORDINANCE NO. 3364 - ORDINANCE TO CONDITIONALLY ZONE ONE LOT LOCATED ON OLD ASHELAND AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL ZONING WITH A DENSITY BONUS FOR PROPOSED AFFORDABLE HOUSING

Mayor Bellamy opened the public hearing at 6:36 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone one lot located on Old Asheland Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Zoning with a density bonus for proposed affordable housing. This public hearing was advertised on May 12 and 19, 2006.

The applicant, Lisa Karen Roberts, seeks rezoning from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Zoning for a multi-family residential project with 5 units. This level of density will require the development standard bonus for both affordable housing and exceptional design. The proposed project would include a single family structure to be licensed as a Family Care Home, as well as two duplexes available to the general public (and potentially adults transitioning out of the Family Care Home).

The lot, 0.316 acres in area, is located on Old Asheland Avenue south of Asheville's Central Business District, between South French Broad Avenue and McDowell Street. The site's proximity to the Central Business District makes it exempt from off-street parking requirements.

Multi-family and single-family dwellings are permitted uses in the RM-8 zoning district. With the 200% density bonus applied, the proposed number of units conforms with the density standards for the district. The combined habitable area of the residences would be approximately 5,500 square feet. The duplexes would be two stories, while the single-family home will be one story over a finished basement. The plans show a Type "B" buffer with an opaque wooden fence. Though details about the plantings will need to be provided, the buffer location and width appear to otherwise meet standards.

To qualify for the density bonus for affordable housing, the applicant has stated that the rents will not exceed the maximum rental rates of $690 and $1,050 per month for the two-bedroom units and four bedroom unit respectively.

To qualify as an exceptional development project for the development standard bonus, the applicant has stated that the project includes elements of higher quality building design, design sensitive to neighborhood context, and project amenities. Planning staff feels that the submitted plans and elevations exhibit all of these elements, to an extent that the minimum requirements can be met.

At the April 3, 2006 meeting, the Technical Review Committee and approved the proposed concept plan, based on the conditions outlined in the staff report.

At the May 3, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend approval.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use is compatible with the surrounding natural features and topography.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Staff does not expect that the proposed use would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction as negative.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed project would be in harmony with these characteristics of the area. While the layout differs from any existing residential development in the immediate area, staff feels that the design would be complementary to the neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The adopted Smart Growth Land Use Policies listed in Asheville's **City Development Plan 2025** state that compatible, higher density commercial and residential infill development should be encouraged, that existing neighborhoods near Downtown Asheville should be strengthened through infill development, and that traditional neighborhood development patterns should be recognized and encouraged. Further, the plan makes numerous references to the need for affordable housing, calling it "one of the most pressing

problems facing the City of Asheville." The exceptional design elements which a project must provide to qualify for the maximum density bonus are all in keeping with the New Urbanism concepts espoused in the plan. Thus, staff finds this project to be in compliance with the Comprehensive Plan.

One of the goals expressed in the Strategic Operating Plan is increased employment training opportunities. Vocational training is among the services that the proposed family care home will offer to its residents. Another plan goal is an increased supply of affordable housing. The applicant has stated that all the units will meet the City's rental rate requirements to qualify as affordable housing. The proposed development therefore would further two of the goals of the Strategic Operating Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location near McDowell Street ensures access to transportation facilities and other services. Transit route 6, 12, and 18 serve the area. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposed project would provide affordable housing and vocational services – both goals of the strategic operating plan.
- Proposed project exhibits elements of exceptional design.
- As of this writing, staff has received no indication of opposition to the project.
- Overall mission of project could be described as a helpful one for the community.
- Proposed design is of a higher density than the surrounding single-family developments.

Staff is of the opinion that the proposed conditional zoning and concept plan would represent a net benefit to the community and therefore recommends approval of the request.

Ms. Lisa Roberts Allen, property owner, spoke in support of the project which will offer affordable housing.

Mr. George Young, area resident, said that over 35 years ago this area was considered an East Riverside urban renewal area and designated for single-family structures. He urged Council to keep this single-family designation.

Mayor Bellamy closed the public hearing at 6:43 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3364 to conditionally zone one lot located on Old Asheland Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Zoning with a density bonus for proposed affordable housing, subject to the following condition that all

outstanding issues in the TRC staff report be addressed, noting that this request is reasonable based on the information provided in the staff report. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 with Mayor Bellamy voting "no".

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At 6:45 p.m., Councilwoman Cape returned to the meeting.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CONVENTIONAL WISDOM TO DEVELOP A COST ANALYSIS FOR REFURBISHING AND UPGRADING THE CURRENT CIVIC CENTER FACILITY

Mayor Bellamy said that this item has been requested to be continued to the June 13, 2006, meeting in order to receive additional information. Therefore, Councilman Davis moved to continue this matter to June 13, 2006. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilman Freeborn voting "no."

VII. OTHER BUSINESS:

Councilman Mumpower encouraged citizens to attend the City's Memorial Day celebration.

Councilman Freeborn thanked the local Federal Bureau of Investigation for their citizens information session explaining how they operate locally and how they assist citizens.

The following claims were received by the City of Asheville during the period of May 5-18, 2006: Tony May (Sanitation), Charter Communications (Water), Patrick Henry (Police), Erin McQueen (Sanitation), Terry Walz (Water) and Bellsouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Biltmore Park Traffic Calming

Mr. Robert Zieber presented Council with three issues regarding the Biltmore Park Traffic Calming Plan: (1) many provisions of the Traffic Calming Policy have been ignored on the basis that the City will not have to pay for the speed humps; (2) the Biltmore Park Homeowners Association (HOA) Board of Directors has spent thousands of HOA dollars misrepresenting this project to homeowners; and (3) there are significant costs to all Asheville taxpayers for this ineffective and poorly planned project. City Manager Jackson said that he will have the City's Engineer meet with Mr. Zieber to follow-up on his concerns and will distribute an update to Council.

Use of Pritchard Park to Feed the Homeless

Mr. David Carey spoke against the proposed use of Aston Park to feed the homeless. He felt that the Senior Opportunity Center would be a much better location.

Reverend Christopher Chiaromonte urged City Council to work with and for the homeless.

Reverend Amy Cantrell, representing Zaccaeus House Church and the Asheville Homeless Network, spoke in support of allowing Pritchard Park as a place to meet, eat and cross paths. She urged Council not to make downtown Asheville an exclusion zone.

Mr. Stephen West, downtown resident and owner of the Miles Building, explained to Council how the quality of life has improved for the downtown residents since they have stopped feeding the homeless in Pritchard Park.

Ms. Judy Swan, downtown resident, spoke in opposition of feeding the homeless in Pritchard Park.

Mr. Fred Guggenheim, downtown resident, objected only to using Pritchard Park to feed the homeless, not to keep the homeless from using Pritchard Park.

A small business owner in downtown Asheville felt that to feed the homeless in Pritchard Park is not what the park was intended for.

Mrs. Guggenheim explained that since the feeding has stopped at Pritchard Park it has become more of a neighborhood park. She feels like the City has offered them other places to eat that would be more appropriate than Pritchard Park.

Mayor Bellamy said that over the last couple of weeks, City Council has received numerous e-mails categorizing Council members about this issue. City Council was made aware of this issue after members of the community contacted Council requesting order. Mr. Ripley told Council that he was serving food in Pritchard Park, was asked to receive a permit and the permit was denied by City staff. At that time, Assistant City Manager Jeff Richardson said that he would be happy to meet with Mr. Ripley and City staff to address the concern, not knowing that the meeting with City staff had already been set up prior to Mr. Ripley addressing Council. We discovered that another non-profit agency that provides services to the homeless 24/7 offered Mr. Ripley their kitchen but Mr. Ripley turned that offer down. City staff has offered Mr. Ripley the Senior Opportunity Center, which has offered to open their doors so that during the heat and cold Mr. Ripley can access their kitchen to help provide the food service to individuals, but Mr. Ripley turned down that offer as well. Another opportunity available for Mr. Ripley is to work in collaboration with the group that already provides the service on Saturdays at the Buncombe County Department of Social Services. Regarding the location at Aston Park, it was brought to her attention that Mr. Ripley said he didn't care about some of the activities that are happening at Aston Park, but the people in Aston Park worked hard to clean up that Park and the entire West End/Clingman Avenue neighborhood. City staff has offered Mr. Ripley several different locations, but Mr. Ripley has turned them down, wanting Pritchard Park. Cities across this nation trying to address this issue and some ways Asheville is addressing this is by (1) using Community Development Block Grant dollars; (2) using Housing Trust Fund monies to create housing for the homeless; and (3) supporting non-profit organizations that support the homeless. What is unfortunate is making it seem like this Council does not care for the homeless population, especially since Council is very receptive to working for the homeless. Some Council members open their wallets to support the homeless, some clean up after the homeless after they have thrown trash on their property; and some visit parks with their children who have seen activities and paraphernalia in the parks, but didn't use their position to make political statements about the homeless. She also feels it's wrong to make Council seem like they have done something wrong by adopting a 10-Year Plan to End Homelessness which is a beginning to address the issue. She feels this Council has been made out to be villains only because they have asked for order. City Council contributes to making sure that our community is upheld by every member of the

community, whether they are homeless or affluent. She feels this is a mechanism to divide our community and it needs to stop now. She urged Mr. Ripley (a Montreat resident) to not work to divide the Asheville community, but to work with the existing structure in our community. She hopes that Mr. Ripley's goal is to really serve the community and she challenged him to work with the non-profits and City staff to achieve that goal. She is committed to working on policies that are reasonable for everyone with those who see beyond their own agenda. She hoped our community can begin a healing process by working together to address this issue.

Closed Session

At 7:24 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5).; and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 8:35 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:35 p.m.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Monday – June 12, 2006 - 9:00 a.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Buncombe County Chairman Nathan Ramsey, Presiding; Vice-Chair Bill Stanley; Commissioner David Gantt; County Manager Wanda Greene; County Attorney Joe Connolly; and County Clerk Kathy Hughes (Absent: Commissioner Carol Peterson and Commissioner David Young).

Present: Senator Tom Apodaca; Senator Martin L. Nesbitt, Jr.; Representative D. Bruce Goforth; Representative Susan C. Fisher; and Representative Wilma M. Sherrill

Mayor Bellamy called the meeting to order at 9:00 a.m. in the Laurel Forum at UNC-Asheville. Councilman Freeborn then moved to adjourn the meeting to Conference Room 110 in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 9:50 a.m. Councilman Davis moved to come out of closed session and reconvene the meeting in the Laurel Forum. This motion was seconded by Councilwoman Cape and carried unanimously.

At 10:00 a.m. Mayor Bellamy and Chairman Ramsey called their respective boards to order to discuss water-related issues.

Mayor Bellamy outlined some issues that are important in impacting our area. Looking at the issue of water, the City is looking at a governance structure that will be a municipal-run system. The City has done a great deal to improve our system and we want to outline a couple things: (1) Asheville is the first city to have an active asset management program and it's structured to approach is to optimize the life-cycle costs of asset ownership necessary for providing reliable and dependable service to our customers: (2) we have environmental management standards for the ISO 14001 Certification; (3) we have computerized our maintenance system; (4) we have a capital improvement program in which we have over $6 Million that we are investing back into the system; and (5) we had an excellent peer review by QualServe. She felt it was important for individuals to know what we have done in the past 6-12 months regarding our system.

Regarding rate differentials, Mayor Bellamy said that when you look at differentials across the State of North Carolina, the average differential is 85% (they use that to offset costs). City Council is willing to give up our rate differential ability (which is about 85%) and for that 85%, it would cost us over $6 Million. Today we would like to see a tax equity payment of $6 Million for us to give up the rate differential ability. We are willing to talk about how we can get there.

Mayor Bellamy said another issue that has been important to the City is the Joint Planning Area (JPA). The City of Asheville is open to look at new approaches and alternatives to the JPA, especially since we are now we are looking at extending some of our services that we currently provide into the County.

Mayor Bellamy said the last issue is the Civic Center. The last proposal that we submitted to the County talked about support for our Civic Center. We are looking to get support for our Civic Center from Buncombe County and our legislative delegation. We do, however, want to express our reservations using sales tax for this support.

Commissioner Gantt said that throughout the whole discussions they have had four guiding principles. The County has presented the City with 9 separate offers, all that have been unanimous decisions, and they have all been rejected by the City. Eight offers were rejected and one offer accepted by then Councilman Joe Dunn. The most guiding principles for us is an independent Water Authority. Every time a city runs a water department they have to pay betterment costs to the N.C. Dept. of Transportation. The number we have is $4 Million. That is $4 Million right off the top. The repairs needs are around $350 Million that need to be put into the system. If we had an independent authority, we could put the money towards fixing the system since everyone wants to fix the system and make sure it doesn't get run down again. We always thought the MSD type model would be best. The money they receive is put right back into repairs and they have a capital plan to put $260 Million in over the next 20 years. The County is so insistent on an independent board because we have seen how well MSD works and the results to the rate-payers.

Commissioner Gantt said that another guiding principle for the County is no differential rates. The Sullivan Act has been law since the 1930's. We don't feel that for a necessary service that people should pay differential rates. There is no utility, except for a government run utility, that pays differential rates for services. Based on the history of our County, who paid for the system to begin with, there should be no differential rates.

Commissioner Gantt said their third guiding principle is that there be no forced annexation to receive water services. Water is a basic necessity and everyone should be entitled to it.

Commissioner Gantt said that finally, we want everyone to be treated equal. Someone is going to have to pay for this big mess we're in and we want everyone to be treated fairly. We will have to work together to do this. The offers we have made in the past have included taking over the Civic Center. Some of the offer packages were up to $50 Million and the County Manager has a copy of the eight specific proposals we have given and the one we accepted from then Councilman Joe Dunn. We have talked dozens of times because we want to work this out. As far as the specific proposal, basically if $6 Million is desired to be paid up front, that money would be paid by people that will probably never have water service and never got a benefit from it. We already have 3 other water systems within the City and we represent those people too. To say that we're going to give a whole lot of money from their coffers didn't seem right to us. We want everyone to be treated equally and fair and we are very interested in an independent board because that is the way we see the opportunity to fix up what we have. We are, however, interested in continuing talking.

Senator Nesbitt said that their position is well-known in that they put it into legislation. He said we do have a unique history in that in the 1930's our founding fathers made a deal. When everyone went broke they put all the water systems together. Prior to that time the City charged differential rates. When they pooled their reasons, they decided not to do that. The County residents gave up their water systems (he believed there were five) and gave them to the City. When the County residents gave up their ability to have their own water system based on that commitment, it seems unfair that 70 years later to say we are now going to increase your rates. That is where we were coming from. It's all about how you treat people. We did what we thought was best for the community. Asheville is not the only city in the state where this occurs. The City of Charlotte in Mecklenburg County have gone through a number of voluntary agreements to take over other people's water system for the agreement that they would phase out differential rates

and they did it over a 10-year period. At the end of that time, Charlotte will not be charging differential rates.

Representative Goforth was concerned about the negative attitude from Council toward the legislators. He felt it was the City's poor planning when they terminated the water agreement, knowing there would be an upfront loss of $2.5 Million. In addition, we are now in a lawsuit costing everyone money. He urged the City and the County to go back to the table and work out something fair for everyone.

Mayor Bellamy said that this meeting is a point to move forward. The City does have a shortfall in our budget, but we were not anticipating Sullivan Acts II and III taking away $1.1 Million. We have recently paid for and received completed a study that said the City needs to put $59 Million back into our system, not $300 Million inaccurately quoted. She hoped that as we move forward that accurate information is given. She requested a copy of the 9 proposals the County offered.

Senator Apodaca felt we need to look at the way the whole process started when the City gave notice of the termination of the water agreement and the way the legislators were kept out of it. He hoped everyone could put that behind them and move forward.

Representative Sherrill agreed that the biggest disappointment is the negative attitude the legislators have received from Councilman Mumpower, which is a bad reflection on all of City Council. She was totally against using water for forced annexation. She hoped we can move forward. We would all like to see something happen with the Civic Center and they have been begging for years for the figures and plans on what the City as a whole wants to do with the Civic Center.

Representative Fisher felt that we have the potential to get along and supported moving forward.

Councilman Mumpower passed out information on his position on the water issues. He said that he intends to continue insulting the actions of our legislative body against the citizens of Asheville. Our state legislators got involved in a local matter. Had they not trumped the process we would be at a much different place today in treating people in a fair and responsible manner. He said a few cities in North Carolina own and don't manage their own assets. Regarding the City of Charlotte, Charlotte is taking over the County of Mecklenburg. There is one in Chapel Hill which is a University owned system. Aside from those two, every other city in North Carolina of any size, including Hendersonville, Weaverville and Canton, own and manage their assets and it works. He stressed that Asheville is being treated differently and that is not fair. He said that he has never made a public personal attack on anyone. When our legislators passed Sullivan Acts II and III, they created a permanent division between the City and the County. He didn't create that, the legislators did and all he has done is to shine a light on it.

Commissioner Gantt said that 44% of the water ratepayers live outside the City limits. He agreed that this issue is not City vs. County, but is a matter of politics and control over the water facilities. He hoped we can get beyond the control issue.

Regarding differential rates, Councilman Newman said that is a core issue because we need some kind of rate structure to fix the system. Everyone is interested in treating the customers fairly, although we may have different opinions about what that fairness is. He shared Asheville's prospective on the rate structure. He said that when the various systems were combined, the basic understanding at that time was that on the lines that had been built and were being paid for by the bonds for the old water districts, the agreement was that the City could never charge differential rates on those lines (because there had been specific bond issue for

those specific lines). But Asheville's prospective is that there was never necessarily an agreement that on any future lines – 100 years in the future – that they couldn't start charging differential rates. Not that everyone will agree with that, but that is the other prospective. When the Regional Water Authority was created there was an administrative agreement between the different local governments not to charge differential rates. We feel the City's offer today is a big concession on our part. He said that City Council is willing to not challenge that legal question if we can work out an overall agreement that is fair. (At this time – 10:37 p.m. Councilman Freeborn left the meeting).

Mayor Bellamy said that other municipalities in Buncombe County charge differential rates. So, if you want no differential rates in Buncombe County then it should be across the board for every municipality in Buncombe County.

Senator Nesbitt felt that every place where they have a differential, the people know it. What we have here is 70 years of history where people built lines and joined the system with no differential rates and now the City wants to charge differential rates.

Councilman Mumpower explained that was why City Council's position is for incremental increases.

Councilwoman Cape said that we have an unusual situation in Asheville in that 50% of our daytime visitors don't live in the City and rely on City services, which are paid for by the Asheville taxpayers. We have to figure out a way to be fair and water is one of those pieces.

Vice-Mayor Gantt said that the County did a study of dollars into the County from City residents and County residents and dollars out. He thinks because of the services, it's a basic wash-out because the County does welfare, schools, general health and well-being and more money goes back to the City residents when they pay taxes. He lives outside the City limits, but has his office in the City and School District and receives services. And, actually there is a net increase return on the dollar spent by City taxpayers to the County. Maybe we should jointly study that issue. Mayor Bellamy felt it would be good to furnish the City the County's study so we can look at not only the City and County dollars, but where the State dollars go, because when we look at our infrastructure, that is where we are missing support.

Representative Goforth said that since the City took over the Golf Course we have differential rates. The City owns the property and County is paying the note on it for $2.5 Million. Mayor Bellamy responded that was the bonds are for McCormick Field. She said that the County was leasing the property from the City of Asheville and the County paid for the upfit. Any building that someone leases, the owner keeps the upfit when the tenant moves out.

Ms. Greene responded to Commissioner Gantt when he asked what the amount is that the County pays for debt service on bonds that the City has ownership of.

Vice-Chair Stanley wondered what the numbers are between City/County residents who go through the Department of Social Services and the Health Department.

Mayor Bellamy noted that we are all partners and despite of what it looks like, there are several ventures the City and County are collaborating successfully.

Senator Nesbitt felt that the City and Council can get over the differential rates hurdle after we solve some of these other problems. He suggested as a starting point that the City and County sit down and determine what is an equity. A lot of the things went away with the water agreement. The legislators don't have any role in that and it's not for us to decide what the

equities are. Once that is determined and we can help in some way, we will be willing to do that. The legislator's prospective is that we may be able to help with the Civic Center, golf course, McCormick Field, Nature Center, et al. He suggested putting all of those things together to be dealt with since they are County-wide services to where everyone can look at it. Maybe in that process we can find a way to help you with some of that and that will relieve the $6 Million problem. If you can solve some of it in another way, it is the same thing as giving you money. We need to help you find some money for the Civic Center or the County has to help you. He said they need a good plan on what to do about the Civic Center. We never had one, but he's not sure Council has reached consensus much less the community. If we are going to do something, we need to do what is right for this community for the next 30-40 years. He would like an expert from the outside to come in and tell us what this region needs. We are ready, willing and able to help in some way and we will try to help you out in that area.

Councilman Davis, Chair of the Civic Center Task Force, explained in detail the exhaustive process used to gather information from the community, culminating in a final report. He noted that they did not look at it from a regional approach. He explained the following two options that were presented to City Council by the Task Force: (1) Build a new arena, build Performing Arts Center and Media Center inside the existing arena, make Thomas Wolfe a flat floor facility; and (2) Renovate the arena, build a new performing arts center on the lot next to City Hall (Parkside) and make Thomas Wolfe a flat floor facility. A third option was to refurbish what we have. He then explained the rough cost estimates. In addition, the City has just had a study completed by Dr. Ha from Western Carolina University, which said that the Civic Center is currently operating at a deficit of about $400,000 a year, but generates ten times more in visitor spending dollars than it costs to operate the Center ($19 Million in money generated vs. $1.9 Million in operating expenditures). In addition to the economic impact of the Civic Center, it also generates over $4 Million a year in federal, state and local taxes.

Senator Nesbitt felt that the City has done a great job in studying the Civic Center, but to some extent the City has been laboring under what the City could do. What he is proposing is what the state legislators, the County Commissioners, and private sector can do to help. But, before they commit, they want to look at it from that prospective because we are the hub of this region.

Representative Goforth felt that we can lower the rates if we do what is best for the people. If you can get $5-6 Million from someone who will lease the water system, that makes sense to him.

Senator Apodaca feels that the City and County should concentrate on the water issue by separating out all the other facilities. Then find out where the true costs come and figure out a way to pay for those services but not on the back of water users.

Councilman Newman said that we have to address some of these tax equity issues and if we don't have any rate differentials, it's hard to see how it's fair to Asheville residents.

Vice-Mayor Jones voted to give notice to terminate the water agreement because she didn't feel like the water pipes were getting fixed (3 different governmental bodies were needed to approve the budget) and Asheville City rate-payers pay the highest water rates in the state. She said those two things were why she wanted to renegotiate the water agreement. She said that the City has made a capital improvement commitment of $6 Million this year to fix those pipes. She feels that the City-run system gives accountability to the voter. She said that the City is offering no rate differentials for a tax equity arrangement. This is a big movement since June of 2005. She felt the City has moved forward and hoped the County would move forward too.

Upon inquiry of Commissioner Gantt, Water Resources Director David Hanks felt that the City should be investing $6-8 Million every year for maintenance. Mr. Hanks said that if we have the resources and the ability, we probably have approximately $200-300 Million of real live needs out there as far as system-wide replacements, which is not uncommon of a water system our size. It's not feasible to do the projects at one time. Our CIP over the next seven years will go for maintenance.

Upon inquiry of Representative Sherrill, Mr. Hanks said that the annual raters pay about $20 Million per year, plus an additional $2 Million from development.

Upon inquiry of Representative Goforth, Mayor Bellamy said that we want to keep the water system because it is a City asset and that is one source that Asheville residents have direct accountability for. Over the last year, we have shown Asheville residents that we can be good stewards of our resources.

Chairman Ramsey said that City Council was extremely unwise not to take the offer of the County to take all the recreation facilities (including the Civic Center) so they could be paid for by the taxpayers throughout the County. Then we could come up with a plan on the Civic Center and go to the local delegation and others to come up with additional funding streams. The only thing they asked for in exchange was a true independent authority and that recreation facilities be governed jointly with the City and the County. The assets would still be owned by the City of Asheville.

Putting aside the non-betterment costs issue, Mayor Bellamy asked why the City shouldn't be allowed to run their own water system.

Chairman Ramsey felt that the City has every right to run their own water system, but when the City gave notice to terminate the water agreement, they faced certain consequences. (At 11:30 p.m., Senator Apodaca left the meeting.)

Vice-Chair Stanley said that we have a new Mayor and a new City Manager. He felt that the City and County Managers and the Mayor and Chairman they should be given an opportunity to work this out and bring to the respective bodies a proposed plan.

Senator Nesbitt said that the City is the one holding the problems. You have a water system you need to repair and civic center, et al. we need to do something with. Those are things as the County Commissioners and legislators have an interest in and we need to turn our attention to these problems. He said that in some reasonable way, under some reasonable plan, the legislators are willing to come to the table and help. In addition to the City and County being able to work it out, there will be help from your legislative delegation to do that. He thinks the City and County need to get together on the Civic Center issue and figure out what needs to be fixed and quantify it for the legislative delegation. We will then be ready to try to help, if that's possible. He said that this session is almost over and the City and Council will have some time to work on it before the next session, which starts in January of 2007

Commissioner Gantt suggested the City and County Managers get the income and expenses (including betterments) and the repair needs for the water system. Then the bodies can talk about the best way to manage it. He said he didn't care that much about how it's managed, but just that it gets fixed for the next 30-40 years.

Councilman Newman said that if we want to try to work this out locally, then we need to stay ahead of the judicial process. We may a little more time on the Civic Center, but some of the core water utility issues, we do need to try to work out as quick as we can. He felt that the City and County Managers need some direction on what each of the bodies can live with. The City

has come in and said we are committed to fixing the system. We are also willing to have no rate differentials going forward (with a tax equity payment of $6 Million/year) and will drop our legal challenge around that issue. He asked if any of the proposals that the County made in the past are still alive and what is on the table for negotiations.

Representative Sherrill said that if there is some agreement between the City and County, there may be something small we can find to do in the legislature before we adjourn this year. (At 11:39 p.m., Representatives Goforth and Sherrill left the meeting.)

Vice-Chair Stanley said that he didn't have a problem with the City running the water system, but just wanted to make sure where the money was going.

In response to Councilman Newman's question if any County proposals were still on the table, Commissioner Gantt said that unlike the negotiations, the County has made a conscious effort to not answer unless all five Commissioners agree. He said they would be willing to keep talking but all five Commissioners would need to agree on any proposals.

Chairman Ramsey said that he would not support a $6 Million tax equity payment unless they can come up with money which they don't have. He would support the water system being a City-run system but that all water revenue must stay in the system with no differential rates. He personally would be willing to compromise on some issues, but not others. Certainly he did not want to necessarily compromise on the one point that within ½ mile of the City limits future developments of a certain size would have to agree to be voluntarily annexed before they receive water service. We were on the record at the time accepting that. He is still willing to go in that direction and still willing to go the direction of the independent authority.

Councilman Mumpower said that all the County proposals ask Asheville to perform differently than Canton, Hendersonville, Waynesville, Weaverville, and all the other cities that own their assets in our area. He is not personally willing to support any agreement that says the City of Asheville has to behave differently than everybody else does.

Councilman Davis said that the City does have the tool to annex, if the area meets certain criteria, however, if the City and the County work together, we can have a place where people would want to build new development in the City.

Mayor Bellamy said the next step will be for the two Managers to circulate some dates for the next open meeting with all three bodies, at which meeting the report can be reviewed and we can see what needs to be done next and how we are going to get there.

Senator Nesbitt said that someone has to quantify the amount of the City's recreation facilities (that were transferred back after termination of the water agreement) and have that taken out of the equation before the legislators will know what they can do. We wouldn't just be helping the City with the Civic Center but around the corner we will be helping the City with the water system. If we take the burden off the City on the other facilities it will leave you with money to fix the water system.

Senator Nesbitt suggested the City and County Managers work together on coming up with a consensus group of things that could be put in an authority and how much money that will save the City if you do that. With all due respect, he thinks he would want an independent assessment on what we need to do regionally with the Civic Center.

Upon inquiry of Councilman Mumpower about the cost of the study, Senator Nesbitt said that the County would pay for it. And, it would need to be a new person not used before.

At 11:51 a.m., Mayor Bellamy and Chairman Ramsey adjourned their respective meetings.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – June 13, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

EXPRESSION OF SYMPATHY

On behalf of the City Council and the citizens of Asheville, Mayor Bellamy expressed its deepest sympathy to the family of Jackie Clark, who was killed on June 8, 2006, in an automobile accident. Division Chief Clark was an active member of the Asheville Fire Department for over 25 years.

INVOCATION

Councilman Freeborn asked for two moments of silence.

PLEDGE OF ALLEGIANCE

Mr. Fred English led City Council in the Pledge of Allegiance.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JUNE, 2006, AS "APHASIA AWARENESS MONTH"

Councilman Davis read the proclamation proclaiming June, 2006, as "Aphasia Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Edna Tipton who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda "G" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 23, 2006

B. RESOLUTION NO. 06-111 - RESOLUTION AUTHORIZING THE MAYOR TO SELL AIR SPACE ADJACENT TO 12 S. LEXINGTON AVENUE TO CENTRINO LLC

Summary: The consideration of authorization authorizing the Mayor to convey air space adjacent to 12 South Lexington Avenue to Centrino, LLC.

On May 23, 2006, the City Council of the City of Asheville directed the City Clerk to advertise for upset bids regarding an offer to purchase air rights to City owned property adjacent to 12 South Lexington Avenue (PIN 9649.18-40-1034) for the sum of $2,000. The notice ran in the Asheville Citizen-Times on May 26, 2006, as provided in N. C. Gen. Stat. sec. 160A-269. No upset bids were received in response to said advertisement.

Approval of the resolution will authorize the sale of the property to Centrino, LLC for the amount of $2,000.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by independent appraisal.
- It will provide for a more practical approach to the air space occupied by the balconies.
- It will clarify responsibility and liability for the balconies.

There is no negative impact.

City staff recommends City Council authorize the Mayor to convey air space adjacent to 12 South Lexington Avenue to Centrino, LLC.

RESOLUTION BOOK NO. 30 – PAGE 31

C. RESOLUTION NO. 06-112 - RESOLUTION ACCEPTING BODDINGTON COURT AND A PORTION OF RACQUET CLUB ROAD AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept Boddington Court and a portion of Racquet Club Road in South Asheville as City-maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Boddington Court is a developer-constructed street that has an average paved width of 20 feet and a length of 0.14 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

A portion of Racquet Club Road is currently maintained by the City. In order to accept maintenance of Boddington Court the City must accept maintenance of an additional section of Racquet Club Road. This section of Racquet Club Road is 20 feet in length and 0.02 miles long. The right-of-way for this section of Racquet Club has been recorded. The property owners adjacent to this section of roadway have requested the acceptance of the street.

Following City Council's approval of this resolution, Boddington Court and a portion of Racquet Club Road will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- Property owners inside the City on this section will receive relevant City services for future maintenance and other related street services.
- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Boddington Court and a portion of Racquet Club Road in South Asheville as a City maintained street.

RESOLUTION BOOK NO. 30 – PAGE 32

D. RESOLUTION NO. 06-113 - RESOLUTION AUTHORIZING THE MAYOR AND KEY CITY STAFF TO ACCESS THE FEDERAL TRANSIT ADMINISTRATION'S TRANSPORTATION ELECTRONIC AWARD AND MANAGEMENT SYSTEM

Summary: The consideration of a resolution authorizing the Mayor and key City staff to access the Federal Transit Administration's Transportation Electronic Award and Management (TEAM) System.

The Federal Transit Administration (FTA) uses the TEAM system to award, administer and oversee federal funds granted to transit systems. The Mayor and the City Attorney require access to the system to agree on behalf of the city to the certifications and assurances sought by the FTA as a condition of making the grant, and, to actually submit the application for the grant which allows the City of Asheville to receive FTA funding. Grant administration and origination will be performed by the Transit and Parking Services Manager and the Transit Planner. This action is a required by the FTA in order to receive federal funds to support transit operations.

This action conforms with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources

Pros:

- Allows the origination of grants to receive federal transit funding.

Cons:

- None

City staff recommends adoption of the resolution authorizing the Mayor and key City staff to access the Federal Transit Administration's Transportation Electronic Award and Management System.

RESOLUTION BOOK NO. 30 – PAGE 34

E. ORDINANCE NO. 3365 - ORDINANCE DISSOLVING THE TAXICAB ADVISORY BOARD

Summary: The consideration of an ordinance to dissolve the Taxicab Advisory Board.

The City Council Boards & Commissions Committee met and determined that the Taxicab Advisory Board is no longer necessary and should be dissolved.

The Taxicab Advisory Board was created by the Taxicab Ordinance and has never been constituted or appointed. The taxi affairs are being dealt with through staff level meetings with the providers. Where difficulties remain, the City Council Revenue and Finance Committee is acting as the final advisory group. The board is not needed in order to continue the business of the taxicab ordinance.

This action conforms with the Strategic Operating Plan in the Community Building area. Goal #1 - efficient and effective City Council procedures

Pros:

- Will eliminate a board that has no remaining function.

Cons:

- Possible perception the process for review may lack impartiality.

The City Council Boards & Commissions Committee recommends City Council adopt an ordinance to dissolve the Taxicab Advisory Board.

ORDINANCE BOOK NO. 23 – PAGE 1

F. ORDINANCE NO. 3366 - BUDGET AMENDMENT TO AUTHORIZE USE OF N.C. STATE DRUG SEIZURE FUNDS

Summary: The consideration of a budget amendment, in the amount of $66,290, to authorize the use of North Carolina State Drug Seizure Funds to fund training improvements for the Asheville Police Department.

The North Carolina State Drug Seizure Program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

To date, the City of Asheville Police Department has received $66,290 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to make critical improvements at the APD firearms range. These improvements include modifications to create a 100 yard firing range, paved access road, paved parking area, and operable restroom facilities. These improvements will enhance all APD officers firearms proficiency and overall officer safety training. This range is used monthly by the Drug Suppression Unit / Emergency Response Team for firearms training.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- North Carolina State drug seizure revenue used to fund improvements to the APD firearms range at no cost to city taxpayers.

Con:

- None noted.

City staff recommends City Council adopt the budget amendment, in the amount of $66,290, to authorize the use of North Carolina State Drug Seizure Funds to fund improvements to the Asheville Police Department firearms range.

ORDINANCE BOOK NO. 23 – PAGE 2

G. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FOURTH OF JULY CELEBRATION ON JULY 4, 2006

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BLUE RIDGE CLASSIC LACROSSE TOURNAMENT ON JULY 29, 2006

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 10, 2006

These items were removed from the Consent Agenda for individual votes.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 06-114 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FOURTH OF JULY CELEBRATION ON JULY 4, 2006

RESOLUTION NO. 06-115 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BLUE RIDGE CLASSIC LACROSSE TOURNAMENT ON JULY 29, 2006

RESOLUTION NO. 06-116 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 10, 2006

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: (1) The Fourth of July Celebration on July 4, 2006; (2) The Blue Ridge Classic Lacrosse Tournament on July 29, 2006; and (3) The Lexington Avenue Arts & Fun Festival on September 10, 2006.

The below listed group has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event.

- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area. This event will be held in Pack Square and along College Street, due to the Pack Square Conservancy construction project.

- The Blue Ridge Classic Lacrosse Tournament on July 29, 2006, in the designated area at the end of Azalea Park Field #4.

- The Lexington Avenue Arts and Fun Festival on Lexington Avenue on September 20, 2006.

The Asheville Parks and Recreation Department recommends City Council adopt the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: (1) The Fourth of July Celebration on July 4, 2006; (2) The Blue Ridge Classic Lacrosse Tournament on July 29, 2006; and (3) The Lexington Avenue Arts & Fun Festival on September 10, 2006.

Councilman Newman moved for the adoption of Resolution Nos. 06-114, 06-115, and 06-116. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 06-114 - RESOLUTION BOOK NO. 30 – PAGE 35
RESOLUTION NO. 06-115 - RESOLUTION BOOK NO. 30 – PAGE 37
RESOLUTION NO. 06-116 - RESOLUTION BOOK NO. 30 – PAGE 40

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO RECEIVE INPUT ON THE FISCAL YEAR 2006-07 ANNUAL OPERATING BUDGET

Mayor Bellamy opened the public hearing at 5:12 p.m.

Chief Financial Officer Ben Durant said that this public hearing is to receive input on the Fiscal Year 2006-07 Annual Operating Budget. This public hearing was advertised on June 2 and 9, 2006.

After a series of worksessions on the Fiscal Year 2006-07 Annual Operating Budget, the City Manager presented the budget to City Council on May 23, 2006. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the budget along with a notice of the public hearing was published on June 2 and 9, 2006. Adoption of the budget ordinance is scheduled for June 27, 2006, at the City Council meeting.

The Fiscal Year 2006-07 Annual Operating Budget is balanced with an Ad Valorem tax rate of $0.41 per $100 of assessed value. All essential City services are maintained.

A copy of the budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

City staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2006-07 Annual Operating budget and include public input in considerations on the budget.

Mr. Fred English, Haw Creek resident, expressed concerns over the 90-day trial free bus period. He also felt it wasn't fair to have people who are trying to make a living to charge them more for parking.

Mr. Jeff Slosman, speaking on behalf of the Manufacturers Executive Association, said that the manufacturing sector has felt a tremendous burden due to the stormwater utility tax in the past year. He urged Council to be cautious before putting more burden on our area industries, especially regarding water and the privilege tax. Increasing the cost for water for large users would have an immediate repercussion on jobs in the area. We already pay more for water than other cities in the state and in the region. Higher costs might result in additional job losses for the area. He felt it was imperative that we keep the differential structure that is currently in place and not go to a flat rate structure. Regarding the CIP, manufacturers are willing to pay their fair share, but not a disproportionate fair share, since 90% of the water users are residential and 8% of the remaining 10% are manufacturers. The unbalanced fee structure will result in employers not be able to give wage increases to our employees or donations to the area's non-profits. Regarding the privilege licenses, to remove the cap totally would have an unfair disadvantage to the larger

businesses and manufacturers in the area. He urged Council to not place any more taxes on manufacturers because there may be potential job losses in the manufacturing sector in the Asheville area.

Mr. Hartley Eastwood, representing a group from Deerwood, was not opposed to paying their fair share to repair the water system, but was concerned about the water meter charge for the capital improvement plan. He said that Deerwood has 100 residential units. The plan for a residential one-inch meter would be $3.50 a month and a 6-inch meter is $9.90 a month. Deerwood has a 6-inch water meter and they share a water bill for assessments. Beyond the water meter is the homeowner's responsibility. He feels they are being charged an unfair share and asked for Council to reconsider charging them for the 6-inch meter, when they are in fact residential homes.

Ms. Robin Stickney, United Way Community Services Director, urged City Council to fund the 211 Call Center in that almost half of the 60,000 calls last year were from City residents.

Mr. Mac Cox, President of Crowfields Association, said that Crowfields contains 192 homeowners and expressed the same concerns as the homeowners from Deerwood.

Mayor Bellamy closed the public hearing at 5:29 p.m.

City Manager Jackson said that he would provide Council with background information on these budget concerns at the June 20, 2006, budget worksession.

Mayor Bellamy said that City Council will be holding another budget worksession on June 20 and then Council will consider adoption of the Fiscal Year 2006-07 Annual Operating Budget at their June 27, 2006, formal meeting.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE MINIMUM LOT WIDTH FOR CUL-DE-SAC LOTS

ORDINANCE NO. 3367 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE MINIMUM LOT WIDTH FOR CUL-DE-SAC LOTS

Mayor Bellamy opened the public hearing at 5:30 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance for the purpose of clarifying the standards concerning the required lot width for lots on cul-de-sacs. This public hearing was advertised on June 2 and 9, 2006.

The current regulations contained in the Code of Ordinances of the City of Asheville concerning the lot width for residential lots on cul-de-sac lots read literally that such lot width shall be twenty-five (25) feet at the front setback line (interpreted as a typographical error meant to be the property line) and an average of the required lot width over the entirety of the lot. The staff has long considered this standard as difficult to administer. The staff previously went through the process of amending this standard in conjunction with a number of other ordinance amendments. In the process of approving the numerous amendments made over the course of a few months, an accidental reinsertion of this problematic regulation occurred. This wording amendment simply corrects the clerical and drafting mistakes and creates a regulation concerning lot width on residential cul-de-sacs that is easily applied and appropriate for such development. The standard

is that such lots must be a minimum of twenty-five (25) feet at the front property line and eighty (80%) percent of the required lot width at the front setback line.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Considerations:

- This amendment provides for a simpler mechanism for determining lot width on cul-de-sacs without jeopardizing the need for such lots to be similar in size, etc. with other lots in the same zoning district.
- This amendment corrects clerical and drafting mistakes previously made concerning such regulations.

The Asheville Planning and Zoning Commission recommended approval of this code amendment on May 3, 2006, by a unanimous vote of 5-0. Staff recommends approval.

City staff recommends City Council approve the amendment to the Unified Development Ordinance for the purpose of clarifying the standards concerning the required lot width for lots on cul-de-sacs.

Mayor Bellamy closed the public hearing at 5:31 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3367. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 4

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW "REPAIR AND SERVICE BUSINESSES" AS A PERMITTED USE IN THE INDUSTRIAL DISTRICT

ORDINANCE NO. 3368 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW "REPAIR AND SERVICE BUSINESSES" AS A PERMITTED USE IN THE INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:32 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow "repair and service businesses" as a permitted use in the Industrial District. This public hearing was advertised on June 2 and 9, 2006.

The City of Asheville's Unified Development Ordinance does not currently permit "repair and service businesses" in the Industrial District. Such uses are allowed in the Commercial Industrial and River Districts. They are also allowed in the Community Business I, Community Business II, Highway Business, Regional Business, and Central Business Districts as uses by right subject to special requirements (restricted as to what may be repaired and whether outdoor operations or storage are permitted). Repair and service businesses are establishments primarily engaged in services (often including repair) to individuals, households or businesses. Examples would include: carpet cleaners; appliance repair; shoe repair; and electronic repair services. Heavy equipment and automobile repair are separately listed in the current ordinance and, therefore, would not be included in this classification.

This ordinance simply adds "repair and service businesses" to the list of permitted uses in the Industrial District.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Considerations:

- This amendment allows for "repair and service businesses" to be developed in Industrial Districts which seems an appropriate area for such operations.
- This amendment opens up additional areas where such businesses may operate without numerous limitations on operation.
- This amendment may be seen to deplete the available industrial sites in our community for use for non-industrial purposes.

The Asheville Planning and Zoning Commission recommended approval of this code amendment on May 3, 2006, by a unanimous vote of 5-0. Staff recommends approval as well.

City staff recommends City Council approve the amendment to the Unified Development Ordinance to allow repair and service businesses as a permitted use in the Industrial District.

Mayor Bellamy closed the public hearing at 5:32 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3368. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 6

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. QUALSERVE PRESENTATION

Mayor Bellamy was pleased to present the QualServe Peer Review plaque to the Water Resources Department. This plaque was presented to the City of Asheville by the American Water Works Association (AWWA). She then recognized Water Resource Department employees David Hanks, Mike Brookshire, Ron Kems, Carroll Woody and Leslie Carreiro.

Water Resources Director David Hanks gave a brief update of the 2005-06 water utility improvements: (1) Asset Management Excellence; (2) Environmental Management Standards (ISO); (3) computerized management system; (4) Capital Improvement Program; and (5) excellent peer review by QualServe.

Mr. Hanks then explained the a peer review is an objective set of external eyes by experienced utility professionals who take a high level look at the organization and make recommendations to senior utility management. The QualServe Peer Review was conducted by: Tom Clark, Round Rock, Texas; David Dawson, Abingdon, Virginia; Ron Thomas, Harlingen, Texas; Jim Miller, Anniston, Alabama, and Angela Lafferty, AWWA, Denver, Colorado.

He then shared the highlights of the strength findings: excellent water quality; formal education program is in place; committed to continuous improvement; safety policies are in effect and enforced and safety meetings occur on a regular basis; equipment is provided, personnel are

trained on its use and most important, employees use it; all facilities have an Emergency Response Plan in place; capital improvement needs have been identified; utility has debt capacity; construction crew – neighborhood projects; effective customer service (a) external customers are well served; and (b) an understanding of the importance of the water utility mission; Water Resources (a) dedicated staff; (b) certification/recognition of excellence; and (c) Asset Management Program; and continuous improvement (a) commitment/participation programs; (b) culture of continuous improvement; (c) support within business and commercial community; and (d) ISO 14001-2004 Certified – Environmental Management System.

He then shared the highlights of the opportunities findings: develop plan to locate all utility functions at a single central location; new employee orientation should include tours to all work sites to increase appreciation of fellow employee working hardships; a formal executive development program for senior staff should be implemented throughout the City; alternative financing options such as leasing and special assessments; ensure that talented staff will choose to make careers here; and fund major capital improvements.

B. CIVIC CENTER ECONOMIC IMPACT REPORT

Councilman Davis, Chair of the Civic Center Task Force, said that the economic impact study of the Civic Center on the local economy has been completed and is being presented to City Council for consideration. He thanked the Dr. Ha, the Civic Center Task Force members, Ms. Sasha Vrtunski and Mr. David Pisha for their hard work in reaching this point.

Ms. Sasha Vrtunski said that the Civic Center Task Force, created by City Council, recommended that the City carry out an economic impact study that would measure the impact of the Civic Center on the local economy. City Council funded the study, and it has been completed. Western Carolina University Professor of Economics Steve Ha conducted the study to estimate the economic impact of the Asheville Civic Center on the economy of Asheville and Buncombe County.

The study found that visitor spending related to the Asheville Civic Center is estimated to be over $19 million. Adding in the direct and indirect effects of the expenditures by the Civic Center, the total impact on the local economy is over $22 million. Measuring the impact in jobs, the Civic Center creates 295 direct jobs and 73 indirect jobs for a total of 368 jobs in the local economy. The study also breaks down the impacts in both dollars and jobs for each of the Civic Center venues (arena, auditorium, exhibit hall, banquet hall).

In addition to the impact on the local economy, a fiscal impact study of the Civic Center was carried out. It was found that the Civic Center generated $1.8 million in state and local taxes, and another $2.4 million in federal taxes, for a total of $4.2 million in taxes.

Advantages:

- The economic impact study reveals new information about the Civic Center's impact on our local economy.
- The Civic Center is generating over $22 million a year in local spending, creating approximately 368 jobs (directly and indirectly).

Disadvantages:

- None noted.

She said that this report is for informational only and for City Council use when considering the merits of future investment in the existing or new structures/programs of the Asheville Civic Center.

Dr. Inhyuck "Steve" Ha said that the purpose of the study was (1) to estimate the economic and fiscal impacts of the Asheville Civic Center on the economy of Buncombe County, N.C.; and (2) to examine the characteristics of the events (event length and type) and visitor profile, such as visitor volumes, and the residential origins of its visitors.

Key findings included: (1) the Civic Center is currently operating at a deficit of about $400,000 a year, but generates ten times more in visitor spending dollars than it costs to operate the Civic Center ($19 Million in money generated vs. $1.9 Million in operating expenditures); (2) events at the Civic Center range from one to more than five days in length and combined attract over 211,000 attendees a year; (3) overall in terms of payroll expenditures, other expenditures, and visitor spending, the Civic Center contributes more than $22 Million a year; (4) in terms of jobs, the Civic Center creates a total of 368 jobs in the local economy; and (5) in addition to the economic impact of the Civic Center, it also generates over $4 Million a year in federal, state and local taxes.

Dr. Ha then explained, using a map, Civic Center ticket sales by state. He then reviewed with Council a map showing ticket sales by North Carolina counties. Using charts, Dr. Ha showed the distribution of revenues and expenditures from the Civic Center over a three year average. The then showed a distribution chart of visitors by venue of the Auditorium, Banquet Hall, Exhibition Hall and Arena. Following that, he reviewed with Council the ticket sales from the box office, phone sales, internet sales and outlet sales.

Using tables from the IMPLAN analysis, Dr. Hall showed Council the economic impacts of the Civic Center and then by venue use. He reviewed the expenditures of visitors at the Civic Center and the fiscal impact of the Civic Center.

Dr. Ha presented council with three recommendations: (1) The Civic Center is making a significant amount of financial contribution to the Asheville-Buncombe economy. Due to its influence beyond Buncombe County, the Center is attracting revenues from outside the County; (2) a comprehensive survey needs to be conducted over a full 12-month period given the seasonal fluctuations of the type of events and length of events held. A survey of less than a year would not accurately portray spending behavior related to the Civic Center; and (3) the Civic Center could install a tracking system to consistently gather information about the characteristics of people attending events at the Civic Center.

In summary, Dr. Ha said that the study estimated Civic Center revenues and expenditures, event length and type, visitor volumes, and the residential origins of its visitors. The study also considered the direct and secondary economic and fiscal impact on the local economy and jobs generated as a result of the Civic Center.

The study's principal investigator found the Center is currently operating at a deficit of about $400,000 a year, but generates ten times more in visitor spending dollars than it costs to operate the Center ($19 Million in money generated vs. $1.9 Million in operating expenditures). Events at the Civic Center range from one to more than five days in length and combined attract over 211,000 attendees a year. Finally, in addition to the economic impact of the Civic Center, it also generates over $4 Million a year in federal, state and local taxes.

In terms of payroll expenditures, other expenditures, visitor spending, and taxes, the Civic Center contributes more than $22 Million a year.

Even though Dr. Ha was unable to respond to some questions due to the software design, he did respond to various questions and comments from Council, some being, but are not limited to: of the $4 Million in tax revenue generated, how much does the City get back; in terms of the software, does one finding impact other areas; out of the $22 Million impact, what are the proportions for inside the City, Buncombe County, and statewide; is the information based on the present day on the conservation side; is there a way to find out if the overnight visitors' destination was the Civic Center; what is the average salary of the 11 full-time employees; how was the dollar amount for the overnight visitor determined; and, has the IMPLAN tool been used in other communities to obtain a history of its use.

Councilman Newman wondered if there was a way to determine if the City had been investing money into the Civic Center annually if we would have a higher operating deficit, or if the well-maintained facility would be drawing more people.

Councilman Mumpower understands that without the visitor tracking, we have a suspect study. He said there is no question that there is secondary economic impact from the Civic Center, but Dr. Ha's ability to be thorough was hampered based on limited statistical data.

Mr. Dennis Justice suggested other variables to determine the economic impact of the Civic Center.

It was the consensus of City Council to accept this report.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CONVENTIONAL WISDOM TO DEVELOP A COST ANALYSIS FOR REFURBISHING AND UPGRADING THE CURRENT CIVIC CENTER FACILITY

Councilman Davis, Chair of the Civic Center Task Force, said that as a result of the meeting with the state legislators and County Commissioners on Monday, June 12, 2006, at which time they asked the City to look at the Civic Center from a regional approach, he felt it may be appropriate to continue this resolution for a short period of time.

Ms. Sasha Vrtunski said that on May 9, 2006, the Civic Center Task Force presented its report to the Asheville City Council. The report recommended two options for consideration; the first included building a new arena, and the second called for building a new performing arts center next to City Hall. A third option, estimated at approximately $17 million, was also discussed. This third option would only cover repairs of deferred maintenance items and would not improve service to customers, nor conditions for event performers and producers.

During the May 9 Council meeting, there was a request from members of Council that a "fourth option" be developed. This option consists of refurbishing and upgrading the current facilities so that the Civic Center can continue operations into the future successfully. In pursuit of this option, staff contacted Ian Vingoe, a consultant with Conventional Wisdom, who wrote much of the Heery Report. Mr. Vingoe is intimately familiar with the Civic Center and has the capability to develop realistic and detailed estimates for improvements in a short time frame.

Mr. Vingoe has indicated that the fee for the costs estimates report will be up to $10,000 plus expenses. There is additional cost if City Council would like him to attend a City Council meeting to discuss the results. Staff is confident that the total cost of these items would not exceed $20,000. Staff proposes that we use savings in the current Fiscal Year 2005-06 Civic Center budget to fund this $20,000 expense; therefore, there will be no impact on the Fiscal Year 2006-07 budget.

Advantages:

- City Council will receive up to date cost estimates for improving the Civic Center, broken out into three milestones (levels of improvement).
- Updated cost estimates will also be useful in evaluating the second option proposed by the Civic Center Task Force (Parkside option), as that option calls for upgrading the Civic Center Arena.

Disadvantages:

- The cost analysis will cost between $10,000 and $20,000.

City staff recommends that City Council authorize the City Manger and/or his designee to enter into a contract with Conventional Wisdom, not to exceed a total of $20,000.

After each Council member voiced their opinions on whether or not to proceed with the study at this time, it was the consensus of Council to defer action on this matter and bring it back to Council on August 8, 2006.

Mayor Bellamy felt that it was important to look at all information from the standpoint of what will serve our community long-term.

D. RESOLUTION NO. 06-117 - RESOLUTION EXPANDING INSPECTION SERVICES INTO THE EXTRATERRITORIAL JURISDICTION AREA

City Attorney Oast said that this is the consideration of a resolution expanding inspection services into the extraterritorial jurisdiction area.

He said that the purpose of this report is to implement Council direction concerning issues and opportunities for managing growth in areas immediately proximate to the City limits through the extension of City development review services into the extraterritorial jurisdiction (ETJ).

City Council has directed staff to undertake extension of the full range of development review services into the ETJ. We have advised Buncombe County of this intention and have coordinated transition plans for service extension. The resolution effectuates Council direction in accordance with our service transition discussions with the County. This service extension will apply to the ETJ areas and will include the following services.

- Floodplain management
- Stormwater management
- Erosion control
- Street address services
- State Building Code
- Minimum housing code

City staff recommends City Council adopt the resolution extending the City's full range of development review services into the ETJ.

At the request of Vice-Mayor Jones, it was the consensus of Council to instruct the Mayor to write a letter to the Chairman of the Buncombe County Commissioners asking for enforcement authority for nuisance abatement in the extraterritorial jurisdiction area.

When Councilman Freeborn asked if there would be any financial impact to our General Fund, City Manager Jackson explained how the revenue will exceed expenditures by approximately $150,000.

In response to Councilman Davis, Building Safety Director Robert Griffin felt that the City can provide those services as efficiently as they are being done now. Under the current conditions, if someone is building in the ETJ, they go to the County to take out the building permit and then have to come to the City to take out their zoning permits. Whereas, once the ETJ is governing by the City for all building activities, they only have to make one stop at the permit and development services center.

Mr. Griffin also noted that the City does have a relationship with the Health Department regarding permitting wells and septic tanks. Regarding pricing, Mr. Griffin said that the vast majority of what is in the ETJ are one and two family dwellings. The City's fees and charges and the County's fees and charges for one and two family dwellings, as well as commercial, are virtually the same.

When Councilman Mumpower asked how long it takes to get an average permit in the City vs. in the County, Mr. Griffin did not know what the County's average turn-around time was. However, the City does studies each month on our matrix for issuing permits. He guessed the month of April for some projects were 29 days average time and he believed that was the longest time period for a building permit.

Councilman Mumpower said that it was his understanding that the County averages about 2 weeks.

Councilman Mumpower said that people cannot build substandard housing in North Carolina due to our State Building Codes. He felt it was presumptuous of the City to lay claim to a unique or special ability that is so much better than the County's. We can create urban standards that might be better for us in the long run, but we do that at the expense of controlling people who don't get to vote. He feels that is wrong.

City Attorney Oast said that the City already provides zoning and subdivision regulations in the ETJ except in the areas that the County zones. The building regulations are state-wide codes and all this does is changes who enforcement it.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-117. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 30 – PAGE 42

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 19-June 1, 2006: Leon Dejournett (Streets), Charlotte Tell (Streets), Grove Arcade (Streets), Arlene K. Schandler (Transit Services), Charles Whitted (Streets) and Amber Prestwood (Civic Center).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross asked Council to create an avenue for people to go, without having to hire an attorney, who have a complaint against the Police Department. In addition she would like City Council to have a collective voice and leadership over the Police Department. Mayor Bellamy asked that City staff contact Ms. Ross regarding her concerns.

Mr. Robert Zieber said that on May 23, 2006, he brought to Council's attention the following three issues regarding the installation of 24 speed humps on the public streets of Biltmore Park: (1) the City's Traffic Calming Policy has not been followed; (2) the Biltmore Park Traffic Calming Plan has been misrepresented b the Homeowners Association; and (3) the City will be assuming unknown costs for a project of questionable benefits. He felt that some members of the Homeowners Association Board of Directors have taken control of the petition process by withholding information and abusing their position to lobby and advocate for approval of the project despite a resolution limiting action on this matter. He has had some conversations with City staff regarding this since May 23, unfortunately he was not confident that he will get all his questions answered, so he is bringing this matter back to City Council. Mayor Bellamy clarified the City's traffic calming policy, specifically noting that the role in the petition process in that it is the homeowner's responsibility to get signatures on the petition for traffic calming. Mayor Bellamy asked that City Engineer Cathy Ball talk with Mr. Zieber to make sure that the City is following our guidelines in place.

CLOSED SESSION

At 7:32 p.m., Councilman Mumpower moved to go into closed session for the following reason: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 9:00 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:00 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – June 20, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

GROWTH AND DEVELOPMENT POLICIES

Planning & Economic Development Director Scott Shuford said that City staff has taken the input received from the City Council worksession on May 16, 2006, and the Development Issues Forum on May 30, 2006, and produced the following summary report. He explained how the report is supported with a variety of attachments, listed below (but not specifically included in these minutes):

- Selected Council Minutes – May 16, 2006, Worksession
- Executive Summary and Complete Responses from the May 30, 2006 Development Issues Forum and follow-up correspondence
- Table Summarizing Proposed Revamping of City Zoning Districts
- Example Illustrating Ordinance Requirements
- Town of Knightdale UDO Development Review Process Example
- Proposed Land Use/Economic Development Analysis
- Neighborhood Coordinator Position and Formal Staff Query Program
- Town of Apex Interactive Development Map Link

Summary Report

Six common themes emerged from Council comments and public input. These are listed below:

- Development Regulations
- Economic Development
- Transportation
- Green Building
- Public Involvement/Communication
- Housing

Development Regulations:

A common theme has emerged with both Council members and the public requesting amendments to the UDO that make it clearer, more "environmentally-sensitive," and directive as far as important City goals. The following table summarizes content and clarification changes proposed by staff to address these issues. Some staffing resources will be needed to effectively implement and enforce these changes. Proposed completion date including public input via focus groups is December 31, 2006, using staff resources.

Proposed UDO Changes

Significant Content Changes	
Nonresidential zoning districts and mixed use zoning districts	See table that addresses changes proposed for this key section.
Parking, landscaping, buffering, and loading requirements	Illustrations, adjustments to requirements, retroactive landscaping requirements, simplifications (see example)
"Environmental" regulations: • Floodplain Management • Open Space • Hillside, Steep Slopes • Ridgetop	 • Best practices adjustments • Fee-in-lieu, increased scope • Increased scope • Increased scope
Nonconformities	Broader application, lower thresholds
Incentives for: Green building, multimodal transportation, affordable housing, smaller unit size	Process and development intensity adjustments
Significant Clarification Changes	
Development processes	Flow charts (see page from Town of Knightdale UDO)
Definitions	Review and add any needed definitions
Signs	Review and clarify as needed; match with revisions to zoning districts
General	Use of tables and charts
No Significant Changes Proposed	
Residential Zoning Districts	Maintain current requirements
Overlay Districts	Add adaptive reuse overlay district
Subdivision regulations	Minor technical adjustments

Economic Development

Public and Council concerns address the need for a broader perspective on economic development issues. The following steps are proposed:

- Completion of a comprehensive economic development incentives program to provide incentives to the "right" kind of business recruitment retention and expansion. Proposed program completion: December 31, 2006. Proposed program implementation: Beginning with FY 2007/2008 budget.
- Completion of a comprehensive economic development/land use analysis by an outside consultant to identify consistency between the City's development regulations and pattern and the adopted economic development goals. Follow-up work will coordinate adjustments to regulations and goals as necessary. Completion date for analysis is per attached report. Incorporation of ideas and concepts into development regulations and economic development incentives are dependent on Council direction.
- Website targeting areas of the City where redevelopment activities are encouraged (this is the so-called *Priority Places* program). Proposed completion: December 31, 2006.

Transportation

Promotion of multimodal transportation alternatives was identified by both Council members and the public as an important objective. The following steps are proposed:

- Budgetary focus on capital and operational needs for sidewalks, transit, greenways, and bike lanes/paths. Proposed program implementation: Beginning with FY 2007/2008 budget.
- Inclusion of best practices for multimodal transportation in City and MPO regulations and standards. Proposed completion: December 31, 2006.
- Identifying and implementing regulatory process, development intensity and financial incentives for incorporating multimodal and greenway amenities in development plans. Proposed program completion: December 31, 2006. Proposed program implementation – financial incentives: Beginning with FY 2007/2008 budget.

Green Building

Promotion of Green Building was mentioned by both Council members and the public as an important objective. The following steps are proposed:

- Promotion of best practices for Green Building in City brochures and web-based media. Proposed program completion: December 31, 2006.
- Inclusion of best practices for Green Building in City regulations and standards. Proposed program completion: December 31, 2006.
- Identifying and implementing regulatory process, development intensity, and financial incentives for incorporating Green Building methods in development plans. Proposed identification step: December 31, 2006. Proposed program implementation – financial incentives: Beginning with FY 2007/2008 budget.

Public Involvement/Coordination

Improving the content and extent of public communication was identified as a priority by Council and the public. Ideas for accomplishing these objectives include:

- Creation of a neighborhood coordinator position and formal staff query program. Possible inclusion in FY 2006/2007 budget.
- Installation of a development review mapping tool on the City webpage which would provide detailed information about development projects throughout the City. Proposed completion: December 31, 2006.

Housing

Promotion of affordable housing was identified by both Council members and the public as an important objective. The following steps are proposed:

- Budgetary focus on capital needs for affordable housing (Housing Trust Fund, infrastructure investments). Annually as part of budget process.
- Identifying and implementing regulatory process and development intensity incentives for incorporating affordable housing in development plans. Proposed program completion: December 31, 2006.
- Build on the "out-of-the-box" analysis of affordable housing options. Council objectives, and additional community input in order to restructure our housing programs, staff assignment, and financial resources for maximum effectiveness in the promotion of affordable housing. Proposed timeline: (1) identification of Council objectives (what affordable housing "looks like" – issues such as price ranges, rents, unit sizes, client/income group, etc.): September 30, 2006; (2) program analysis and development: December 31, 2006; and (3) community, stakeholder input – final Council direction: March 31, 2007.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: the need for a comprehensive plan on how to address affordable housing in the community; how is the form based performance zoning and the possibilities of illustrated ordinances moving forward and when will Council see those changes; what are some of the significant content changes in the zoning districts, parking, landscaping, buffering and loading requirements; will the residential zoning classifications change; and will there be opportunity for multi-family development based on footprints.

Councilman Mumpower felt that this is another framework for the City to control market forces and other issues in the community. Philosophically he felt the City is looking at finding ways to exert greater control over other people's property in the City.

Mayor Bellamy said that her goal in this process is to make things clearer and easier for developers and our community.

Councilman Newman felt that Council needs a range of different kinds of housing in the community. He felt that we may need to be specific when it comes to financial strategies, but a good land use plan will be respectful of neighborhoods and allow infill development with reasonable regulations and good incentives allowing the housing community do what they are good at doing.

It was the majority of Council's direction to accept the Planning & Development Department's work program outlined above.

MAYORAL ELECTION AND 4TH SEAT REPLACEMENT

City Attorney Oast said that N.C.G.S. 160A-63 prescribes the method of filling vacancies on municipal governing boards.

Depending on when during the term a vacancy occurs, the statute provides for the unexpired term to be filled first by approval of the Council, then by election at the next regular city election. The manner of filling vacancies on Council is not one of the features of the governmental structure (like term length or partisan elections) that Council can change by ordinance, but it appears to be possible for a municipal charter to prescribe a different procedure for a particular city.

Our limited research on other NC municipal charters indicates that, where a charter makes specific provision for filling vacancies, it either refers to the applicable State law, or prescribes a process not significantly different from State law. Some charters prescribe a different procedure for filling a vacancy in the Mayor's office than a vacancy on Council, and some specify a process that applies if Council fails to make an appointment within a certain time. Asheville's charter provides only that vacancies will be filled by the Council for the remainder of the unexpired term.

In summary, City Attorney Oast said that Council can appoint the next highest vote-getter, appoint whoever Council wants, or ask for legislative approval to change Asheville's charter to reflect that if the vacancy is not filled within 60 days then a special election must be held.

We will continue our research, and report any additional findings to Council.

Vice-Mayor Jones supported changing Asheville's charter to reflect that in the election year of the Mayor that if a seated Council member is elected Mayor that the unexpired seat be

filled by the 4th highest vote-getter. However, if the Mayor or a Council seat is vacated for other reasons, then Council should make the appointment, due to the cost of an election.

Upon inquiry of Councilman Mumpower, City Attorney Oast believed that the general law states that if a Council member is running for an office that they don't have to give up their current seat. He said that he would verify that information.

Councilman Davis was not certain that he could support the Charter change automatically giving the unexpired seat to the 4th highest vote-getter.

Councilwoman Cape could not support asking for another election due to the cost associated with elections and also do to the fact that the community had just voted. She would support a Charter change to allow the 4th highest vote-getter being appointed to the vacated Council seat.

Councilmen Mumpower, Newman and Freeborn also supported the Charter change to allow the 4th highest vote-getter being appointed to the vacated Council seat.

Upon inquiry of Councilman Newman, City Attorney Oast said that he would research why municipal elections hold their elections in odd-numbered years and why they are not held on the same election cycle as state and federal elections. If they were held in the state and federal election cycle, cities could save money and get a lot higher percentage of the community participating in the local elections.

Councilwoman Cape said that it says that any vacancy shall be filled by the Council for the remainder of the unexpired term. She wondered if she had to give up her seat now (with almost 4 years to serve) does that person sit for the almost 4 years until her term expires, or until the next election. City Attorney Oast said that general law provides that if there is an intervening city election, then the unexpired term gets filled at that election. He did feel that provision needs to be clarified.

Councilwoman Cape felt the Charter provision should be clarified that the unexpired term be filled at the next election.

After a brief discussion, it was the consensus of Council to ask the City Attorney to research the issue of filling the unexpired term at the next city election, in that some Council had concerns about the public voting for 3 members when there are 4 positions open.

Upon inquiry of Vice-Mayor Jones, City Attorney Oast said that City Council can chose to do partisan or non-partisan elections by an ordinance adoption.

Mayor Bellamy said that these items will be brought back to Council after the City Attorney has had an opportunity to research the individual questions.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to arrange interviews for Rhett Grotzinger, John Panarites, David Hillier and Martha Marshall the vacancies on the Airport Authority

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Janet Whitworth as an Alternate member to the Board of Adjustment.

It was the consensus of City Council to instruct the City Clerk to re-advertise the vacancies on the Civic Center Commission and to reappoint George Keller to that Commission.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for Sheryl Near and Sharon West for a vacancy on the Civil Service Board.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson (electrical contractor), reappoint Ronnie McAbee (journeyman electrician), appoint Fred Pratt (utility representative), reappoint Brian Kintner (licensed engineer) and reappoint Harold Garland (layman) to the Board of Electrical Examiners.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for William Allison, Todd Williams, Tebbe Davis, Amanda Starcher, Lupe Perez, Christopher Lyman, Timothy Ownbey and Tom Gholson for vacancies on the Historic Resources Commission.

It was the consensus of City Council to instruct the City Clerk to instruct the City Clerk to reappoint James Fink as a regular member and John Hayes as an alternate member to the Noise Ordinance Appeals Board.

It was the consensus of City Council to instruct the City Clerk to instruct the City Clerk to prepare the proper paperwork to reappoint Sam Camp, Carol Ann Pothier and Laura Williams to the Recreation Board and arrange interviews for Wind Peter Motika, Pastor Spencer Hardaway, Randolph Walter, Scott Barnwell and Shelley Booth for other vacancies on the Recreation Board.

It was the consensus of City Council to instruct the City Clerk to arrange interviews for Frank Salvo and Ronald Storto for a vacancy on the Buncombe County Tourism Development Authority.

After a brief discussion, it was the majority of Council's wish to advertise for the HUB Project Plan's Community & Economic Development Alliance with the normal monthly vacancy listing.

At 4:55 p.m., Mayor Bellamy announced a short recess.

BUDGET WORKSESSION

City Council gave direction to City staff at their final budget worksession, prior to the scheduled adoption of the Fiscal Year 2006-07 annual operating budget on June 27, 2006.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:10 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – June 27, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

ANNOUNCEMENTS

Mayor Bellamy asked that a new item be placed under New Business dealing with the receipt of funds from a local foundation.

Mayor Bellamy said that the City of Asheville has received a lot of negative attention as a result of the behavior of Asheville Tourists Manager Joe Mikulik on Sunday, June 25, 2006. In response, on June 27, 2006, Mayor Bellamy received the following letter from Mr. Mikulik: "I am writing to apologize for my behavior on the baseball field on Sunday, July 25, 2006, when the Asheville Tourists visited the Lexington Legends. As a resident of Candler, I take great pride in being able to work and live in the Asheville area and the last thing I want to do is bring embarrassment to my city, my team and my family. I have said that my actions were a result of frustration and I obviously went too far. I apologize to the fans, to the umpires, to the Colorado Rockies' organization and to the residents of Western North Carolina for my actions, and I regret what happened. My job with the Asheville Tourists is to develop players for the major leagues and I realize I must set an positive example for everyone involved. It is my goal to help our team move forward from this unfortunate incident." In addition, Mayor Bellamy also received a letter from the Mr. Marc Gustafson, Director of Player Development of the Colorado Rockies, the parent club of the Asheville Tourists, expressing their regret for any embarrassment that may have been brought upon the City of Asheville for Mr. Mikulik's actions. Mayor Bellamy asked that we put this incident behind us and support the Asheville Tourists.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE SPECIAL MEETING HELD ON JUNE 12, 2006, THE FORMAL MEETING HELD ON JUNE 13, 2006, AND THE WORKSESSION HELD ON JUNE 20, 2006**

B. **RESOLUTION NO. 06-118 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE RENAISSANCE PLANNING GROUP TO DEVELOP A TRANSPORTATION CORRIDOR STUDY OF US 70**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Renaissance Planning Group in the amount of $124,525 to develop a transportation corridor study for US 70.

As the lead planning agency for the French Broad River Metropolitan Planning Organization (MPO), the City of Asheville staff administers federal transportation planning funds to carry out the MPO's annual Planning Work Program. Transportation planning is funded at 80% by the federal government. The required 20% matching funds are split among local governments in the MPO.

The US 70 Corridor study has been approved and budgeted through the MPO process and the City of Asheville budget process. The corridor study will take a comprehensive look at growth and development patterns, traffic, and bicycle and pedestrian issues. The primary objective of the study is to have a plan that will preserve the existing capacity of the roadway and minimize congestion and provide informed decision-making for costly road improvements in the future.

The Renaissance Planning Group was selected through a competitive proposal process. Renaissance has teamed with the firm Martin/Alexiou/Bryson located in Raleigh. The study will take place between July 2006 and April 2007.

The costs for the study will be shared according to the following breakdown:

Federal Highway Administration	$ 99,620
City of Asheville	$ 18,905
Town of Black Mountain	$ 6,000
Total	$124,525

Considerations:

- Although planning studies like these are expensive, the cost is minor compared to the cost of making road improvements, especially the wrong improvements. One traffic signal can cost between $40,000 and $200,000
- This study was budgeted through the MPO and City of Asheville process. 80% of the cost is paid with federal funds.
- This process is more regional in nature, which better insures for strengthening key stakeholder relationships.

City staff recommends the City Manager to sign a contract with Renaissance Planning Group in the amount of $124,525 to develop a transportation corridor study for US 70.

RESOLUTION BOOK NO. 30 – PAGE 43

C. RESOLUTION NO. 06-119 - RESOLUTION AUTHORIZING THE CITY MANGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT FOR TEMPORARY WORKERS

Summary: The consideration of a resolution authorizing the City Manager to enter into a temporary services agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (FIRST) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions) and the Civic Center. This agreement is a collective contract for all City departments.

FIRST is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized FIRST staff for the past two years with excellent results.

Benefits to contracting with FIRST include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all FIRST personnel requested, enabling operations to be fully productive at all times.

City staff recommends the City Manager be authorized to enter into a temporary services agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

RESOLUTION BOOK NO. 30 – PAGE 44

E. RESOLUTION NO. 06-120 - RESOLUTION GRANTING A UTILITY EASEMENT ACROSS CITY-OWNED PROPERTY LOCATED ON ROCKY RIDGE ROAD FOR AN UNDERGROUND ELECTRIC POWER LINE

Summary: The consideration of a resolution granting a utility easement across City-owned property located on Rocky Ridge Road (new fire station) for an underground electric power line

Progress Energy has requested an easement through City-owned property located on Rocky Ridge Road, to install an underground power supply line to a new fire station. The City will receive no consideration for this easement and historically has not received consideration for power line easements. Per State and local law, Progress Energy pays a utility franchise tax. Fire Department staff have reviewed this request, and have no objection to it.

Considerations:

- The easement will not interfere with the City's use of the property.
- The electric power supply line will be installed in such a manner as not to be a hazard;
- The line will be installed underground, as opposed to overhead.

If Council approves of this easement, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 – PAGE 45

E. RESOLUTION NO. 06-121 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR WIDENING LONG SHOALS ROAD FROM WEST OF CLAYTON ROAD TO EAST OF I-26, INCLUDING REPLACEMENT OF A WATER LINE

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Utility Agreement with the North Carolina Department of Transportation (NCDOT) for widening NC 146 (Long Shoals Road) from west of SR 3501 (Clayton Rd) to east of I-26, including replacing the current existing 12 inch and 8 inch water lines along Long Shoals Road with a new 24 inch ductile iron line.

The current water lines on Long Shoals Road have numerous breaks. This NCDOT betterment project will be the second phase of placing a 24-inch ductile iron pipe line along Long Shoals Road, including crossing the French Broad River. The cost is $876,850, which will be paid in 3 equal annual installments to the NCDOT.

Pro:

- This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west and south regions of the system.
- The line size upgrade better prepares Asheville for the anticipated continued commercial and residential development along the Long Shoals and Avery Creek areas of southern Buncombe County.

Con:

- The final construction cost of this project is above the original engineer estimate due to dramatic increases in material cost in the past two years; however, funds will be budgeted in the Fiscal Year 2007/08 Water Fund Budget for this project.

City staff recommends approval of the Municipal Utility Agreement with NCDOT for the NC 146 (Long Shoals Road) Project: R2813 B.

RESOLUTION BOOK NO. 30 – PAGE 47

F. RESOLUTION NO. 06-122 - RESOLUTION APPOINTING AN ALTERNATE TO THE BOARD OF ADJUSTMENT

Summary: Ms. Jessica Erwin Leaven has declined the appointment as an Alternate member on the Board of Adjustment, thus leaving an unexpired term until January 21, 2009.

At City Council's worksession on June 20, 2006, the City Council instructed the City Clerk to prepare the proper paperwork to appoint Janet Whitworth, as an Alternate member to the Board of Adjustment, to serve the unexpired term of Ms. Leaven, term to expire January 21, 2009, or until her successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 48

G. RESOLUTION NO. 06-123 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

Summary: The terms of Tommy Wilson, Ronnie McAbee, Terry Ponder, Brian Kintner and Harold Garland expired on July 1, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson (electrical contractor), Ronnie McAbee (journeyman electrician), Brian Kintner (licensed engineer) and Harold Garland (layman) to each serve an additional three-year term. All terms will expire on July 1, 2009, or until their successors have been duly appointed.

In addition, City Council instructed the City Clerk to prepare the proper paperwork to appoint Fred Pratt (utility representative) to serve a three year term, term to expire July 1, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 49

H. RESOLUTION NO. 06-124 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Summary: The terms of James Fink (Regular member) and Scott Fowler (Alternate member) expire on July 1, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint James Fink as a Regular member to serve an additional three-year term, term to expire July 1, 2009, or until his successor has been appointed.

In addition, on June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to appoint John Hayes as an Alternate member to serve an additional three-year term, term to expire July 1, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 50

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE FOR MODIFICATION TO DIMENSIONAL AND DEVELOPMENT STANDARDS FOR CONDITIONAL USES AND CONDITIONAL DISTRICTS

ORDINANCE NO. 3369 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR MODIFICATION TO DIMENSIONAL AND DEVELOPMENT STANDARDS FOR CONDITIONAL USES AND CONDITIONAL DISTRICTS

Mayor Bellamy opened the public hearing at 5:10 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to allow City Council to revise certain requirements for establishing conditional districts. This public hearing was advertised on June 16 and 23, 2006.

Currently, the ordinances covering conditional zoning and conditional use permits contain provisions that limit or prohibit variances or modifications to the requirements of the corresponding or underlying general zoning districts, if those modifications are less restrictive. With respect to dimensional standards (height, setback, etc.) and other technical requirements (landscaping, buffering), this has proven to be unnecessarily restrictive, and has occasionally caused an applicant to seek a more intensive zoning classification than necessary for the use, and has limited Council's flexibility on some projects.

The amendment allows Council to modify these requirements in a manner appropriate to the project at the time the approval is granted. The proposed ordinance contains a requirement that such modifications that are less restrictive than allowed by the corresponding zoning be

described in public notices when possible, and that they be separately set out, along with the reasoning, in the ordinance granting the request.

At its June 7, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend adoption of the ordinance. There was no public comment at the meeting.

Considerations:

- Allows more flexibility in processes where flexibility is one of the stated goals;
- Reduce the potential for seeking inappropriate zoning classifications to address dimensional or technical issues

If City Council approves of the proposed amendment, adoption of the ordinance is recommended.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mr. Shuford responded to questions raised in an e-mail from Mr. James Judd received on June 27, 2006.

Councilman Davis felt that this amendment is a powerful tool in that it gives Council the opportunity to be more flexible with dimensions and that is largely what we deal with on many conditional zonings. To him, though, it seems like conditional zoning almost stands alone without this particular tool. In addition, he questioned if this amendment is before Council now largely to deal with the conditional use permit amendment proposed by the Grove Park Inn, which will be discussed next.

Mr. Shuford said that he has been working with City Attorney Oast on this amendment for at least a couple of months and stated that it was not prepared specifically for the Grove Park Inn conditional use permit amendment. This amendment enables Council to go beyond what the prior conditional zoning would allow. There have been plenty of circumstances where Council has required something more stringent than what the underlying zoning is or the applicant has proposed a greater setback. He felt this amendment gives Council the flexibility to make some adjustments that they may find to be beneficial for a site and it also puts the decisions about some of those issues in Council's hands and not in the hands of staff. From that standpoint, he thinks it is a positive amendment and is in keeping with Council's desire policy-wise to retain a fair amount of control over the development process.

Mr. Shuford responded to Councilwoman Cape's inquiry about specific cases where this flexibility would have been beneficial.

At the request of Councilman Newman, Mr. Shuford said that future staff reports will contain a specific box for requested modifications from underlying zoning development standards. However, sometimes staff may not know about them until the day of the meeting. He said that he does expect, by the end of the year, to have a development review mapping system in place and we will be sure to include a way to highlight the proposed deviations from the underlying zoning standards.

Councilman Mumpower felt that flexibility is a good concept, but predictability is a more important concept, especially with the UDO, so he would not support this amendment.

In response to Councilman Freeborn, Mr. Shuford felt that a con of the amendment would be that there might be some expectation that the underlying zoning standards would be applied and that expectation would not always be met. The counter to it is that when we know about it, we advertise it and make sure the public knows about it.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3369. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 23 – PAGE 8

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR THE GROVE PARK INN MASTER PLAN TO ALLOW FOR AN INCREASE IN BUILDING SIZE AND HEIGHT FOR THE NEW BUILDING TO BE CONSTRUCTED ON THE FORMER BATTLE HOUSE SITE

Mayor Bellamy opened the public hearing at 5:35 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Clerk Burleson administered the oath of office to anyone who anticipated speaking on this matter.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of an ordinance to amend the approved conditional use permit for the Grove Park In Master Plan to allow for an increase in building size and height for the new building to be constructed on the former Battle House site. This public hearing was advertised on June 16 and 23, 2006.

The Grove Park Inn Resort and Spa originally submitted a Conditional Use Rezoning (CUZ) application and Master Plan documents in the summer of 2004; the rezoning request and Master Plan was approved by the Asheville City Council in November of 2004 and it included five different phase. This approval consisted of a conditional use rezoning of a five acre, RS-4 Residential Single-Family Medium Density District parcel along with the review of an associated Master Plan showing development on this parcel along with four other project areas on the larger resort property (Aerial Map – Attached to City Exhibit 3). Using a blow-up aerial (City Exhibit 4), she showed the scale of the former Battle House, which has been demolished and removed. In addition, road and traffic improvements were required as a condition of approval.

It has been the intention of the owner to initiate development of Phase 1 and follow with subsequent phases of the Master Plan. Phase 1, the Battle House Condominiums (now referred to as "The Fitzgerald"), included the removal of the old Battle House and redevelopment of a new building into a 30 residential condominium units, approximately 1600-1700 s.f. each with basement storage, underground parking (56 spaces) and a 30,000 s.f. open space terrace area. Conceptual/illustrative plans were approved as exhibits to the Conditional Use Rezoning and Master Plan although specifics of building height, size, and materials were not considered they were represented to reflect the existing structure (City Exhibit 5). The Battle House was not salvageable in a practical way so they proposed to demolish and rebuild a new structure. Ms. Tuch showed character sketches of the proposed building approved in 2004 (City Exhibits 6 and 7), to show the west elevation and east elevation views.

The new structure was always described to architecturally reflect the former structure and the footprint to some degree does reflect that original character, but is larger than what was originally there. The former footprint was approximately 12,000 square feet and this is probably 15-16,000 square feet. The parking has been relocated underground and is not part of the site plan any longer. From a land disturbance prospective, it really didn't result in any more impervious surface. The applicant is now seeking an amendment to this phase of the Master Plan to allow for a building that is clearly larger and taller than what had been approved in concept.

Ms. Tuch reviewed with Council some schematic drawings of the footprint approved in 2004 (City Exhibit 8) and the proposed new footprint (City Exhibit 9). The new building proposal keeps the number of units unchanged at 30 total, but requests approval of a 4-storey structure that is 87,766 square feet (122,323 square feet including underground parking structure) with a maximum height of 48 feet (City Exhibit 10). In this case, height is defined as the distance between the floor of the main point of entry to the ceiling of the highest occupiable level. The Resort zoning restricts building height to a maximum of 80 feet except for where the property lies within a "transition zone" defined as the portion of property that lies within 100 feet of a residentially zoned area. In this transition zone, height is limited to that established in the least restrictive adjacent residential zone. In this case, the properties across Macon Avenue are within 100 feet and zoned RS-4 where the height of structures is limited to 40 feet (City Exhibit 11). Because of the approval of a wording amendment earlier in the meeting, City Council has the ability to establish dimensional requirements for properties in excess of the allowances allowed in the underlying zoning districts; as such, the Asheville City Council may approve the proposed height of 48 feet despite the underlying development standard that would normally restrict the height of a structure to 40 feet.

It is also important to note that the distance between grade and the highest roofline is shown to be 75 feet, 3 inches, where the height of the foundation and height of the roof pitch are included in this overall height measurement. These additional measurements are not included in the technical definition of height and are, therefore, not included when evaluating a structure for technical compliance with height standards. However, this overall height may be considered for compatibility purposes and should be considered as part of the proposed amendment.

Also as part of the amendment to Phase 1 is an underground parking structure that would support 60 resident parking spaces in addition to 11 surface parking spaces along with a comparable amount of open space that had been previously reviewed and approved. As with similar requests for approvals of development standards that exceed or deviate from those of the underlying zoning districts, the alternative standard must be approved prior to a final site plan review. If approved, this project will be required to return for a more detailed review by the Technical Review Committee (TRC).

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety and will be reviewed in more detail at a final review of the Technical Review Committee.

2) **That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The increase in overall square footage is the result of an increase in the proposed height of the building and does not negatively impact the amount of disturbance experienced on the ground plane. However, the revised footprint is somewhat larger than what currently exists and larger than what had originally been approved; nevertheless, when reviewed in context with the overall site plan, it does not appear to result in a significant increase in disturbance.

3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Property values around the Inn property have continued to rise for the surrounding homes despite increases in resort and residential activity over the years. An increase in building height and size is not expected to have a negative impact on adjacent property values, particularly when the character of the structure is kept within that of the historic and other residential structures in the area.

4) **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The new Fitzgerald will architecturally reflect the character of the former structure and be well within scale and density of the adjacent resort property and nearby Longchamps Condominiums (5-6 story's). The proposal is also in relative scale with the adjacent historic Bynum House property and proposed Sunset Mountain condominiums which will be developed as part of the same residential community. The proposed structure is less compatible with the adjacent low density single family homes to the east but is not dramatically different in height from the former Battle House structure whose general height is measured at approximately 62 feet from grade to peak of roof. The new structure is approximately 75 feet tall but sits 4 feet lower than the former Battle House which would result in a net increase of approximately 9 feet.

5) **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The Asheville City Development Plan 2025 (ACDP 2025), through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning & Conditional Use Permits) to ensure some level of protection for compatibility and environmental sensitivity. Historic Preservation and its relationship to Smart Growth are also clearly described as being an effective way to revitalize and stabilize neighborhoods.

6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This proposed development is within close proximity to transportation facilities with the Route 5 bus line running regularly down Charlotte, Macon, and Kimberly including hourly stops at the Grove Park Inn. As a component of the Master Plan approval, a new transit shelter will be coordinated along with new sidewalk installation running the length of Macon Ave. (one side) to Charlotte Street.

7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed amendment does not increase the total number of units proposed and would not be expected to contribute an additional traffic impact beyond that which has previously been considered and approved. As a component of the Conditional Use

Permit, additional traffic calming measures have been required to be installed along a number of the affected roadways to better carry the load of the cumulative resort and residential traffic.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Allows for infill residential development of 30 luxury condominiums.
- Results in a larger/taller multi-family condominium structure that is approximately 9 feet taller than the former Battle House structure.

For the reasons outlined in this report, staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use permit.

Concerns over neighborhood compatibility may be best addressed by those most affected by the proposed use. Staff recommends that the City Council utilize public input concerning this and other issues and carefully consider whether the conditional use permit should be conditioned to mitigate these concerns.

Mr. Gerald Green, representing the Grove Park Inn, said that they presented a conceptual plan for a 10-year Master Plan for the property in 2004. When we presented the plans for Phase I on the Battle House site, we did so without marketing studies and without a whole lot of detailed work. We did not feel it was appropriate to spend tens of thousands of dollars on a conceptual plan when a valid protest petition was filed and we didn't know if the conceptual Master Plan would be approved. Under the requirements of the conditional use permit, the new building is to be architecturally compatible with the Battle House. The façade has changed. Using a Macon Avenue elevation drawing (Applicant Exhibit 1), he showed how they tried to pick up more of the architectural details of the Battle House. He showed the elevation view from the golf course (Applicant Exhibit 2). He said they are looking at a larger building. The footprint is larger due to the marketing studies done which show that people who want to live in these units want larger units. He explained the different footprints of the original Battle House, Master Plan schematic and proposed Fitzgerald (Applicant Exhibit 3). The reason that the building has shifted is that a portion of the building is on the historic Bynum property and is also over a stream. The height increase is for 8 feet and the overall height is taller than the original Battle House (Applicant Exhibit 4). He showed the profile of the Battle House and the profile of the proposed building. He noted there was no height associated with the plan that was approved in 2004. He talked with the architect who did the conceptual plan and he pointed out that the width of the building that was approved was 16 feet greater than the Battle House. Maintaining the same roof pitch, he stated that the roof pitch would be 8 to 10 feet taller than the original Battle House (62 feet) , which would be somewhere between 70 and 72 feet with the plan that was approved. Although the height, as measured under the Code, would still be under the 40-feet, the overall height would come close to the 75 feet proposed with the existing plan. With the existing plan, we made the roof pitch less steep to reduce the overall height. We have tried to comply with the conditional use permit standards in that we have hired an ombudsman and provided funds to the City to initiate a traffic calming plan for the streets impacted by the proposed Master Plan. We have hired a consultant to do a stream mitigation and enhancement study to address neighborhood concerns and have hired an arborist who has started a study of the trees on the Battle and Bynum properties to identify those which need immediate attention. There was a self-appointed neighborhood committee established over 3 years ago and we have worked with them continuously. We presented these change to the neighborhood committee in

March and received no strong opposition until recently. The opposition was not so much as the changes being proposed, but the process to come back after the Master Plan was approved and ask for changes. He explained that when you have a plan for something this large (over 100 acres) over 10 years, we do not have the detail in the initial planning process that we do as we go along. We are asking you to allow us to work through the process. We will try not to have to come back to Council again as we work through the next 6-10 year process, but we can't promise that. We will try to listen to the neighbors and try to meet the demands of the market. We ask for your support.

The following individuals spoke in opposition of the amendment for various reasons, some being, but are not limited to: comparing the Macon Avenue elevations approved in 2004 with the proposal reveals a staggering increase in the building's proposed height and mass; the Fitzgerald's footprint will be twice the size of the Battle House's footprint; the architectural character of the Fitzgerald would be a grim parody of the Battle House; the new proposal represents more than a 75% increase in the building size, but with the same 30 condo units; even without this amendment the Grove Park Inn can profit handsomely from developing the Fitzgerald; appears that the Grove Park Inn has undertaken a strategy of obtaining approvals on a protracted, piecemeal basis; Grove Park Inn should submit closer to "final" versions of its development plans before seeking approvals; request should be tabled until the Grove Park Inn can bring back a more complete set of information; Grove Park Inn changed from being an Inn in the 1970's to a major commercial hotel in the middle of one of Asheville's oldest neighborhoods; if the City approves the amendment, it will threaten the neighborhood's trust in that City Council would approve a plan with different implications that the original one; hold construction until traffic calming is implemented per the conditional use permit approved in 2004; rezoning residential property to resort is a bad precedent for our neighborhood; size of proposed structure is doubled from that of the Battle House; additional investors who live outside our community have joined the Grove Park Inn on this venture and want a greater return for their investment; the Grove Park Inn will have no problem in selling the units regardless of their size; a larger footprint will result in more delivery trucks, more noise, more interference, more danger for children and pets in the area and more destruction of peace and calm of our neighborhood; if future amendments are requested, the Grove Park Inn should have to comply with any new ordinances and regulations adopted in the interim and not have them grandfathered in; the staff report seems to favor the developer with no objections as to the size, reasons for change, or effect upon the neighborhood; proposal changes the size and bulk so that it no longer represents the former Battle House; the Smart Growth and Sustainable Economic Development Plan has not been reviewed regarding this plan; the Grove Park Inn neighborhood; even though the neighborhood argued against the Master Plan approved, they have been working with the Grove Park Inn and the Grove Park Inn should be required to work with the conditionals already approved; neighborhood will continue to oppose any construction that does not include strict adherence to environmental issues and the safety of their neighborhood; City should protect neighborhoods; and traffic can be alleviated on Macon Avenue and Old Toll Road by using the road off of Charlotte Street that goes to the old tennis courts to reach the condominiums:

Mr. John Quinn, resident at 428 Sunset Drive (Neighborhood Exhibit 1)
Dr. Peter Gentling, resident at 500 Cherokee Road
Ms. Jane Northway, resident at 80 Edgemont Road
Reverend Christopher Chiaromonte
Ms. Sue Hunter, resident at 4 Evergreen Lane
Ms. Hope Hunter, resident at 4 Evergreen Lane
Ms. Grace Curry, resident at 59 Edgemont Road
Ms. Leah Karpen, resident at 400 Charlotte Street (Neighborhood Exhibit 2)
Ms. Glenda Burgin, resident at 599 Old Toll Road (Neighborhood Exhibit 3)
Mr. Tom Smith, resident of 25 Glendale Road
Ms. Mary L. Kirby, resident at 185 Macon Avenue

Mr. Jeff Slosman

Mr. Jerry Sternberg spoke in support of the amendment noting that no developer has ever done so much for a neighborhood as the Grove Park Inn. The Grove Park Inn is a great asset to our community in that it has contributed millions of dollars to non-profits and charities. The Grove Park Inn is working on the conditions imposed by Council, e.g., hiring an ombudsman and paying $375,000 to the City for traffic calming. He noted Grove Park Inn is the second largest employer in Asheville and has brought in millions of tourist dollars. We shouldn't try to drive the Grove Park Inn out of our area.

At 6:38 p.m., Mayor Bellamy closed the public hearing.

Councilman Freeborn moved to deny the amendment to the conditional use permit. This motion was seconded by Councilwoman Cape.

Councilman Newman could not support this particular amendment to the height and width; however, he would be supportive of changes to the Plan as they get into more detailed phases of their development. He felt it was good that the Grove Park Inn brought the 10-year Master Plan in so that Council could look at all the phases at the same time. Since the majority of concerns raised were about the width and height changes, he wondered if this particular amendment request was denied if Grove Park Inn could still move forward with the other parts of their Plan. Mr. Shuford responded that the Grove Park Inn can go forward with other phases of the project had that been approved so long as they are in keeping with the concept plan approved in 2004. They can go back to even this site and make the adjustments necessary to be consistent with what was approved in 2004 and develop this property as well.

Mr. Shuford asked that if Council denies this amendment request, he would appreciate any information that Council could provide about what the specific concerns are in case they get into other similar types of situations with this particular project since it is a 10-year plan.

Councilman Newman said that when Council considered the conceptual Master Plan in 2004, what was approved was what they felt would be appropriate for the scale and character of the neighborhood.

Councilwoman Cape agreed with Councilman Newman in that the increase is too much and the proposed building is not in scale with the neighborhood. She, too, would be supportive of amendments if they did not dramatically change the original Plan.

In response to Vice-Mayor Jones regarding traffic calming, City Traffic Engineer Anthony Butzek updated Council on the progress to date. He summarized by saying that the Request for Proposals are due on July 21, 2006, and we will be looking at an early 2007 to mid-spring construction implementation.

When Councilwoman Cape asked if the access from Charlotte Street was considered, Mr. Butzek said that it was looked at extensively. It was determined that it would have such a large impact to the golf course, it would not be a feasible option.

Vice-Mayor Jones said that she would be open for change, but felt that this amendment is too much.

Councilman Mumpower said that the Grove Park Inn is a good contributor to our City, but felt that the increase in square footage is substantial and the amendment steps away from the Master Plan. He did, however, feel that large developments like this should be phased in and understands things change.

Councilman Davis felt that the City did not uphold their part of the condition regarding traffic calming, in that we did say that the City would put the planning and the funding in place before construction began. He, too, felt that the Grove Park Inn is a great neighbor and did a good job in working with the neighborhood, but he could not support the substantial change in the Plan.

After a short discussion and upon further inquiry of Councilman Mumpower, Mr. Shuford explained that the reason why this is back before Council is because the changes were substantial enough that the building didn't look like the building that Council approved in 2004. He felt that the proposed development does meet the minimum standards required of a conditional use permit, and while scale and height issues are of a concern, staff didn't see a technical objection for that.

Mayor Bellamy felt that it is important for the City to commit to a specific timeframe on the implementation of the traffic calming. Mr. Shuford said that it is difficult for us to give Council a precise timeframe because part of the traffic calming process is working with the neighborhood to get what they want. He said this is probably the most significant traffic calming project in City's history and he doesn't want to establish an unrealistic deadline for how long it will take to implement. But, it is clearly understood that Council wants to see the implementation of traffic calming in that area as quickly as can be done.

Mayor Bellamy said that if the project is going to take longer than noted by Mr. Butzek, then we need to communicate that information to the neighbors who will be impacted, not just the ones who are at the meeting. She felt we must do a better job of articulating the timeline to make sure that everyone knows the process is moving forward. Mr. Shuford agreed and said that we will use the media we have available to get the word out and will work with the Grove Park Inn because they have a neighborhood newsletter about the project.

Mayor Bellamy felt that the Master Plan is the overall framework plan for what will be developed, not specifics. A course of action will be for the developer to continue to come back to Council if they want to change because the neighborhood residents should know what is happening every step of the way. That is why the conditions were attached to the permit. The developer will have to comply with the ordinances that are in effect when the amendments come forward. She did believe that dialog between neighborhood residents and the developer can create good development. Her concern is that the building change was too big and the fact that the City hasn't implemented the traffic calming didn't help the situation.

The motion to deny the amendment to the conditional use permit made by Councilman Freeborn and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 7:11 p.m., Councilman Mumpower moved to go into closed session in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:46 p.m. Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

C. **PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 8 LOTS LOCATED ON ALEXANDER DRIVE – THE SKYLOFTS OF ASHEVILLE - FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MULTI-FAMILY DEVELOPMENT**

ORDINANCE NO. 3370 - ORDINANCE TO CONDITIONALLY ZONE 8 LOTS LOCATED ON ALEXANDER DRIVE – THE SKYLOFTS OF ASHEVILLE FR-FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MULTI-FAMILY DEVELOPMENT

Mayor Bellamy opened the public hearing at 7:47 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone 8 lots located on Alexander Drive – the Skylofts of Asheville – from RS-8 Residential Single-Family High Density District and RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed multi-family development. This public hearing was advertised on June 16 and 23, 2006.

The subject property is located within the City Limits of the City of Asheville off of Alexander Drive and Carroll Avenue in the East End/Valley Street Neighborhood. The property fronts on both Carroll and Alexander. The project site contains 8 lots proposed for combination if the project is approved. Surrounding properties to the north and east are zoned RM-8 Residential Multi-Family Medium Density District and contain single- and multi-family housing. Properties immediately south (across Carroll Avenue) are zoned RS-8 Residential Single-Family High Density District and are primarily single family in nature, although the McCormick Heights Apartments are located behind the single-family homes that front on Carroll Avenue. To the west, the zoning is RM-8 and Institutional with a single-family home and the Tried Stone Missionary Baptist Church on abutting parcels. The property itself is currently zoned RS-8 to the south between Alexander Drive and Carroll Avenue and RM-8 to the north between Alexander Drive and the abutting properties which front on Curve Street. There is an existing single-family home on Carroll Avenue that would be demolished as part of this project. A small portion of the lot (.404 acres) is subject to the hillside ordinance.

The development proposal calls for the new construction of 8 buildings (constructed using green building techniques) containing 67 one- and two- bedroom condominiums. The buildings will have three floors with a garage level underneath. The footprint of the seven larger buildings is approximately 3500 square feet. Access to all units will be provided off of Alexander Drive. Although not needed to meet minimum parking requirements, there is a proposal to construct 28 on-street parking spaces along Alexander Drive by widening Alexander onto property owned by the developer. The applicant is proposing to do as little surface parking on the site as is possible in order to limit the amount of impervious surface within the development. The percent of impervious area proposed in the development is 38% (1.69 acres). All hillside regulations are complied with in the proposal. A 10-foot platted right-of-way that enters the property off of Carroll Avenue is proposed for closure. A sidewalk is shown for both sides of Alexander and off-site sidewalk connections proposed (through work with the City of Asheville Engineering Department) that would connect with the intersections of Weaver Street and Martin Luther King Jr. Drive. The sidewalk that would typically be required for the portion of the property along Carroll Avenue has been waived by the City of Asheville Engineering Department due to the extensive grading that would be required along the bank that abuts Carroll to create such a

sidewalk, the fact that Carroll already has a sidewalk on the other side of the street, and due to the additional sidewalk proposed to be provided by the developer along Alexander. A bus shelter is proposed for the existing bus stop on the corner of Martin Luther King Jr. Drive and Alexander Drive. The developer proposes to improve the water line along Alexander Drive by replacing the current 4" line with an 8" line.

At the time this report was created, the developers had stated their willingness to price 2, two-bedroom units at the City's defined affordable price ($120,000). They also stated their willingness to price 2, one-bedroom (expandable) units at the moderate price of $150,000. They were looking at additional affordable units.

The developers held two meetings with residents of the area (4-10-06; 5-15-06) to discuss the project and to listen to neighborhood concerns. The City of Asheville Public Works Department has completed testing of drainage systems along Carroll Avenue to make certain that the stormwater management proposals for the development would not create problems for the residents along this street.

At their meeting on April 17, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

At their meeting on June 7, 2006, the Planning and Zoning Commission reviewed the conditional zoning request and did not recommend the proposal in a vote of 3-3 (Mr. Cathey absent). Members of the Commission who were opposed to the project noted density and scale concerns while those in favor noted benefits associated with infill development and good site/building design.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with most all of the City's development standards and the applicant is working with City staff on full compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The applicant has met all applicable provisions of the hillside regulations. The applicant has worked to create a design for this project that minimizes grading activity and impervious surface on the site. The applicant is proposing the use of green building techniques in the construction of this development.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of property that surrounds this site is varied. There are two other multi-family housing developments on abutting streets and another, smaller project, in the area that has recently been approved under conditional use zoning. The applicant is proposing buffering or other landscaping in compliance with City of Asheville standards along all property lines in the development.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The East End Valley Street area contains an array of building types and uses with varying gross floor areas, densities and elevations to existing structures. The proposed footprint of the seven largest buildings in this project is 3500 square feet, much less than that of the Woodberry and McCormick Heights developments in the immediate area. The proposed three story elevation is not as reflected in the area although the Woodberry Apartments development has three story buildings and the newly approved Arbors of Beaux Catcher (off Ardmion Park Drive) will have four stories. The proposed density for this project is 14.6 units/acre. The McCormick Heights community has a density of 12.4 units/acre and the Woodberry Apartments 9.1 units/acre.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development supports the following Smart Growth Policies of the City of Asheville: (a) Locating development in areas where infrastructure exists and can easily be provided; (b) Finding appropriate opportunities to establish transit supportive densities (8-16 units per acre) and facilities; (c) Promoting infill developments proximate to the Central Business District and in developed areas that can support increased density in development; (d) Promoting green building; and (e) Providing some affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The proposed development is within a block of an existing transit stop and proposes to provide a shelter at this location in addition to pedestrian connections to the intersection where this stop is located. The developer proposes to improve the provision of water in the area by improving the existing water line along Alexander Drive.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City of Asheville Traffic Engineer has indicated that the roads that will be accessed by those living in the proposed development are sufficient to handle any traffic generated. The developer will provide a double yellow line throughout the 90-degree curve on Alexander to improve the traffic conditions on that street. The provision of on-street parking by the developer should assist in calming traffic along Alexander.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Provides for infill development in an area in close proximity to downtown and infrastructure suitable for increased density of development.
- Project incorporates green building and environmentally sensitive approaches to development.
- The development incorporates higher elevations than much development in the area.
- The development is immediately abutting to mostly single-family residential development although considerable multi-family development is in very close proximity.

At their meeting on April 17, 2006, the TRC reviewed the conditional zoning request and made a positive recommendation, with conditions. The Planning and Development staff recommended the rezoning proposal to the Asheville Planning and Zoning Commission. The Commission, at their meeting on June 7th, 2006, did not recommend approval, in a vote of 3-3 (one member absent). Members of the Commission who were opposed to the project noted

density and scale concerns while those in favor noted benefits associated with infill development and good site/building design.

Mr. Mike Farmer, petitioner, said that they held two meetings with the residents to hear their concerns regarding the project. We worked hard to address those concerns and feels like they have come up with some good compromises. He feels that the project will make a positive impact on the neighborhood and will be good for the entire Asheville community. He feels this is a worthwhile model that other developers will mirror. They initially committed to offer 2 units to be designated as affordable housing and after hearing additional comments, they decided now to designate 7 units (or 10% of the project) to affordable housing. We need to be responsible neighbors. Many benefits incorporated into this project are only possible with the increase in density. If they are required to build under the existing zoning, then their flexibility in providing these benefits will be greatly reduced. He felt that if a private developer is willing to designate 10% of the project's total units as affordable housing and if a green built project is truly a goal for the Asheville community and if the respect we have shown for the use of the land for the neighborhood is good for the community, then Council should vote in support of this project.

Mr. Gerald Green, representing the petitioners, presented City Council with a letter of support from Mission Health & Hospitals, a letter from Tried Stone Missionary Baptist Church stating that "Tried Stone will work in cooperation with Farwood Properties to repair the section of damaged pipe on the church's property"; and a petition containing 7 signatures in support of the project. He reiterated that they have increased the number of affordable units to 7. He said they are also asking for an increase in the total number of units from 67 to 69 to offset some of the affordable units being provided. The project is infill development with a mixture of housing costs and is walkable to downtown; and it is a green built project meeting N.C. Healthy Built Home Standards. In addition, there is over 30% more open space than what is required. Regarding the stormwater problem, they have an agreement with Tried Stone Missionary Baptist Church and they are committed to address that problem which is caused by the crushed stormwater pipe on the church's property. Sidewalks will be constructed along Alexander Drive from Martin Luther King Jr. Drive up to Woodberry Apartments. A bus shelter will be constructed at the existing bus stop on Martin Luther King Jr. Drive. In addition to the waterline upgrade, there will be 3 fire hydrants provided in the area. There will be streetscape along both Alexander Drive and Carroll Avenue with additional plantings along both streets. There will be no access from the development to Carroll Avenue. The scale is compatible to the neighborhood and there are a number of architectural details on the buildings that will reflect the homes in the neighborhood. Alexander Drive will be upgraded with curb and gutter. There will also be on-street parking on Alexander Drive that is not required by the standards. Regarding the neighborhood's concern about traffic, the City's Traffic Engineer said that the streets are capable of accommodating the additional traffic. Regarding an increase in crime, all indications are that the project will not increase crime in the area, noting that all the units will be owner-occupied. Regarding the increase of property taxes for area residents, he talked with the Buncombe County Tax Office who said the project would be evaluated as a separate community and would not impact adjacent properties through increased property values. Regarding trees along Carroll Avenue, they will remove the dead and dying trees, but will preserve the healthy ones to be incorporated into the street buffer. He urged Council for their support of this project.

The following residents spoke not in opposition to housing, but in opposition to this project for various reasons, some being, but are not limited to: real estate prices are sky-rocketing and our tourist industry is always in need of more low wage service workers who cannot pay high prices for housing; long-time working class homeowners now face the prospect of losing their previously affordable homes because of escalating property taxes from this large upscale condominium complex; if this project this approved, the process of gentrification will accelerate and destroy the neighborhood as it now exists; existing residential area should not be changed to a higher density; Planning & Zoning Commission denied the project; buildings are too large;

existing water and sewer problems; Alexander Drive is not wide enough for on-street parking; existing traffic on Martin Luther King Jr. Drive is too much and also people ignore the school buses; if the rezoning passes, how will the affordable housing units be kept affordable; there are too many other apartment complexes in this area already; and existing water run-off onto properties:

Ms. Glenda McDowell, President of the East End/Valley Street Association
Mr. William Young, resident at 18 Martin Luther King Jr. Drive (presented petition containing 78 signatures)
Reverend Christopher Chiaromonte
Ms. Mary Young, resident at 18 Martin Luther King Jr. Drive
Ms. Sharon Burton, resident at 131 Carroll Avenue
Ms. Doris Daniels, resident at 42 Curve Street

The following individuals spoke in support of the proposed development for various reasons, some being, but are not limited to: this project will build 7 affordable units for 7 families; project will cater to more middle income residents who want to be able to work and live in the downtown area; if property taxes go up because of this development, the surrounding property owner's net worth will go up as well; walkable distance to downtown; infill development; underground parking will eliminate the need for asphalt parking; project followed the Healthy Built Homes Program; need for affordable homes that are disability accessible; positive unique model for this community; and allow different people to share in the heritage of the community:

Mr. Philippe Rosse, Executive Director of the Affordable Housing Coalition of Asheville-Buncombe County
Mr. Charlie White, resident at 21 Bearden Avenue
Mr. Carl Gunther, resident on Mountain Street
Mr. Mark Shriner, Chair of the Western North Carolina Green Building Council
Mr. Bart Floyd
Ms. Mary Love, former project manager for the Asheville Healthy Built Home Program
Mr. Jonathan Glover, resident at 84 Bartlett Street

At 8:35 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Vice-Mayor Jones, Mr. Norman Divers, Civil Engineer for the petitioner, said that the stormwater problem has been discussed with the neighbors and City staff. He explained that on Carroll Avenue, the property owners are experiencing water in their basements when it rains hard is because their basements are tired into one storm drain line that runs into the storm drainage further down the street. When the gravel lot was constructed for the church across the street, a home was demolished and it caused a blockage in the drain line that was serving all those homes. The developer has reached an agreement with the church to access the property and have the opportunity to fix the storm drain line, which will alleviate the storm drainage issues for the residents on those lots. Regarding Alexander Drive, the storm drainage on Alexander Drive currently has curb-cuts that allows stormwater to run down along the road and eventually into the storm sewer system on Martin Luther King Jr. Drive. As part of the street improvements project for this project, they will be upgrading Alexander Drive to City standards, widening it an additional 8-feet to add the on-street parking, and also incorporating a storm sewer system that solely drains Alexander Drive. Further drainage issues upgrade from the petitioner's site is an off-site matter.

In response to Councilwoman Cape, the developer proposes to improve the water line along Alexander Drive by replacing the current 4" line with an 8" line at Martin Luther King Jr. Drive up to the high end of the petitioner's property and will add 3 new fire hydrants.

When Councilman Davis asked how long the line on Carroll Avenue had been crushed and if that repaired pipe would alleviate the problems, Mr. Divers felt it has probably been in that condition about 3-5 years. He said they only got to the first blockage, which was in the gravel parking lot. Once they start uncovering the line and work their way further upgrade, if other blockages are found (there is actually an inlet where they can actually see the pipe and see that it's flowing), they will actually extend their improvements all the way to that point since a commitment has been made to repair the line all the way up until there are no blockages.

Councilwoman Cape was glad that the developer will work with the Affordable Housing Coalition in keeping the units affordable. In addition, she suggested there be more of a variation of the buildings.

Councilwoman Cape moved for the adoption of Ordinance No. 3370, to conditionally zone 8 lots located on Alexander Drive – the Skylofts of Asheville – from RS-8 Residential Single-Family High Density District and RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a multi-unit development, subject to the conditions recommended by the TRC and City staff, noting that this request is reasonable based on the information provided in the staff report and in the staff recommendation. This motion was seconded by Councilman Newman.

Councilman Brownie spoke in support of the development noting that these kinds of infill developments are difficult.

Mr. Shuford suggested City Council add the following condition: That the number of units shall be increased to 69 with seven units meeting the affordability standards of the City of Asheville. In addition, he also suggested that he and City Attorney Oast work on a condition regarding the storm drainage issue, noting that it would be something similar to the drainage improvements described by the applicant shall be completed prior to the issuance of any Certificate of Occupancy.

Councilwoman Cape and Councilman Newman accepted the two additional conditions outlined by Mr. Shuford, noting that the storm drainage condition will be refined by the City Attorney.

Councilman Mumpower was uncomfortable with the developer having to "bribe" City Council with affordable housing units in order to have a decent chance to get his project approved. We do not have any standards in place where we provide incentives through our ordinances to give the developer the opportunity to bring this project alive. The affordable units will be subsidized by other people and we should go there cautiously.

Ms. Patsy Brison, attorney representing the developer, asked for clarification on the condition about no Certificate of Occupancy being issued until the drainage is addressed. Mr. Shuford said that it is his intent to refine the specific drainage improvements prior to the condition being signed by the Mayor. The improvements will specify the areas discussed tonight, not to include the up the hill situation which the developer has no control over.

In response to Councilwoman Cape, Mr. Farmer said that they have an agreement the Church that we will assist them in fixing the line. If the Church says we can't come on their property to fix the line, that would be an issue. But again, we do have an agreement already with the Church that they will cooperate with us to fix the line and it will be done. This will be done in conjunction with the side works we are doing on the property.

City Attorney Oast said that we will structure a condition that if the developer does everything they legally can effectuate the condition they promised to meet, that will be satisfactory compliance.

Mayor Bellamy said that growth, development and change in communities are difficult. The developer is representing that they are proposing a project of things Council has said was important, e.g. green building, inclusionary zoning, infill housing, etc. When there is a neighborhood that has vacant property, that owner can sell it to a developer who in their eyes will see the neighborhood improved. Even though a lot of her family members signed the petition against the project, she must make her decisions based upon the data presented to her. To her, this is a great project and she believes the developer has listened and worked with the community to address their concerns. Not everyone is pleased, but it is a step in the right direction for change in our community.

The motion made by Councilwoman Cape and seconded by Councilman Newman, including the follo ving two additional conditions (1) That the number of units shall be increased to 69 with seven units meeting the affordability standards of the City of Asheville; and (2) the Planning & Development Director and City Attorney work on a condition regarding the storm drainage issue, noting that it would be something similar to the drainage improvements described by the applicant shall be completed prior to the issuance of any Certificate of Occupancy carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 10

D. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE

RESOLUTION NO. 06-125 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE

Mayor Bellamy said that this public hearing was held on April 25, 2006. She said that it was continued until this date in order to make sure that all property owners are advised of the proper procedures concerning closing the right-of-way, and also in order for the closing to be discussed in conjunction with the conditional zoning public hearing on Alexander Drive – The Skylofts of Asheville.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened right-of-way off of Carroll Avenue. This public hearing was advertised on March 31, April 7, April 14 and April 21, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Martin Barnes of Brooks & Medlock Engineering, PLLC representing the property owner Farwood Properties, Mike Farmer, President of Farwood Properties, has requested the City of Asheville to permanently close to the public an unopened right of way off of Carroll Avenue as shown on Plat Book 6, Page 6, Block "C" in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened right-of-way is not a City maintained street. Closure of this unopened right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There is one parcel that abuts this section of right-of-way, owned by Farwood Properties. It is identified by PIN No. 9648.07-68-1457.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution permanently closing the unopened right-of-way off Carroll Avenue.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-125. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 51

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 56 WALTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED SCHOOL TO BE HOUSED WITHIN THE EXISTING CHURCH

ORDINANCE NO. 3371 - ORDINANCE TO CONDITIONALLY ZONE 56 WALTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED SCHOOL TO BE HOUSED WITHIN THE EXISTING CHURCH

Mayor Bellamy opened the public hearing at 9:05 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone 56 Walton Street from RS-8 Residential Single-Family High Density District to Industrial District/Conditional Zoning for a proposed school to be housed within the existing church. This public hearing was advertised on June 16 and 23, 2006.

This review concerns a proposed school on the property of Tabernacle Missionary Baptist Church on Walton Street. The applicant is seeking for the property to be rezoned from RS-8 to Institutional (CZ) to accommodate the school use. As noted above, schools are a Use By Right, Subject to Special Requirements in the RS-8 district, but the proposed site meets neither the lot size nor the primary access requirements for this district. In the Institutional district, schools are a permitted use, and do not have to meet these requirements.

The proposed school would be entirely housed within existing church buildings. (It is noteworthy that the main church building on the property was formerly the St. Anthony of Padua School.) The church is considering a possible future expansion at the rear of the main building as well as a possible future expansion of the parking area (both shown on the plans). The proposed school would not be involved in any such expansions other than possible relocation/rearrangement of vehicular use areas.

The site is located near the southern end of South French Broad Avenue (within the City Limits of the City of Asheville). The plans include 2 lots, with a combined area of approximately 1.23 acres. Vehicular access to the facility would be from the Walton Street side of the property. The amount of parking shown on the plan meets City requirements.

In its initial phase, the school aims to enroll 15 kindergarten students. If the program is successful, the school hopes to fill four classrooms, with a total of approximately 60 students in grades K-4.

The building, which the school aims to use, was built as a school in 1936. It ceased to operate as a school in the 1960s. The Tabernacle Missionary Baptist Church subsequently purchased the property. After review of the site plan, staff is of the opinion that the conditional zoning to allow the (re)establishment of a school use is reasonable.

At the May 15, 2006, meeting, the Technical Review Committee (TRC) approved the proposed concept plan, based on the conditions outlined in the staff report.

At the June 7, 2006, meeting, the Planning and Zoning Commission unanimously recommended approval of the rezoning request, with the added condition that enrollment be limited to a maximum of 75 students.

Staff has received no indications of opposition to the project. One neighborhood resident called to express support for the proposed school, but did express a desire that the project result in improved maintenance of the vegetation on the Scott Street side of the site, which, in the estimation of the neighbor, often causes a nuisance due to neglect. Staff is of the opinion that the additional landscaping required to meet buffer standards will improve the condition of this area.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use is compatible with the surrounding natural features and topography.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff does not expect that the proposed use would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction as negative.

4. ***That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.*** The proposed project would be in harmony with these characteristics of the area. The proposed school use will entail few changes to the exterior of the site other than improving one parking area and adding landscaping.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The adopted Smart Growth Land Use Policies listed in Asheville's City Development Plan 2025 state that existing neighborhoods near Downtown Asheville should be strengthened through infill development, and that traditional neighborhood development patterns should be recognized and encouraged. Further, the Vision – Smart Growth Initiative section encourages projects that employ adaptive reuse to "preserve the architectural character of the community." Thus, staff finds this project, which would increase the level of use of an existing structure, preserve a noteworthy building, and in fact restore a historic use, to be in compliance with the Comprehensive Plan.

   Aside from the possibility that the rezoning could facilitate development of a small business, this rezoning can be said to neither hinder nor promote the goals identified in the Strategic Operating Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location near Depot Street ensures access to transportation facilities and other services. Transit route 18 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposed project would establish a school use on a property that was historically used as a school.
- Project's proposed adaptive re-use would preserve a noteworthy building.
- As of this writing, staff has received no indication of opposition to the project.
- Overall mission of project, a school "designed specifically designed for the needs of low-income minority children" could be described as a helpful one for the community.
- Project conforms to multiple policies in the Comprehensive Plan.

Staff is of the opinion that the proposed conditional zoning and concept plan would represent a net benefit to the community and therefore recommends approval of the request.

I move to approve the zoning map amendment from RS-8 to INST (Conditional Zoning)- subject to the conditions recommended by staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation.

The designer on the project and the Board Chair for the New City Christian School both spoke in support of the project.

Mayor Bellamy closed the public hearing at 9:12 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3371, to conditionally zone 56 Walton Street from RS-8 Residential Single-Family High Density District to Industrial District/Conditional Zoning for a proposed school to be housed within the existing church, subject to the conditions recommended by staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 14

F. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PRE-SCHOOL

ORDINANCE NO. 3372 - ORDINANCE TO CONDITIONALLY ZONE 103 N. BEAR CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PRE-SCHOOL

Mayor Bellamy opened the public hearing at 9:15 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone 103 N. Bear Creek Road from RM-8 Residential Multi-Family Medium Density District to Commercial Industrial District/Conditional Zoning for a proposed pre-school. This public hearing was advertised on June 16 and 23, 2006.

The subject property is located within the City Limits on N. Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Two parcels totaling 2.28 acres are included in this conditional zoning request. Access to the property is off of N. Bear Creek. Surrounding properties to the north and west are zoned residentially (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes construction/contracting/electronics operation is located to the east.

The applicants, Amica Venturi and Ken Huck, wish to rezone their property from RM-8 Residential Mulit-Family Medium Density District to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home and dilapidated manufactured home. (The current property owners have been cited for a number of violations by the Building Safety Department, primarily concerning illegal dumping and the condition of the manufactured home. At the time of the drafting of this report, the applicant had assisted the property owner in demolishing most all of this manufactured home and clearing the property of debris). It is proposed that the single-family home be preserved. The applicants have not specified the exact use of this building. The development plan shows, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

At their meeting on May 15, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

At their meeting on June 7, 2006, the Asheville Planning and Zoning Commission unanimously (6-0) recommended approval of this application to the City Council.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate childcare-licensing professionals on the development of this site.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The applicant is working with appropriate City departments to ensure that proper buffers are established between any construction/site work and the stream and utility lines which lie to the north of the property.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations. The dilapidated manufactured home will be removed as part of the development of this property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed buildings to be utilized for the preschool is in keeping with a residential area. The area has a fairly dense residential population for which the preschool would be a convenience.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposes appropriate nonresidential use in a transition area between residential and commercial/industrial uses.
- Landscape plan indicates the preservation of considerable existing vegetation.
- Some may consider this application a commercial intrusion into a residential area due to the size of the proposed preschool operation.

Staff recommends approval subject to the conditions placed on the development by the TRC with the added condition that the site be cleaned up prior to obtaining final TRC approval on the project.

At their meeting on June 7, 2006, the Asheville Planning and Zoning Commission voted unanimously (6-0) to recommend this rezoning to the Asheville City Council.

Mr. Gerald Green, representing the petitioner, spoke in support of the conditional zoning and presented City Council with a petition containing 24 signatures of area residents supporting the establishment of a preschool in their neighborhood and to conditionally zone the property.

Mayor Bellamy closed the public hearing at 9:20 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3372, to conditionally zone 103 N. Bear Creek Road from RM-8 Residential Multi-Family Medium Density District to Commercial Industrial District/Conditional Zoning for a proposed pre-school, subject to the following conditions: (1) the TRC conditions being met; (2) that the site be cleaned up prior to obtaining final TRC approval of the project; and (3) that, if deemed necessary by the Planning Director, this project be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits. Noting that the request is reasonable based on information provided in the staff report and as stated in the stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously

ORDINANCE BOOK NO. 23 – PAGE 18

At 9:25 p.m., Mayor Bellamy announced a short recess.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3373 - ORDINANCE ADOPTING THE FISCAL YEAR 2006-07 ANNUAL OPERATING BUDGET

Chief Financial Office Ben Durant said that this is the consideration of an ordinance adopting the Fiscal Year 2006-07 annual operating budget. The City Council public hearing was held on June 13, 2006.

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The Fiscal Year 2006/2007 Annual Operating Budget was formally presented to City Council on May 23, 2006. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 2 and June 9, 2006. The City Council conducted a public hearing on the budget on June 13, 2006.

The Fiscal Year 2006/2007 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.4238 per $100 of assessed valuation, which is a revenue-neutral reduction from the current tax rate of $0.53 per $100 of assessed of valuation. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at **$117,011,971**, which includes a General Fund appropriation of **$77,858,556**. The final budget includes several changes that were made after the proposed budget was published on May 23. Those changes are summarized below:

- After the proposed budget was presented to Council, the Fire Department received notification that it had been awarded a federal SAFER grant which will partially fund the cost of three of the eighteen additional firefighters that were already included in the proposed budget. The FY 2006/2007 revenue from this grant totals **$94,616**. This additional revenue was used to 1) add funding to the budget to purchase a **$75,000** quick response vehicle (QRV) for the Fire Department; and 2) reduce the fund balance appropriation in the General Fund by **$16,616**.

- In addition, Council directed staff to include funding in the Transit Services Fund budget to expand the hours of operation for city buses and to initiate a limited-time fare free program. These new transit initiatives are funded with a **$248,116** transfer from the Parking Services Fund. Revenue from various parking fee increases was added to the budget to offset the cost of these new transit programs.

- Outside Agency funding is presented in accordance with City Council's recommendations. The full Council made several changes to the Revenue & Finance Committee's initial recommendations. Final Outside Agency appropriations for FY 2006-2007 total **$224,000**, which represents a net reduction of **$59,500** over the FY 2005-2006 budget of **$283,500**. Staff had included the full $283,500 in the initial FY 2006-2007 proposed budget as a place holder until Council made its final Outside Agency recommendations. Therefore, Council freed up **$59,500** when it set the Outside Agency funding level at $224,000.

- The Revenue & Finance Committee recommended various changes to the business privilege license fee schedule, including the elimination of maximum fee caps in the retail, wholesale, and service business categories. The full Council directed staff to look at various alternatives to the Committee's initial recommendation to eliminate the maximum caps. Staff completed its analysis and is now proposing a maximum fee of **$10,000** for retail, wholesale, and service establishments. This alternative proposal will produce approximately **$225,000** in additional revenue in FY 2006/2007, which is **$325,000** less than the **$550,000** in additional revenue that was initially included in the proposed budget.

  After the proposed budget was presented to Council, the City received two additional months of sales tax revenue from the State; and based on this information, staff was able to increase its sales tax projections for next year by **$300,000**. Staff proposes that this additional revenue, along with a portion **($25,000)** of the savings from reducing Outside Agency funding be used to bridge the **$325,000** revenue gap between the latest business license fee

proposal and the Revenue & Finance Committee's initial recommendation. The remaining $34,500 in Outside Agency savings will be added to the Manager's Contingency.

- Various changes or increases to fees & charges are presented in accordance with Council's recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance.

- Based on better than expected revenue and operating performance in FY 2005/2006, staff projects that the year-end deficit in the Civic Center Fund will be $375,000, which is approximately $400,000 less than the FY 2005/2006 budgeted operating transfer from the General Fund to the Civic Center Fund. Based on Council's direction, staff is proposing that this $400,000 be redirected from the Civic Center Operating Fund to the Civic Center Capital Fund to address high priority capital projects at the Center. The Budget Ordinance provides authorization for staff to execute this transfer.

Staff requests that Council review the FY 2006/2007 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Mr. Durant explained the one remaining outstanding issue of the business privilege license fee. He summarized the current fee structure and the updated proposal in that staff was asked to look at setting a maximum fee as opposed to having an unlimited fee. They are now recommending the maximum fee of $10,000 for business privilege licenses. In summary, the effects of the proposed City changes is that (1) approximately 1,600 business establishments (60% of establishments under the City rate structure) will see their fees decrease due to the reduction in the gross receipts per volume change; (2) approximately 1,000 business establishments (37% of the establishments under the City rate structure) currently pay the minimum and will therefore see no change in their fee; and (3) 84 business establishments (3% of the establishments under the City rate structure) will see their fees increase due to increasing the maximum to $10,000 in the retail, service, and wholesale categories (and out of the 84 businesses, 12 establishments will pay the maximum $10,000 fee.

Councilman Newman moved to adopt the budget as presented by Mr. Durant except to include the recommended Revenue and Finance Committee business privilege license fees, being the minimum fee of $25, $0.50 per thousand over $15,000 + $25, and no maximum fee (not the $10,000 cap). This motion was seconded by Vice-Mayor Jones.

Upon inquiry of Councilman Newman about the neighborhood coordinator position in the Planning & Development Department, Assistant City Manager Richardson said that the City Manager will work with the Chief Financial Officer in trying to identify funds to have an existing intern be hired on a one-year contract basis for this position.

Considerable discussion was held at Councilman Newman's possible amendment to create a budget policy for implementing a uniform water rate which will be phased in over a 5-year period with the first of those 5-years beginning in Fiscal Year 2007-08, with a caveat that we have a policy of maintaining our current differential rate structure for manufacturing customers who are on the Asheville water system at their current lower rate structure. In summary, it was the majority of Council's decision to wait for updated information (since this is a policy decision that can happen anytime and has no impact on the budget being discussed now). Mr. Durant said that he can have the updated information to Council in approximately one month, with updated information to include statement of the impacts, what is the impact with the loss of Anvil, what it will look like phasing in, etc.

Councilman Mumpower moved to amend the main motion to ask staff to create some procedure to assure compliance regarding privilege license fees. Councilwoman Cape responded that conversations have begun with City staff to look at the process of the privilege license fee.

The motion to amend the main motion to instruct staff to create a procedure to assure compliance with the privilege license fees carried unanimously.

Mayor Bellamy moved to amend the amended main motion by adding the maximum fee cap of $10,000 on all businesses, except for manufactures which will have a $1,000 cap (including the $25 minimum fee; and $0.50 per thousand over $15,000 + $25) for at least one year and in next year's budget the Council's policy will be to ask staff to include a uniform business privilege license fee in the next year's budget. After discussion, the motion to amend the amended main motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower didn't support the motion because these are people that don't get to vote and it's always easy to go after businesses. Businesses are faced with parade of taxes and expenses and this is just one of many.

The amended main motion then carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 – PAGE 22

V. NEW BUSINESS:

A. ACCEPTANCE OF GRANT FUNDS

Councilman Mumpower was pleased to present Transit Director Bruce Black a check from the Chaddick Foundation in the amount of $25,000 for the Top A Stop Program.

Councilman Mumpower was also pleased to present Irby Brinson, Director of Parks & Recreation, a check from the Chaddick Foundation in the amount of $25,000 for Memorial Stadium.

B. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

At the request of Vice-Mayor Jones, Chair of the Boards & Commissions Committee, it was the consensus of Council to fill the Airport Authority vacancies on July 11, 2006.

C. RESOLUTION NO. 06-126 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that Mr. Victor Trantham has resigned, as a member of the Buncombe County Tourism Development Authority, thus leaving an unexpired term until August 30, 2007.

At the City Council worksession on June 20, 2006, City Council instructed the City Clerk to arrange interviews for Frank Salvo and Ronald Storto to fill the vacancy for the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units.

After Council spoke highly of the candidates, Frank Salvo received 3 votes and Ronald Storto received 4 votes. Therefore, Ronald Storto was appointed to serve the unexpired term of

Mr. Trantham (representing the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units), term to expire August 30, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 53

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 2-15, 2006: Tana R. Oliver (Parks & Recreation), Doris Firkatoune (Civic Center), Johnny L. Bailey (Transit Services), Teresa Raines (Sanitation) and Robin Cline (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Robert Zieber noted this has been his third time to Council requesting the status of the Biltmore Park Traffic Calming Plan for speed humps. He said that he recently talked with City Engineer Cathy Ball who would be copying Mr. Zieber with the correspondence associated with this matter.

Reverend Christopher Chiaromonte commented on how the City was oppressing the poor.

Mr. Dwight Buckner, representing the members of the Downtown Association, voiced concerns over the budget process and parking deck increases.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:35 p.m.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – July 11, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. SENIOR OPPORTUNITY CENTER RECOGNITION AS A NC SENIOR CENTER OF EXCELLENCE

Mayor Bellamy recognized Mr. Joe Connolly, Director of the Land-of-Sky Area Agency on Aging, who presented the NC Senior Center of Excellence Award to Ms. Pam Kelly, Director of the Senior Opportunity Center; Ms. Irene Pickens and Mr. Daniel Campbell, Senior Opportunity Center staff; and Ms. Amy Rickman, Program Supervisor.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda "C" be removed from the Consent Agenda for discussion.

Mayor Bellamy asked that Consent Agenda "E" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 27, 2006

B. RESOLUTION NO. 06-127- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 27, 2006, the City approved the budget for Fiscal Year 2006-2007 and in that budget approved $121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2006, through June 30, 2007.

Pros:
- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Cons:
- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2006, through June 30, 2007.

RESOLUTION BOOK NO. 30 – PAGE 54

C. **RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE BE VACATED AND CLOSED UNTIL BROUGHT INTO COMPLIANCE WITH THE HOUSING CODE**

This item was removed from the Consent Agenda for individual discussion.

D. **RESOLUTION NO. 06-129 - RESOLUTION AMENDING THE 2006 CITY COUNCIL MEETING SCHEDULE TO DELETE THE AUGUST 8, 2006, FORMAL COUNCIL MEETING**

RESOLUTION BOOK NO. 30 – PAGE 57

E. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 23, 2006**

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 06-128 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE BE VACATED AND CLOSED UNTIL BROUGHT INTO COMPLIANCE WITH THE HOUSING CODE

Summary: The consideration of a resolution setting a public hearing on July 25, 2006, to consider the dwelling located at 128 Alabama Avenue be vacated and closed until brought into compliance with the Housing Code

The structure located at 128 Alabama Avenue (PIN 9638.15-52-0910) is a two-story wooden frame, deteriorated dwelling. Work conducted without a valid permit within the dwelling resulted in four illegal units. The owner has obtained zoning approval for two units but has not completed the required work in order to obtain a Housing Certificate. At a hearing on March 5, 2005, the dwelling was deemed by the building inspector as being unfit for human habitation.

Additionally, the owner was ordered to make required repairs and obtain a housing certificate by May 9, 2005. Upon the owner's failure to comply with the Order, a re-accruing civil penalty was assessed on November 17, 2005. The civil penalty has accumulated to over $8,000 and continues to accumulate at the rate of $50 per day. To date, the illegally occupied dwelling remains unfit for human habitation and is being rented without the required Housing Certificate.

Pros:

- Removes occupants from a dwelling deemed unfit for human habitation
- Enforces the Housing Certificate requirement of the Housing Code
- Once vacated, allows the City to stop the accrual of the civil penalty
- Once vacated, allows the City to proceed with appropriate action to collect the total penalty owed

Cons:

- May require the City to file eviction proceeding to remove occupants from the dwelling.

This action complies with the City Council Strategic Operating Plan in that it promotes the focus area of Housing Opportunities, Goal #4, Objective C: Establish a proactive role for the City of Asheville to best utilize those programs available to it to dramatically increase the long-term availability of affordable housing.

The Building Safety Department recommends adoption of the resolution setting a public hearing on July 25, 2006, to consider the dwelling located at 128 Alabama Avenue be vacated and closed until brought into compliance with the Housing Code.

Upon inquiry of Councilman Mumpower, Director of Building Safety Robert Griffin said that they are in constant dialogue with the owner and there is an excellent opportunity that the owner will comply and the public hearing may be pulled from the July 25 agenda.

Councilman Mumpower moved for the adoption of Resolution No. 06-128. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 55

RESOLUTION NO. 06-130 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 23, 2006

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 10th Annual Brewgrass Festival on September 23, 2006.

Earlier this year this group received Council approval to serve malt beverages and/or unfortified wine at their event. However, they have changed the date and location of their event and this needs to be re-submitted again for Council consideration.

The 10th Annual Brewgrass Festival, which is a benefit for the Big Brothers/Big Sisters program, has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on September 23, 2006, in the Eagle/Market Street area of downtown Asheville.

City staff recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 10th Annual Brewgrass Festival on September 23, 2006.

Councilman Newman moved for the adoption of Resolution No. 06-130. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 58

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 37 ARLINGTON STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PARKING LOT

Mayor Bellamy said that on July 3, 2006, she received a letter from Mr. Robert L. Malkin, agent for Mr. and Mrs. Randall Higgins, doing business at 37 Arlington Street, Asheville, N.C., requesting "a continuation of the public hearing now scheduled for July 11 to July 25, 2006, based on a valid protest petition being filed on May 18, together with the absence of Councilwoman Robin Cape, during the public hearing on July 11. We were fully prepared to go forward on this conditional zoning request had we not been informed of Robin Cape's absence, which thereupon would require 100% of City Council approval. Further, Mr. Higgins' attorney is negotiating with attorney Patsy Brison towards providing a restricted deed to the signors of the protest petition, thus, to go forward with the public hearing on July 11 could be an untimely disadvantage to all parties."

City Attorney Oast said that since there is a valid protest petition filed, in order to adopt any change in zoning would require an affirmative vote of all six members of Council.

Mayor Bellamy said that she has spoken with Councilwoman Cape who is supportive of this continuance since she was not able to be at this meeting due to traveling on City business.

Councilman Newman said that in light of a valid protest petition and Councilwoman Cape's support for a continuance, he would support a continuance.

Councilman Mumpower said that since a valid protest petition has been filed, the goal is fairness and the petitioner should have the benefit of a full Council.

Ms. Patsy Brison, attorney representing neighbors who are opposed to the rezoning, submitted to Council a letter as follows: "You have received a request from the applicant's agent, Robert L. Malkin, for another continuance. The basis of the continuance is the absence of one council member on July 11 and a statement that the applicant's attorney has been negotiating with me about providing deed restrictions in exchange for withdrawal of the protest petition. While the clients I represent have been open to considering a proposal from the applicant, I have not received any proposals from the applicant through their attorney or agent. I have received a few telephone messages and have returned each of those but have not received any proposal for my clients to consider. As the applicant has already received one continuance, my clients and other neighbors will need to make a personal appearance plans to appear tonight to speak in opposition to the application in the event the matter is heard. My clients would like to proceed with this matter and oppose the request for a second continuance." She urged Council to hear the matter at this meeting.

Mayor Bellamy confirmed that the first continuance request by the petitioner was due to a Council member being absent from the meeting as well, and was not the petitioner's fault.

Councilman Mumpower moved to continue this public hearing until July 25, 2006. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Freeborn voting "no."

Councilman Mumpower encouraged the developer to communicate with the neighborhood to see if they can resolve any concerns.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

At staff's request, due to a technical amendment, this public hearing will be re-advertised for the July 25, 2006, meeting.

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE UNIFORM NOTIFICATION FOR DEVELOPMENT REVIEW PROCEDURES

ORDINANCE NO. 3374 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE UNIFORM NOTIFICATION FOR DEVELOPMENT REVIEW PROCEDURES

Mayor Bellamy opened the public hearing at 5:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance to provide uniform notifications for development review procedures. This public hearing was advertised on June 30 and July 7, 2006.

The City of Asheville's Unified Development Ordinance sets forth a number of different notification requirements for many of the different review processes that might occur for the development or subdivision of property. There seems to be no clear reason for this process differentiation and the variation in process has led to much confusion for citizens and for staff about the notification processes.

This proposed amendment, except when state statutory provisions require differing notification, establishes uniform guidelines for the notification of the public on all types of review. These guidelines state that the City will provide notification for all public meetings and public hearings associated with review processes in the following manner:

- Published notice in the newspaper at least ten (10) days prior to the date of the hearing/meeting.
- Mailed notice to those within two hundred (200) feet of the subject property mailed at least ten (10) days prior to the date of the hearing/meeting.
- Mailed notice to any known neighborhood contact person at least ten (10) days prior to the date of the hearing/meeting.
- Posted notice at least ten (10) days prior to the date of the hearing/meeting.

The amendment further states that the North Carolina General Statutes control where specific notification requirements are stated (currently this is only for amendments -- text or map -

- when those are being heard by City Council). Since there are no statutory requirements for other types of review, the amendment also provides that errors in notification for these other types of review, shall not affect the validity of any action taken at a public hearing or public meeting on such matters.

Considerations:

- The amendment provides for uniform notification procedures for all types of development review giving clarity on these procedures to citizens and staff.
- The amendment refers to the North Carolina General Statutes but does not spell out statutory requirements, thus avoiding conflicts in the future should statutory requirements be amended.
- The amendment makes notifications that are not required by statute, "guidelines", that the staff will follow in providing public notice on review processes. The amendment provides that errors in the provision of notice for these other processes will not negate any action taken at a public meeting/hearing on such matters.

At its meeting on June 7, 2006, the Planning and Zoning Commission unanimously (6-0) recommended approval of this wording amendment. Staff recommends approval as well.

Ms. Cogburn asked for Council consideration for two other amendment to the proposed ordinance as follows: "w. Section 7-5-1 (b) (3) be amended by deleting the following language: An application for a major works certificate of appropriateness must be filed with the director of the historic resources commission. When completed, the application shall be filed with the director of the historic resources commission at least 14 days prior to the historic resources commission meeting at which the request is to be heard."; and "Amend I. To add: Posting of sites as set forth in 7-5-20 is not required for major works certificates of appropriateness."

Mayor Bellamy closed the public hearing at 5:26 p.m.

Ms. Cogburn responded to Councilman Mumpower's concern regarding the treatment of errors in notification proposed in the amendment. He stated his concern for the City having ordinances designed to provide clarity, which then allow standards (in this instance, standards for notification) to be changed.

City Attorney Oast said that the technology for accessing and disseminating information is readily available and is being used, and our public notification process goes far beyond what the statutes require.

Ms. Cogburn responded to Vice-Mayor Jones' question why some of the mailing notices were being reduced from 400 feet to 200 feet.

City staff recommends City Council amend the Unified Development Ordinance (UDO) to provide uniform notification for development review procedures.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3374, with the two amendments outlined by Ms. Cogburn. This motion was seconded by Councilman Davis and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

At the request of the Boards & Commissions Committee, it was the consensus of Council to delay the Airport Authority appointments until a full Council is present on July 25, 2006.

VI. OTHER BUSINESS:

At the request of the Boards & Commissions Committee, it was the consensus of Council to institute a procedure whereby when board and commission appointments are made during a formal meeting that all members of Council be present.

Councilman Mumpower encouraged citizens to volunteer to help build Top-A-Stops.

Councilman Newman was pleased to announce the following new improvements to the Asheville transit system: (1) implementation of the evening service, which provides transit services to all parts of town until 10:30 p.m.; and (2 the City's 90-day ride-for- free promotional campaign beginning on August 14, 2006.

Mayor Bellamy announced that the City of Asheville received a Weed and Seed Official Recognition from the Department of Justice for the West Riverside community, which is made up of the Pisgah View and Burton Street neighborhoods.

The following claims were received by the City of Asheville during the period of June 16-29, 2006: Willie D. White (Transit Services), Mark Anderson (Police), BellSouth (Water), Leanna Bowman (Water), Mariana Bartow (Water) and City of Asheville's Information Services (Information Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Joe Minicozzi, speaking on behalf of the Coalition of Asheville Neighborhoods Board, spoke to Council about the David W. Owen's report on three development issues. They narrowed the report to four points, as follows: (1) they asked Council to move immediately to direct staff to fix what has been constructed without Code compliance according to the report – Greenlife, the loading dock in the buffer; Staples, the setback issues; and Prudential, sign not being in compliance with the square footage requirement; (2) there were matters for open interpretation that should have gone to a quasi-judicial hearing either before City Council or the Board of Adjustment and they asked for Council direction to cease the practice at staff level; (3) there were 22-24 items of Code modification that could be initiated by staff and they would like to see those changes start within the next 90 days; and (4) bring forward an immediate halt to the alternative compliance buffer variances at the staff level. Mayor Bellamy noted that City Council is in the process of inviting Mr. Owens to make his presentation to Council and then Council will develop the steps to address the recommendations.

Mr. Reid Thompson urged City Council to direct the Police Department to enforce the laws, in that trucks are driving on Maxwell Street and police officers are not ticketing them. City Manager Jackson took exception that there hasn't been police response in that location. He said he would provide City Council with an update on enforcement action at that location.

Mr. Fred English spoke to Council about Pack Square and questioned how much money the City has contributed to that project, including the improvements to College Street. City Manager Jackson was not aware of any local matching dollars. Vice-Mayor Jones said that we are contributing in-kind support to make sure the project minimally impacts our citizens.

Councilman Mumpower suggested a worksession item be scheduled to discuss how City Council is going to respond to the extensive delays and the significant impacts of those delays to our community, since the delays are causing a dramatic economic and intrusive impact on our downtown businesses. The worksession discussion would be on how do we mitigate that impact. After a brief discussion, it was the majority of Council's decision to ask City staff to prepare a memo to Council to include some of the following, but not limited to, what is in the pipeline as far as parks and recreation activities and events, their timeline, their funding-raising; how will the delays be mitigated so as not to cause further congestion during the fall season; how will traffic be handled in that area; what money is available to complete the project and how will the different portions of the project be phased in. After that report is prepared by City staff, Mayor Bellamy said then a worksession could be scheduled.

Mr. George Grunewald expressed his feelings on the inadequacies that the Town of Biltmore Forest is paying for City water and Asheville Fire Department services. City Manager Jackson said that he would provide a response to Mr. Grunewald addressing his concerns.

Reverend Christopher Chiaromonte spoke in support of public restrooms downtown and the need for low cost apartments or roomy houses to get the homeless off the street.

CLOSED SESSION

At 6:17 p.m., Councilman Mumpower moved to go into closed session for the following reason: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Reid Thompson; Board of Adjustment; Greenlife Grocery of Asheville, LLC; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:30 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

Jerry W. Bellamy
MAYOR

Monday – July 17, 2006 - 9:10 a.m.
Room 202 – Haynes Building
A-B Technical Community College
Enka Campus

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape (arrived at meeting at 10:10 a.m.); Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Buncombe County Chairman Nathan Ramsey; Commissioner David Gantt; and County Attorney Joe Connolly. (Absent: Vice-Chair Bill Stanley, Commissioner Carol Peterson, Commissioner David Young, County Manager Wanda Green and County Clerk Kathy Hughes).

Mayor Bellamy called the meeting to order at 9:10 a.m. in Room 202 of the Haynes Building at the A-B Technical Community College's Enka Campus. Vice-Mayor Jones then moved to adjourn the meeting to Room 200 in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Davis and carried unanimously. (Councilwoman Cape was not present in the closed session.)

At 10:03 a.m. Councilman Freeborn moved to come out of closed session and reconvene the meeting in Room 202. This motion was seconded by Councilman Davis and carried unanimously.

At 10:00 a.m. Mayor Bellamy called the City Council meeting to order to discuss water-related issues.

Chairman Ramsey said that the majority of the County Commissioners could not attend this meeting, noting that a letter was sent last week indicating that. It was his understanding that on July 31, 2006, the entire County Commissioners are able to meet. However, he and Commissioner Gantt are available to answer any questions about the County's latest written offer.

Even though the County continues to strongly believe that an independent water authority is the best solution for the region, the County's latest offer on June 22, 2006, is (1) water will be a municipal system; (2) the County and the water districts will transfer to the City both the title and responsibility for all water facilities; (3) there will be no differential rates; (4) there will be no diversion of water revenues, and this will be verified annually through an independent review; (5) water will not be used as a tool to force annexation; (6) the City will transfer to the County both title and responsibility for McCormick Field, Nature Center, Golf Course, Recreation Park and the Civic Center. (This relieves the City of a net operating loss that is currently $1.1 million annually and which will grow substantially in the future. Additionally, the County could address the much-needed and long-deferred issue of improving or replacing the Civic Center.); (7) all lawsuits on water issues and any related claims will be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement.

Mayor Bellamy noted that since Asheville is the hub of Western North Carolina, the reality is that our daytime population goes from 72,000 to over 100,000 individuals who come into the City to do their business. In most cities in North Carolina there is an equity payment or they use their water resources to help cover the infrastructure costs.

Mayor Bellamy felt it would be appropriate to go through the County's proposal point by point and let the Commissioners know of the City's position. Then the things that the City and County agree on to be taken off the table. For starters, since the County and the City both agree that the water will be a municipal run system, that item should be taken off the table.

Commissioner Gantt said that the County's proposal is a package and they need to have the entire Commissioners at the table, as well at the state legislators since the legislators have the taxing and funding power to help us make these things happen. After checking with the state legislators, the date when the Commissioners and legislators (except for Senator Apodaca) can be present is July 31, 2006.

Mayor Bellamy continued stating that the City will accept the County's proposal point that the water system will be a municipal-run system. Again, since both bodies agree, that should be an issue taken off the table.

Chairman Ramsey noted again that the County clearly wants an independent water authority in that they feel it is the best for the region. He said that point is a major concession for their board. In addition, the County will be taking on a multi-million dollar annual financial cost. He didn't feel that the independent water system/municipal run system should be taken off the table but that doesn't mean that the County will pay $6 Million a year to the City.

Mayor Bellamy asked if the County's position is now changing from their proposal to the City on June 22 in that they agreed that water will be a municipal-run system.

Chairman Ramsey said that, in his opinion, the City can't pick and choose from the County's proposal. He agreed with Commissioner Gantt that it is a package offer, however, he was agreeable to changing some of the provisions.

Mayor Bellamy said the City's goal is not to consider the County's proposal on an all or none basis. The City's goal is to see where we can agree.

Commissioner Gantt was willing to listen to what the City agrees on and then they will go back to their entire board.

Mayor Bellamy then reviewed the City's position on each of the County's latest proposal points: (1) water will be a municipal system – the City agrees to that; (2) the County and the water districts will transfer to the City both the title and responsibility for all water facilities – the City agrees to that; (3) there will be no differential rates – the City could agree to that, subject to tax equity payments with a Consumer Price Index (CPI) attached on a 20-year agreement; (4) there will be no diversion of water revenues, and this will be verified annually through an independent review – the City could agree to that, subject to tax equity payments with a CPI attached; (5) water will not be used as a tool to force annexation – the City will accept the provision from the County's June 2005 offer that new developments within a half-mile can be annexed using the same criteria other North Carolina cities utilize; (6) the City will transfer to the County both title and responsibility for McCormick Field, Nature Center, Golf Course, Recreation Park and the Civic Center. (This relieves the City of a net operating loss that is currently $1.1 million annually and which will grow substantially in the future. Additionally, the County could address the much-needed and long-deferred issue of improving or replacing the Civic Center.) – the City is open to discuss this but wants to focus on water prior to any discussions on this provision; (7) all lawsuits on water issues and any related claims will be dropped – if the City receives support on the above responses, then this provision would be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement.

Mayor Bellamy said that the tax equity payment the City is requesting is $6.2 Million, which is 85% of the average differential across the State of North Carolina. Those municipalities across the North Carolina use that 85% differential to help offset the costs of people coming from outside their municipality into the municipality to do business. The City is willing to talk about how we can get there, which may not be all cash payments. However, the City should be compensated and that is either with a rate differential or with a tax equity payment.

Mayor Bellamy suggested Chairman Ramsey to go back to his board and relay the City's position on the County's latest offer, noting that the County response on an entire package or nothing is not a good process. She hoped at the meeting on July 31, which the County has arranged, the bodies can be open to discuss the provisions on a point-by-point basis and move forward.

Noting that this is only his perspective, Chairman Ramsey said that the more burden that all County residents would incur, then in exchange for that it seems to him that the City would make concessions. The largest financial obligation that the County was willing to incur was when it was an independent authority and the County was stepping out in making a major financial commitment to do that. This is so controversial, because over the past 80 years, the City has never charged differential rates for water customers and has never been able to tell future water customers that they had to be voluntarily annexed to receive water services. That is the way it's been because it is the County's contention that the City doesn't own the entire water system but the Court system will settle that point. He also pointed out that regarding a differential rate, our current overall rate is higher than the City of Hendersonville's outside rate. The County understands that the City incurs some expenses that should probably be borne by more taxpayers than those who live in the City of Asheville, e.g., Civic Center and the recreation assets. That is why they come into the picture, because it is not fair for City taxpayers to solely bear the burden for regional facilities. And that is the intent of the County to address some of that.

Chairman Ramsey requested the City make a list of the different inequities (elaborating on some of the costs) that the Asheville taxpayers are incurring that other 5 incorporated towns in Buncombe County don't have to incur, then, from his perspective, the County will be look at that to try to make sure that all taxpayers in our community are treated equitably.

Councilman Newman said that the City residents are paying for a lot of things by ourselves that have a lot of regional benefit that we think should be shared more regionally, especially if we would agree to not operate the water system the way that more other cities who own their systems in the State of North Carolina do.

Councilman Mumpower said a big inequity is that the City should be fairly compensated for what whatever percentage of the water system that we do own as do other cities like Hendersonville, Weaverville, etc. who own their systems. He noted that this system which has been in place for 80 years hasn't worked and could not understand why would we want to continue that and why would we not want to embrace the same model that every other city in North Carolina uses that owns their system.

Councilman Freeborn said that one of the biggest reasons why our rates are so much higher in this water system is because under the previous governance structure, problems were not fixed until the last minute when it costs the most to fix them. As a municipal run system, we will be proactive in fixing things ahead of schedule so we can ultimately save money in the long run. The present system does not work.

Vice-Mayor Jones did recognize the significance of the County's proposal for the system to be a municipal-run system, but also it was huge for the City to give up the rate differentials for

a tax equity payment. She hoped that the City and County can begin to talk about a mixture of payment and waiving of fees to get to a number for the tax equity payment that we think is fair. She was sure that the legislators want the City and the County to work this out and since this is the last week of session, she felt it was urgent that the City and County meet again this week.

Chairman Ramsey said that his entire board will need to discuss the provision that new developments within a half-mile can be annexed using the same criteria other North Carolina cities utilize. He would also like the list of the inequities that Asheville taxpayers pay that other municipal-taxpayers in our community don't pay. Personally, if the City wants the half-mile annexation and the $6.2 Million tax equity payment with a CPI, there would be no way he would support that. But, if the City can put some costs down that the City currently bears that are regional costs and the City feels like the County should assist in those, then he would be willing to sit down and discuss that. He personally would not support the one-half annexation provision as it is because the County had a threshold that it was larger developments and that is something we can discuss. Regarding the urgency to meet before the session ends, he felt sure that if a resolution or an interlocal agreement was reached, then when the General Assembly reconvenes next session, that they would make the necessary changes in state legislation.

There was a brief discussion surrounding the tax equity payment provision.

When Vice-Mayor Jones asked for the County to share with the City their documentation of property that the County owns, Chairman Ramsey responded said that the City gave to the County an itemized list of 18 miles of water lines and claimed that was all the County owned. The question is from a title standpoint and that is something the Courts will have to decide.

Councilwoman Cape said that when a builder builds a water line it is standard that they want the water system to take it over.

Councilman Newman asked if it would be helpful at our next meeting to talk about the question of ownership of the system, because the City feels it very clear that 95% of the water lines are not in question. County Attorney Connolly felt that information regarding ownership would be beneficial but asked that the information be provided to the County prior to the next meeting so the Commissioners will have an opportunity to review and respond. Vice-Mayor Jones felt the County should provide their documentation because it's not fair to have City staff do all the legwork. If the County feels strongly about this, then we need to compare notes. Chairman Ramsey felt we are getting into the heart of a legal issue and the attorneys for the City and County will handle this through a discovery process.

When Councilman Mumpower asked if there was agreement to determine the value of the system and who owns what part of the water system as a starting place for negotiations. And if there is an agreement, then ask staffs on both sides to bring their respective information to the table. Chairman Ramsey felt it would be helpful on the ownership aspect, because we will never agree on the value standpoint.

Chairman Ramsey asked that the City respond to the County's latest proposal in writing before the next joint meeting date, giving his entire board the opportunity to review and respond. Mayor Bellamy said that the City will hand deliver the written response to Chairman Ramsey's office, noting that this is the second proposal the City has put in writing to the County since the beginning of this year.

It was the consensus of all seated that the next meeting would be on July 31, 2006, at this same time and place if possible, unless the City and County Managers are able to arrange a meeting sooner.

Mayor Bellamy then adjourned the City Council meeting at 11:23 a.m.

Magdalen Bouleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – July 18, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CHAMBER ECONOMIC OUTLOOK

Mr. Tom Tveldt, Director of Asheville Metro Business Research Center, said that the Asheville metro is experiencing strong and stable economic growth. A balance of forces, centered around the area's quality of life amenities, will continue to support this durable pattern.

Through the first quarter of 2006, the Asheville metro has participated in 27 straight months of record-setting job levels. Over the year, 5,200 net new jobs have been added. With current total employment of 170,600 and a growth rate of 1.9 percent through the first quarter, Asheville has settled into a pace close to its historic average.

At 3.2 percent, Asheville's unemployment rate holds well below the state, the nation, and all but two of North Carolina's 13 other metro areas.

Balanced economic growth in the Asheville metro is being led by: specialized healthcare industry; record-setting tourism activity; emerging professional services sector; resilient housing market; baby-boom fueled population growth; and transforming manufacturing sector.

The Asheville metro has developed a unique and balanced economy. Four major activities characterize the core strengths of the area. Together, these drivers underpin Asheville's special economic position and foretell its direction. Predictably, the actions of each driver overlaps and supports other drivers in the local economy. History has also shown that a period of weakness for one driver can lead to the expansion of another. This was the recent experience of the health services industry's growth throughout the transition in manufacturing.

The well-established leisure and hospitality sector is experiencing record-setting growth. Within the initial phases of an entirely new national branding campaign, the industry is looking at spearheading over $15 million worth of media spending. Overnight accommodation sales are up 14 percent, and industry employment, up 3 percent, now stands at 21,700.

After several straight years of losses, the declines in local manufacturing employment have leveled out, with the first two months of 2006 showing gains. With 21,500 workers, the industry continues to be transformed into a high-skilled advanced sector, as exemplified by the major wage gains made over the last few years. In the Asheville metro economy, manufacturing alone contributes $898 million annually in wages.

Health services has grown into one of the area's major job creators. At over 26,000 workers, health services is now the largest industry sector in the Asheville metro. Strong gains in well-paying health services had softened earlier losses in the traditional manufacturing sector. Stable growth continues at an annual rate of 4-5 percent, as it has done for most of the last 15 years.

Local health services will continue strong because (1) concentration of specialized care facilities and technologies; (2) growing baby-boomer market; (3) nationwide trend of growing utilization and per capita spending; and (4) expanding geographic market.

Population growth remains a consistent and stable contributor to the local economy. At no time within the last 35 years has population declined. Estimates indicate moderate growth patterns will continue between 1.5-2.0 percent per year.

The Asheville metro is distinct in that more than 90 percent of local population growth is from in-migration, the remaining from births over deaths. Other North Carolina communities supply about 40 percent of the in-migrants. Florida tops the states with the highest number of in-migrants, accounting for about 12 percent of the total.

Mild population increases, stable job growth, and comparatively affordable prices have kept the residential housing strong. Unlike other communities, the Asheville market has avoided dramatic price appreciation and the threat of falling prices. Currently, home sales are up 10.3 percent for the year, with the average price up 7.8 percent.

In summary, the economic strengths of the Asheville metro assure that it continues along its path of stable economic growth. A balance of economic drivers, centered around the area's quality of life amenities and major demographic trends, will support this durable pattern. Over the last year, 5,200 net new jobs have been added. Health services and the leisure and hospitality industries continue as the major job creators, with an emerging professional/business services sector playing an increasingly important role. Local manufacturing continues its major transformation to high-skilled production, marking the way with sizeable wage gains.

Stable population growth, owing to in-migration and fueled by the retiring baby-boom generation, will continue to fuel growing home sales and guide residential building activity.

Mr. Tveidt responded to various questions from Council, some being, but are not limited to; is there any information that looks at how the small businesses have grown around the manufacturing sector; what sector will new jobs occur and will those jobs be from new employers or current employers who are able to expand; how will the HUB Project play into the future of brining in more jobs and will we see more diversity in service providers; how can we get areas that have a high unemployment rate connected with the new jobs; do we have any data about how Asheville compares to other parts of the state in terms of living wages; are there any economic development public policies where we can address wages; are we continuing to track the number of people coming to our area because of broadbanding, the Media Arts Project, etc.; are we making an aggressive attempt to reach the media arts group; and what is the average wage range per year in the private industry.

On behalf of City Council, Mayor Bellamy thanked Mr. Tvedit for his concise and informative presentation and looked forward to hearing more in the future.

EMERGENCY PLANNING

Public Health

Fire Chief Greg Grayson shared information on the emergency management principles and the good cooperation between the City, County state and federal agencies.

He said the system component representatives include City government efforts; County government efforts; NC Emergency Management efforts; Federal Emergency Management

efforts; and non-profit agencies as partners, such as American Red Cross, United Way 211, and a host of others.

The NC's system is an all-hazards approach to emergency assistance: severe weather (hurricane, snow, tornado, flood, drought); technological (hazardous materials/radiological, fixed nuclear facilities); man-made (weapons of mass destruction, cyber-terrorism); and lost person search/rescue.

The emergency management tradition phases include preparedness (training and equipment), response, recovery and mitigation.

The following is the NC Emergency Management system when disaster strikes in Asheville: (1) Disaster; (2) City of Asheville emergency services responds; (3) If disaster exceeds the City's capability, Buncombe County Emergency Medical assistance is requested; (4) If disaster exceeds Buncombe County capability, State Emergency Management activities; (5) If severity and magnitude of disaster exceeds state and local capacities, Governor requests federal assistance; and (6) if approved, State receives assistance from DHS/FEMA and other federal agencies.

The City of Asheville's primary emergency services are (1) Fire and Rescue; (2) Police; (3) Public Works (fleet and streets); (4) Water; and (5) support departments such as Finance, Information Technology, Engineering, Public Information, and Building Safety.

Key emergency rules for Asheville include (1) the City Manager keeps all elected officials apprised of emergency situations and obtains policy direction from elected officials when necessary; (2) Fire and Rescue has the key coordinating role to ensure that unified command and control is in place and operates in concert with Buncombe County and NC Emergency Management efforts; and (3) all other operating departments perform specific services as needed for emergency.

The Buncombe County's primary emergency services include Emergency Medical Services, Emergency Management, Sheriff's Department, Health, and support departments.

The transition from County to State emergency management is (1) all 100 counties have an Emergency Management Director whose position is partially funded by state government; (2) the state has three geographical districts that the County directors connect with. The WNC branch headquarters is located in Conover; and (3) NC operates an Emergency Operations Center in Raleigh 7/24/365 and upgrades when needed for all significant emergencies.

Dr. Martha Salyers, Team Leader for the Public Health Regional Surveillance Team, provided Council with statistics on the pandemic influenza. She explained that outbreak means occurrence of disease above the expected; epidemic is essentially the equivalent to outbreak; pandemic is a very large outbreak that encompasses many regions and affects a large portion of the population; and influenza is a viral disease caused by the influenza virus, from the Italian "influence."

Dr. Salyers explained the influenza virus stating that mutations can range from minor (seasonal flu) to major genetic recombination (pandemic influenza). She then explained how new flu strains are created.

One of the three kinds of influence that is in the news is the seasonal influenza - (1) November through April; (2) usual peak January-February; (3) yearly vaccine, (d) 200,000 hospitalizations and 36,000 deaths per year in the U.S., mainly very young and elderly; and (4) partial immunity exists from year to year.

Another kind of the influenza that is in the news is the pandemic influenza – (1) caused by new flu virus that becomes transmitted easily between humans; (2) 10 worldwide pandemics in 300 years; 3 in the U.S. in 20th century; (3) little or no immunity exists; and (4) no existing vaccine. No one knows when the next pandemic will come. It is estimated at every 15-40 years and we are overdue. In facing a pandemic, what can we do … (1) prevent it - (a) vaccine availability – probably 3-6 month after pandemic begins; (b) antiviral medication prophylaxis; (c) personal protection (masks, hand-washing, cough etiquette); and (d) "social distancing;" (2) treat it – antiviral medications (supply issues; and may not be effective for pandemic influenza strain); and (c) contain it – quarantine and isolation – limited effectiveness.

The third kind of influenza that is in the news is the Avian influenza, aka "Bird Flu." This is a type of flu that infects wild and domestic birds. This is currently spreading in southeast Asia and eastern Europe. It can be transmitted to humans or other mammals. The World Health Organization has documented 230 human cases as of July 14, 2006, resulting in 132 deaths and a case fatality rate of 57%. Human-to-human transmission has been very rate to date. The Bird Flu is bad for birds because North Carolina is the 3rd largest poultry producer in the U.S. It's bad for people because of the known transmission from birds to humans and the high case fatality rate. If it mutates and develops efficient human-to-human transmission, it could cause the next pandemic.

We are preparing for this. On the federal level, we have a Federal Pandemic Flu Plan: 2005-06. It includes: (1) purchase of H5N1 vaccine for 20 million persons; (2) increase U.S. ability to produce vaccine; (3) stockpile antiviral medications; (4) promote state and local preparedness; and (5) provide aid for international preparedness. On a state level, we have the NC Pandemic Flu Plan, which includes an October 2004 (updated in 2006) part of state Emergency Operations Plan to include: command and control; surveillance; vaccine preparedness; antiviral preparedness; mass case; healthcare facility preparedness; and communication.

There are several issues in local preparedness, which are (1) supplies of personal protective equipment, vaccine, medications (coordinate with state, federal, business, medical, and other response communities; (2) priorities for protection and treatment; (3) surge capacity; (4) continuity of operations (critical services, single points of failure, and plan for 40% staff absence; (5) command and control (partnerships and unified command); (6) communication (between responders and with our citizens; and (7) mobilizing the community.

Dr. Salyers responded to various questions/comments from Council, some being, but are not limited to: who should people contact for additional information; what is the solution to surge capacity response; how long do we have in the U.S. if there is an outbreak in Asia; is there a possibility that the 20 million doses of vaccinations will be ready, if necessary; what are some efforts that City Council can do to prepare for an outbreak; who is the most susceptible to the different flu types; and where can domestic bird owners find additional information to be better partners in mitigating that connection.

Dr. Salyers said that good planning and exercising is underway to address any outbreak in the U.S., and even though we are not ready yet, the City, County, state and federal governments are working hard to get there.

On behalf of City Council, Mayor Bellamy thanked Dr. Salyers on her informative presentation.

PUBLIC ARTIST OF THE YEAR/ASHEVILLE FILM ARTIST OF THE YEAR

Councilman Mumpower presented information regarding a Public Artist of the Year and Film Artist of the Year. He said that (1) we know Asheville is a premier arts destination; (2) we know that the Arts have a significant impact on our economy; (3) We know that it is Council policy to support the arts in Asheville; and (4) we know that money is tight and that the private sector carries the Arts in Asheville.

He said that the arts are an economic engine – one of many that pulls an important train – Asheville. The arts, at least many of them, have a constructive impact on our quality of life. The arts, in one form or the other, touch every living person in Asheville – through everything from Country Music to Mozart, ballet to swing, finger painting to the grand masters, majestic art deco buildings to majestic mountain touched by the hand of God – art surrounds us…

What we do to help… (1) The city provides roads, streets, and sidewalks to help people access the arts; (2) We work hard to help Asheville remain a safe place for people to enjoy the arts; (3) We fund the Civic Center – a major venue for the arts in our community; (4) We provide limited funding to nudge the arts forward in our community; and (5) We keep it on the radar screen.

Some of us have philosophical disagreements with using forced tax payer monies to directly fund the arts. Yet we also realize that the arts need help – the City of Asheville can have a major impact on the arts through our policies. There are other ways we can help that involve limited dollars.

Let's use our clout…and appoint an official "City of Asheville Public Artist of the Year" ad a "City of Asheville Film Artist of the Year." And once we've got it down, look toward other artistic groups we might support in similar fashion. It's a good place to start.

Regarding the Public Artist of the Year, (1) Use this honor to also garner public art for the community; (2) Open the competition to artists in Asheville and maybe add a few counties for spice; (3) Provide a $10,000 honorarium to the creator of winning piece – which is in turn donated to the City of Asheville for the purposes of exhibition as public art; and (4) Create a special annual event during through which we raise funds for the arts and bestow this honor.

Regarding the Film Artist of the Year, (1) Provide a $1,000 honorarium for the Film Artist of the Year; (2) Competition is open to Asheville residents; (3) Announce the winner at our annual Film Festival; and (4) Open the competition to all level of artistic involvement in film – acting, production, direction, screenplay, etc.

Where might we go from here… deliberate the merit of these requests; officially endorse the efforts if the majority wishes; refer the concepts to the respective Boards with some guidance and parameters for developing an implementation plan; and fund the $11,000 per year, but only with the understanding that this program will result in our obtaining a public art piece for our community each year.

He does understand that money matters, but what really matters is the recognition and honor; through this program we can begin building our public art in meaningful, but economic fashion – it's past due; and we have an opportunity to use the national reputation of Asheville to propel local artists forward toward their own fuller potentials.

He presented this thought to the Public Art Board three years ago and it has been deliberated. He believes they need some policy guidance and parameters that can help them help us.

He suggested Council create some kind of fund that people can contribute to in order to raise these monies. If Council supports this, he offered to assume the responsibility in the first year to raise the $11,000, with the understanding that the Public Art Board from that point forward is charged with trying to raise these monies and that the City "fill in the blanks" as necessary.

Councilwoman Cape supported the arts, however, she was concerned about the City getting involved in this when we have arts organizations in our community. She noted that our Public Art Board has been deliberating this idea for three years. We have an existing Arts Council that is doing incredible things in our community and had we funded them with $11,000, she felt that they could have then leveraged that amount, because of their existing fund-raising capabilities, into a larger amount of money. She felt we could make better use of our money in working with the Arts Council supporting them in their abilities to do this type of event. While she is very supportive of the idea of a local competition for public art, she questioned the need to compete with an existing structure that is trying to do those kinds of things now. She asked if Councilman Mumpower would be willing to consider working within the existing Arts Council structure.

Councilman Mumpower said that the City is already in the public art business with the Public Art Board and they have a mandate to bring public art to the community.

In response to Councilwoman Cape, Councilman Mumpower said that the Public Art Board only needs some policy guidance and some parameters to work with. He if confident that the Public Art Board can accomplish this if the City mandates it.

Councilman Freeborn felt this was a good way to get more public art to the community at a low cost. His only concern would be the unfunded aspect of this program. He would support this concept and ask that the Public Art Board look into this further.

Councilman Mumpower felt that if the Arts Council could have done this, they might have done it by now. He thinks it's very difficult for the arts community to focus, commit and execute something of this nature. He thinks there needs to be strong, central leadership and not to involve them would be unwise. However, he thinks we need to take a strong leadership role in this and focus ourselves and make it happen.

Councilman Davis spoke in support of this action and felt this type of incentive award to encourage film production is a great move forward. He offered to help Councilman Mumpower in the fund-raising.

. When Vice-Mayor felt we needed the input from the Public Art Board, Councilman Mumpower said that the Public Art Board does has a Master Plan to guide them and this falls into their responsibility of creating public works of art for the City of Asheville. The Board has endorsed the idea but has not endorsed the parameters, i.e., only Asheville residents or region; whether or not to ask winner to contribute the public art, etc. Over the past three years, they have been trying to actualize this and we need to provide the guidance.

Councilman Newman said that based on this information he has, he thinks the most ambiguous part is the funding. He felt we need clear expectations on what the public will do and what the expectation is from the private sector, opposed to do as much as you can and the City will make up the rest.

Mayor Bellamy's preference would be that the competition be open only to City of Asheville residents. She felt the amount for the film artist should be a little more than $1,000. She did support the concept, but felt the Board should not have to raise the money because the Public Art Board already has a fund to buy art. Our Superintendent of Cultural Arts David Mitchell

will work closely with this endeavor along with the Public Art Board. She noted that there is dialogue in the community with Mr. Mitchell to do something similar to this so she is glad it is coming forward now.

Councilman Mumpower thanked Mayor Bellamy for her support, but said he would like to try to raise that money.

In response to Councilwoman Cape, Parks & Recreation Director Irby Brinson explained the $50,000 one-time appropriation by Council for the Public Art Board to purchase art. He would provide Council with the language of the ordinance regarding matching funds.

Mr. Bill Fishburne, member of the Public Art Board, responded to questions from Vice-Mayor Jones and explained that the Board does support Councilman Mumpower's concept. He said the Board would love to work on this if they can just get a handle on what the program will look like.

Councilman Mumpower liked the idea of supporting Asheville arts as well, but we have a regional responsibility. Even though he would not encourage Council to go beyond 16-18 counties, we should expand our pool and increase our potential for getting meaningful art from people from this region. He felt that $10,000 provides enough compensation to provide some motivation for people to contribute their art.

Councilman Newman felt we should first take care of what we have and if there is any public support beyond that, then we could explore these creative ideas like this. He asked for feedback from the Public Art Board and others about what do we need to be doing to take care of what we have before we do anything else.

In response to Vice-Mayor Jones, Mayor Bellamy said that Mr. Mitchell has already identified the next spot for public art, which will be Carrier Park.

Councilman Mumpower said that with Council's consensus, he would be happy to lay out a beginning parameter list (coming from Council's discussion and working with Mr. Mitchell), have it reviewed by City Council, and then send it to the Public Art Board. One of those parameters would certainly be some level of collaboration and input from the arts community in general.

Vice-Mayor Jones felt it would be fair and helpful that Mr. Mitchell and some members of the Public Art Board be involved in developing the parameter list. If that occurs, then she would endorse the concept.

Mayor Bellamy's endorsement of the concept will not be limited to the Public Art Board's endorsement. She is willing to move forward in order to make this happen, without any input from Council on the parameters.

Councilman Newman asked staff for information on how much money do we need to be investing annually, whether from private or public sources, to maintain the public art that we have.

Councilman Mumpower is asking that if the City does want a Public Artist Program to come out of a Public Art Board, in collaboration with others, some parameters need to be given, i.e., we are willing to fund a portion to be determined (we would like a fund-raising component); and would we like to include or not include counties outside of Asheville, etc. The parameters would be broad things, not whether we want sculpture one year, etc. He'd like to come back to Council with some of those broad parameters, coming out of this discussion, and then if there is a majority view, then take it forward to the Public Art Board and let them flesh out the specifics. It was the consensus of Council to ask Councilman Mumpower proceed in this direction.

At 4:50 p.m., Mayor Bellamy announced a 10-minute recess.

ILLEGAL IMMIGRATION

Councilman Mumpower said that this is a presentation to the Asheville City Council on our responsibilities and potential local interventions in addressing illegal immigration.

A quick review of the issues are (1) Illegal immigration is a national, state and local issue; (2) The response by national and state elected officials has been slow and largely ineffective; (3) We have a responsibility to address, at the city level, our abilities to intervene locally; and (4) we need to begin a dialog of possibilities.

He outlined the realities of illegal immigration: (1) There are 300,000 plus illegal immigrants in NC; (2) Access, under current law, to social services and medical care is complete and funded by citizen tax payers; (3) We are required to educate the children of illegal aliens – there has been a 600% increase in numbers over the past 10 years at a cost of $8,500 per year per child; and (4) The majority of illegal immigrants are uneducated, unskilled, and do not speak English – their capacity for assimilation is dramatically impaired as a result.

Some myths surrounding illegal immigration include *We cannot survive without illegal immigrants* – 75% of our menial jobs (including agriculture) are completed by legal citizens; *Illegal immigrants have powerful economic impact* – yes, but when you factor in the costs for education, medical care, social services & entitlements – that impact is largely reversed; *We are a country of immigrants* – yes, all countries are, but the operative word is "illegal" – forcing your way through our borders represents a poor foundation for assimilation into a new country; and *American businesses have to have illegal immigration help to survive* – businesses and consumers may enjoy the savings of cheap labor and the opportunity to side-step a free market economy through hiring illegals, but that is more about selfish interests than necessity. Employers who hire illegal aliens transfer the hidden costs to tax payers.

Why Does It Matter? We are a nation upheld by a system of laws. We do not authentically support the citizens of Mexico neglected by the indifferences of their government through the patterned indulgences of our government. America lives on a thin veneer of sustainable civilization that must be nurtured and cared for much like the soil of the land – that is so quickly eroded when neglected.

So What Should We Do? (1) Fund/support the transportation of illegal immigrants who are arrested for violating city ordinances to the INS in Atlanta, starting with drug traffickers. There maybe funding available we can tap into; (2) Explore options for city enforcement of immigration laws (Charlotte model), business permit restrictions for those who employee illegal aliens, and/or other local opportunities; and (3) Complete a resolution to submit to our local legislative delegation and congressional representatives supporting prompt and meaningful intervention policies with illegal immigrants and those who employ them.

He said that a brief personal take is that (1) It is the jobs that are the attraction – employers who side step our laws hold the key to containing and reversing the flow of illegal immigrants; (2) It is irresponsible of us to remain passive while our laws, social order, and economy are being harmed by something we can help influence; and (3) The operative word is "illegal" – we should not be comfortable in our willingness to selectively and timidly apply our laws.

He asked to begin the dialog on possibilities.

Vice-Mayor Jones asked what we do currently if someone is arrested and the police find they are illegal. Capt. Tim Splain responded that generally we base all our actions on what the actual crime is. If the person has committed a felony, we charge them and prosecute them through the court system and contact the Immigration & Naturalization Service ("INS") so that at the end of their sentence they can then be deported. If they are a past-deported felon or someone who is in this country illegally and has a warrant out of them, then we contact INS and they come and pick them up from the Buncombe County Jail. These are exceptions for us. He could only recall a few instances in the recent past that we have had to do that, but by and large, most of the crimes we encounter are minor driving offenses.

In response to Councilwoman Cape, Capt. Splain said that if the crime is a minor traffic offense, we charge them by citation or take them to jail and have them charged and then the court process takes it's course. We do not contact INS.

Upon inquiry of Vice-Mayor Jones, Capt. Splain said that we have had a few instances where we have come across a van or a bus that had 10-15 people in them that are undocumented and we can't prove one way or another. In those instances we have not gotten the cooperation of the INS to pick them up. Basically, their base-line rule is it has to be at least 24-25 individuals, all in one location, before they will come and take them to Atlanta for deportation.

In response to Vice-Mayor Jones, Capt. Splain said that if the person is a hard-core criminal, INS will pick the individual up, especially if we have charged them with a state felony or federal crime. Otherwise they will only come if there is a big group.

Vice-Mayor Jones asked what happens if the person is arrested and convicted for drug trafficking. Capt. Splain said that it has been his experience that we have them go through our judicial system first and then they are deported, except in instances where this person is a past-deported felon and then they don't even take them into the court system. INS just comes and picks them up and immediately deports them. He did explain that our experience is fairly limited so far. We don't experience this on a daily basis.

Capt. Splain said the two issues recognized so far involving illegal immigrants is driving offenses and drug trafficking.

Councilman Davis said that the City Attorney's Office has research local law enforcement enforcing immigration.

In response to Councilman Davis, Capt. Splain said that he would have to research how many times within a year that we should have had people picked up by the INS, but didn't the group numbers necessary.

Councilman Newman was concerned that if someone is convicted of a serious crime or is a past convicted felon is deported, it seems like the absence of lack of security that our country has on our boarders isn't a very effective strategy.

Councilman Mumpower said that he sees this as a filtering opportunity to create at least some accountability, where none exists now, for people who come into this community illegally who will at least pause because they know there is some accountability.

In response to Councilman Mumpower, Capt. Splain said that the INS has picked up one individual from Asheville in the past year.

Responding to Councilman Newman, Capt. Splain that that we had approximately 20-25 illegal immigrants in our custody in the course of a year that we would have liked the INS, but they did not meet the qualifications for pick-up. In addition, there have been about twice that many for suspect cases.

In response to Councilwoman Cape, Capt. Splain said that if would have a positive impact if Asheville had the ability to transport people to the INS.

Councilwoman Cape felt she needed more information about the Charlotte model, the business permit restrictions, the other local opportunities, and information on what the INS' holding practices and mandates are. And if we were to consider any type a resolution to our local delegation, she would support that we simultaneously call for a methodology by which people can immigrate here legally and become contributing members of our society.

Mayor Bellamy asked if an illegal immigrant is arrested for drugs, can they post bail, get back out on the streets, over and over again. Capt. Splain said that yes, subject to the thresholds about past deportation, etc.

Councilman Mumpower said that his goal is to do what is going to be most effective in leading illegal immigrants who come into our community to pause and recognize that they are at risk for accountability and that includes any law, including employment and traffic offenses.

In response to Mayor Bellamy, Assistant City Attorney Curt Euler said that because illegal immigration is a federal statute, our police officers have limited jurisdiction in what they can and can't do in terms of detaining someone solely on an immigration matter. We would have to work with the federal government in getting Asheville officers the legal authority to detain persons.

Councilman Mumpower felt we should not just pick on illegal immigrants, but go after the people who employ these folks, and ask our leaders at the state and national level to do things to move forward. He asked that Council put this issue in the hands of our Legal Department and let them provide us with some guidance on possibilities.

Councilman Davis wondered if this is another layer we are using with our valuable resources. Regarding the employment issue, as a small businessman, he has employed an illegal immigrant, unknown to him, however; he was good employee but left when a threat that the INS was coming into the community. He said that typically illegals will have papers that will suit most employers, so he was concerned if we are stepping too far with the employment issue. Small businesses don't have the ability to go into the depth on possible employees and since there is not a national policy on this, how do we deal with this. He felt we needed to do some in-depth research on this issue because we will be placing a greater burden on businesses than at the national level.

Councilman Mumpower responded that we should take the measured steps that we are capable of in a responsible fashion and start asking our permitted businesses, if we can, to start paying the best attention they can. We have a lot of people that are actively looking for illegal immigrants to hire and he wants Asheville to do what we can do within the limits of our abilities.

Councilman Freeborn felt that from a public safety standpoint we need to give the tools to our officers to get illegal criminals out of our community. But again, some illegal immigrants who come to our community are honest, hard-working people, who just don't have proper documentation, and he doesn't have a problem with that necessarily. However, he does have a problem with employers who knowingly hire illegal immigrants because they know they can exploit them. The workers are being exploited and the employer is benefiting. He wondered whether or not we have the authority, or the resources, to tackle this issue at this point. He

would, however, support an effort towards helping our law enforcement officers get the resources they need in removing drug traffickers from our community.

Vice-Mayor Jones said this issue is very complex and there is not one answer. Regarding social services costs, they are mandated not to give their many services to illegal immigrants. Mental health reform is a big issue, which we should be talking about in our community. She asked to let our criminal justice experts, i.e., Police Chief, ask for what they need and then we can make an informed decision. This is a huge national, political issue and felt this was a good discussion for us to have as a community. If the Police Chief says this has risen to the level that we need to do some serious investigation, she will listen intently. The other end of the spectrum is that personally, she adopted her daughter 3.5 years ago and still she does not have her citizenship, after repeated attempts to obtain it. There are people who are trying to go through the proper channels but the system is a mess. She said we do have some good preventive issues taking place, i.e. there is a community effort lead by the District Attorney's Office to begin to infiltrate the Latino gangs forming targeting our young people. Again, she needed the Police Chief to advise Council that this is a big issue in terms of public safety and regarding the business permit restrictions, she felt we were out of our league as well. In terms of the resolution, it would have to be very comprehensive addressing both aspects - those people trying to become legal but are not able to because of the bureaucratic nightmare.

Mayor Bellamy said that she would support the transportation of illegal immigrants who are arrested for violating city ordinances to the INS in Atlanta starting with drug traffickers, because of the amount of resources that our police officers are putting on the street, i.e. community policing. Regarding the business permit restrictions, she was concerned about the enforcement mechanism. That would be very difficult for us to enforce. She would also be supportive of the resolution to our local legislative delegation and congressional representations as well.

Upon inquiry of Mayor Bellamy regarding the resolution, City Attorney Oast said that he would research this issue and provide Council with information about what we can do at a local level.

Councilman Newman is supportive of the Mayor's direction as well. Regarding the business permit restrictions, enforcement of this would not be a top law enforcement priority due to our resources.

Councilman Mumpower questioned if we have legal authority or not to transport illegal immigrants to the INS or not. He said there is a movement lead by Congressman Taylor to create a pilot program in Western North Carolina through the INS that they reimburse you for transport, etc. He would also like to suggest that we not take a line officer off the line and ask him to make the trip to Atlanta because there are lots of creative ways we can do this, i.e., off-duty officers, County officers, etc. Our policy guidance to the Police Chief should be what will help you, how can the City do it, what are the possibilities, and what are some creative opportunities for us to try to address this issue.

Councilman Davis asked if we have been talking with the Sheriff's Department to see if there is an opportunity for inter-departmental work. City Attorney Oast said that we have already been in touch with the Sheriff's Department and have begun exploring those issues, but are waiting on further direction from Council.

Vice-Mayor Jones said that as long as the system is broken about illegal immigrants being arrested, convicted and not going to jail, then she could support the transportation of individuals buying and selling hard core substances. The rest of the Councilman Mumpower's

request is beyond us and she will not be supportive at this time. In terms of the limited resources, we must be sensitive about what we ask our attorney's to research.

Mayor Bellamy felt that if we begin with an issue we are all against - drug trafficking – we can benchmark our success or failure over a year's time tracking the number of people taken off our streets and the impact it has had on our drug trafficking trade in our community. After that time, then we can begin to track the other crimes.

Vice-Mayor Jones said that she is not willing to go further than drug traffickers and if this is a pilot program for something broader, she is not supportive of it. Because drug-trafficking crime makes sense based on what we are seeing.

Councilwoman Cape said that when we look at violent crimes, she would like to have the option of getting people off the street.

Councilman Davis felt we should ask our City Attorney's Office to research what we can do, obtain the transportation cost, and see about the opportunity to work with the Sheriff's Department.

Councilman Mumpower felt there was clear direction by Council to (1) have our staff explore resolution potentials; (2) have our staff look into the transportation issue, i.e., partnership, etc.; and (3) have our staff look into our potential at the local level to address employers who intentionally violate our laws.

Mayor Bellamy said that there was not direction from Council to have our staff look into our potential at the local level to address employers who intentionally violate our laws.

Councilman Newman also raised a process question regarding the resolution because it was his understanding that City Council would consider issues regarding state or federal issues at one time. He didn't feel that Asheville is uniquely affected differently than every other community in North Carolina.

Mayor Bellamy noted that she did not get consensus from Council to have our staff explore resolution potentials either.

Councilwoman Cape said she would like more information on what is meant by business permit restrictions.

Councilman Freeborn is supportive of what is being requested, but not supportive, at this time, of spending staff resources on the business permit restrictions part of the issue. He suggested Councilman Mumpower, with a group of citizens, do some research and bring it back before Council with more information. He feels there is very little we can do as a City to go after employers, in light of all of the other things the City has to deal with, he is not willing to tackle that part of the issue at this time.

Councilman Mumpower said that he would be happy to undertake that research responsibility and asked to be placed on the next worksession agenda. Mayor Bellamy responded that she before she could commit to the next worksession agenda she would have to look at that agenda and let him know as soon as possible.

Mayor Bellamy asked that if Councilman Mumpower is going to get additional information, she would like to see more of a commitment from the District Attorney's Office regarding penalties for individuals who are arrested, so that we can ensure that we are not wasting anybody's time. Councilman Mumpower said that he will gather that information and be

very specific with clear recommendations. Mayor Bellamy also stated that the minutes of this meeting be included with the information when it comes back to Council.

SUSTAINABLE COMMUNITY ENVIRONMENTAL ADVISORY COMMITTEE & GREEN BUILDING INCENTIVES

Councilwoman Cape said that within the City of Asheville we have created a structure of boards and commissions as a means of being more inclusive of our citizens in the governance of this City. This structure has proven to serve an important role for the community, expanding the depth of discussion and acting as an agent to extend the resources and vision of local government.

She recommends the establishment of a citizen's advisory committee on energy and the environment because it is vital that our City, advance the principles of sustainability to enhance our quality of life. Sustainability means thinking about our behavior in the larger context and understanding that the choices we make now will have a profound effect on the future of our community.

Cities are the forefront of response and impact for the effects of economic, social and environmental stresses. Throughout this county, cities are leading their communities in discussions, exploration and actions to remedy and address these concerns. It is the role of community leaders to convene the discussions that can lead our City forward with a vision to the future, to seek to understand what the world is going to look like in 2050 and to determine how we can govern with that future in mind.

We are blessed with many residents within our City who have much to offer this endeavor in terms of their knowledge, interest and background in sustainability issues. With their help we can extend the opportunities for Council to think, plan and act in a manner that will allow us to more expediently address issues that affect the quality of life in our community, now and in the future.

The City of Asheville had had a tradition of undertaking initiatives to improve the environment, encourage green development, and support development of a healthy community. Additionally, we acknowledge that there are regional partners working toward these same goals. She recommended City Council establish a citizens' advisory committee on energy and the environment to address these issues at a City level and participate in the larger community and regional discussions of these same issues.

The committee would meet a minimum of once a month. This committee should consist of a diverse group of stakeholders including technical experts and interested citizens.

Councilman Newman said that he has been working with Councilwoman Cape on establishing this committee as well as opportunities for the City to be a leader on green building initiatives and creating incentives for green building and sustainability in the private sector. In anticipation of establishing this committee, he offered five ideas to either (1) charge this new committee; (2) give direction to City staff; and/or (2) City Council take the lead on working on them ourselves. Those issues regarding green building, environmental and energy sustainability in Asheville are: (1) should the City adopt a policy that all new municipal buildings over 5,000 square feet are certified under the LEED certification process; (2) create additional economic incentives for green building in the private sector; (3) whether or not the Council simply establish a goal for ourselves as a City for reducing our use of energy and also reducing our fuels; (4) ask staff to research the potential of converting our transit fleet to hybrid electric vehicles; and (5) ask staff to research is a parking cash-out policy for City employees which would create further incentives for City employees to use car-pool, use transit or walk to work.

Councilwoman Cape explained that the ICLEA organization is working on local level actions for climate protection. In order to benchmark our progress, she encouraged the City to join ICLEA ($1,200 annually), which will allow us to amplify our voice on an international level and utilize the tools they give us regarding inventory assessments and benchmarks to move us forward in achieving the goals we set for ourselves.

Councilman Mumpower would be supportive of the committee if it was set up as an advisory committee and structure them with narrow parameters at the beginning. He felt it would be appropriate to refer this to one of our Council standing committees and charge them with providing some parameters and guidance for that new committee. He liked the concept of green building and could support it as long as we do that in a measured fashion and look for incentives. In terms of the parking initiative, as long as Council is willing to pay for their parking spaces as a model for City employees, then he would consider it, however, he doesn't think it is a good idea. Regarding Councilman Newman's other ideas, if we aid toward points of realism and reality on where we spend our limited tax dollars, those are worth exploring.

Councilman Freeborn was supportive of joining the ICLEA organization and also supporting researching the cash-out policy for City employee parking since we do provide them with free access to the transit system. He would support the green building incentives and felt staff can find some good benchmarking programs. He would also support the establishment of the advisory committee on the environment and energy. He noted we are working towards getting a Clean Cities designation and if the City is able to bring their diesel fleet on board with a flex fuel, such a bio-diesel, 100 extra vehicles would help our regionalized area meet that Clean cities designation. That would help trigger funding mechanisms that would help aid in that switch. He would also be interested in looking at where we have an abundance of street lamps in neighborhoods, since that was a significant increase in the budget.

Vice-Mayor Jones was supportive of Councilman Newman and Councilwoman Cape's economy savvy alternatives. One caveat around the parking cash-out policy is that she heard it more as a bonus, opposed to having to pay for parking. Some employees work 9-5, however, for others it may be a hardship in terms of their physical abilities or they may live outside in the County.

Councilwoman Cape said that the cash-out policy is the kind of an issue that she would like the committee to flesh out and let them bring it back to us with the varying degrees.

Councilman Davis supported the creation of the committee as well, with narrow parameters. He would like to see the implementation explained better and perhaps that could be the committee's first task. As far a green building incentives, he has some hesitancies because some costs would be prohibitive. He realizes technology will get better through the years and hoped we will strive for that. He hoped we will continue working with the County in inventorying energy. He would like more information from City staff on the pros and cons of hybrid buses since hybrid is a good interim technology. In addition he would need additional information on the parking cash-out policy, and could only support it if it is a bonus for City employees.

Councilman Newman said that since it looks like Council is willing to establish the committee, he and Councilwoman Cape will go over the feedback from Council and work with City staff. They will bring it back to Council with a specific proposal for recommendations asking for (1) Council approval, (2) refer it to the committee, or (3) do more analysis on it.

Mayor Bellamy suggested that pros and cons be included when this matter is brought back to Council. Regarding the committee, we need to narrow the focus of the policy area going to the committee and make sure that any policy changes go through the same review process as other ordinances prior to coming back to Council, i.e., CAN, CIBO, etc. She is supportive of the

committee, however, she will not automatically approve the recommendations coming from the committee.

In response to Councilman Mumpower, Councilwoman Cape explained how City staff is involved in this and she envisions direct City staff involvement.

City Manager Jackson felt there would be a lot of City staff looking at these tactical issues. The City Manager's Office will provide support to this committee of the larger task of coming up with what is the environmental management plan for the community. The primary work is you form the committee and they will establish a master plan. He sees the committee using the investment in the goal setting tools of the ICLEA to begin its work by looking at what should be our long-range goals and how do we become an environmental setting and then you take the individual tactics and decide the priorities. Some may compete for your financial resources. You can look at models of those kinds of environmental management plans that come as a result of months of effort by these kinds of committees to set a visionary long-range plan for the community.

In response to Councilman Mumpower's concern about Councilwoman Cape using a "staff" presentation for her presentation, she assured him that the staff report arose from various meetings she attended with City staff. Councilman Mumpower asked that this item be placed on a future agenda to deal with that issue. Mayor Bellamy said that the issue of who is making who's presentation would be placed on an agenda if the topic rises to that point. Councilman Mumpower's concern was duly noted.

It was the consensus of Council to establish a citizens advisory committee on energy and the environment and that Councilman Newman and Councilwoman Cape review the information from Council and work with City staff to bring back to Council a specific proposal for recommendations asking for (1) Council approval, (2) refer it to the committee, or (3) do more analysis on it.

In addition, Mayor Bellamy asked that the normal process for appointment take place.

At 6:40 p.m., Mayor Bellamy announced a 10-minute recess.

RETIRED EMPLOYEES HEALTH CARE

Councilman Davis thanked Council for placing this item on Council's worksession agenda. He understands that our policy is to provide continued coverage at the employee rate for those retirees who haven't access to other group health plans. Those employees having access through an employed spouse's group coverage do not receive the benefit of continuation, in our program, at the employee price. He understands that the policy was put in place several years ago and asked for an update.

He then introduced Mr. John Ferguson, the City's third-party advisor, who briefed Council on the actions to date regarding retiree health insurance.

Mr. Ferguson explained in detail the three options Council has regarding this issue – (1) increase the coverage for all; (2) reduce the benefit (a) go back to the policy of the 1980's; or (b) cost-neutral; or (3) do nothing and leave the current situation as it is. With both options one and two, their may be legal implications and he would have to work with the City Attorney if Council so directed.

He reviewed with Council his analysis of the cost of offering subsidized benefits for retirees that are eligible for other health insurance. If the City provides this for just future retirees,

the cost would be approximately $18,680 in the first year, growing approximately $28,065 each subsequent year, so $53,114 in year 2 and $91,179 in year 3, etc. If it is offered to past and future retirees, the estimated maximum additional annual cost would be about $266,452 per year – even without considering cost increase trends of about 10% for retirees under the age of 65. He also confirmed that the number of employees offering retiree health coverage has decreased dramatically.

Mr. Ferguson responded to several questions/comments from Council, some being, but are not limited to: what happens with changes in relationships; how many retirees have elected to keep the City coverage at the higher rate; can you change your retirement option after you retire if circumstances change; can you cancel the insurance after you retire and then get back on it; what happens if the retired employee gets another job; is the insurance restricted to just the employee or is it extended to family members; and do retired employees have access to the Asheville Project.

Councilman Freeborn felt the City should look at the equity of our retirement package and felt this topic should be referred to the City's Revenue and Finance Committee for a recommendation.

Councilman Mumpower was more inclined to pass the equity question to City staff. He said that from a point of fairness and courage, the cost-neutral option has some potential.

Mayor Bellamy said that based on the last eight months regarding financial impacts, she could not support referring this to the City's Revenue and Finance Committee because of the nature of this, all of Council will want to have input. She would support, however, getting more information by City staff on the different options.

Personally, Mayor Bellamy would support keeping the retiree health insurance as it currently exists, especially since there may be legal consequences to make changes.

Councilman Mumpower supported asking staff to explore in detail the cost neutral solution and other potential solutions that they might identify for us, with the understanding that we do see an inequity and we would like to address it, if possible. He also asked staff to look deeply at the risk factors for cost-neutral and explore other possibilities.

Councilman Newman felt strongly to treat all our employees fairly and would support moving in the direction of cost neutral, unless there is a legal reason we cannot.

Councilwoman Cape would be interested in getting more information in moving towards cost- neutral and questioned what the possibilities would be for starting a policy change with the next new hires.

Councilman Freeborn felt that if this means changing the policy away from providing affordable access to health insurance for future employees, he won't support the change. If a change is make, he would support the more expensive route of giving everyone the option of the lowest cost, because if you work for an organization for 30-35 years you deserve something substantial for that.

Vice-Mayor Jones would support more information on the cost neutral analysis option.

Upon inquiry of Councilman Davis, Mayor Bellamy asked City staff to look at some our retention efforts, longevity pay

Mr. Ferguson said that he would work with City staff in providing Council with the following information (1) the legality for the second option; (2) cost options if we change this for future retirees; and (3) possibility of longevity pay.

CITY LAND REDEVELOPMENT AND FACILITIES PLANNING

Mayor Bellamy said that in looking where our City facilities are located throughout the City, she doesn't believe that we are making the highest and best use of that land. Our Purchasing Division is on Hunt Hill, overlooking Memorial Stadium and McCormick Field. It is an eyesore for the neighborhood. On our Charlotte Street corridor, we have some basic needs there and in the West End/Clingman Avenue neighborhood we have two other large facilities – the bus depot and the Parks & Recreation maintenance facility. Why don't we centralize where we put our facilities together and use our land for the best and highest use. She felt we needed to begin planning on how we want to grow our City facilities and needs with the amount of people anticipated to move to the Asheville area.

Planning & Development Director Scott Shuford said that this report is related to the City-owned property and redevelopment potential for Parkside and South Charlotte Street.

The goals for reuse or redevelopment include: Facilitate development of a Performing Arts Center; Provision of workforce housing; Significant tax base enhancement; and Smart Growth development pattern – infill, redevelopment and use of existing infrastructure.

With regard to the Parkside site redevelopment options, (1) Performing Arts Center Location; (2) Mixed use development – development mix may contain public and private parking, offices (including possibly some City offices), entertainment, retail, hotel, market residential and/or workforce housing; and (3) >$200M private investment.

Goals met on the Parkside site include: (1) Facilitate development of a Performing Arts Center; (2) Provision of workforce housing; (3) Significant tax base enhancement; and (4) Smart Growth development pattern – infill, redevelopment and use of existing infrastructure.

He then reviewed several sample projects for the Parkside site.

Development challenges/opportunities for the Parkside site include: (1) City doesn't own entire block or Hayes-Hopson building; (2) Context issues - Mt. Zion, EMS, Pack Square design guidelines; (3) Parking logistics are excellent; (4) Considerable developer interest; (5) Proximity to Pack Square Renaissance; and (6) Possible linkage with other Downtown properties.

The method of transfer would be a Request for Qualifications (RFQ)/Request for Proposals (RFP).

Regarding the Public Works area, redevelopment options would include: (1) Mixed-use development; (2) Greater utilization of South Charlotte Street; (3) Possible parking garage location; (4) Potential density > 50 units per acre; (5) Public space could be integrated into design >$200M development potential; and (6) Good location for access & near Downtown.

Goals met would include: provision of workforce housing; Significant tax base enhancement; and Smart Growth development pattern – infill, redevelopment and use of existing infrastructure.

He then reviewed several sample projects for the Public Works area for the east side of Charlotte Street and west side of Charlotte Street.

Development challenges/opportunities at this location would be (1) Need to relocate and replace facilities for City Water and Public Works; (2) Possible opportunity to consolidate all City maintenance facilities; (3) Attractive site - gateway area to Downtown; (4) Possible to phase the project; (5) Attractive site(s) for public-private partnership; and (6) Possible linkage with other Downtown properties.

The method of transfer would be a RFQ/RFP.

Alternatives would be to (1) Pursue RFQ/RFP for each site as a stand-alone project; (2) Package Parkside and Public Works sites for a combined RFQ/RFP; and (3) Package larger selection of City-owned properties for a combined RFQ/RFP.

In evaluating the alternatives for a stand-alone RFP/RFQ, the pros would be (1) simpler to assess; (2) shorter-term; and (3) less reliance on phasing or a master developer. The cons would be (1) no synergy with other properties; (2) may not accomplish goals without heavy City investment due to small scale and (3) less opportunity for creative ideas.

In evaluating the alternatives for two sites combined RFP/RFQ, the pros would be (1) synergy with other properties; (2) potential for less City investment per amount of private investment; (3) more opportunity for creative ideas; and (4) more opportunity for workforce housing and tax base enhancement. The cons would be (1) not as simple to assess; (2) longer-term; phasing; and (3) reliance on a master developer.

The alternative description for a package larger selection of City-owned properties for a combined RFQ/RFP; (1) Combine with Civic Center and near Civic Center properties (Economic Development office; Rankin Street parking deck; etc.); (2) Offer opportunities to expand development opportunities to other areas (Eagle-Market Street; transit maintenance facility; etc.).

The evaluation of alternatives for many sites combined RFP/RFQ, the pros are (1) synergy with other properties may get whole Civic Center redeveloped; (2) potential for less City investment per amount of private investment; (3) greatest opportunity for creative ideas; (4) greatest opportunity for workforce housing and tax base enhancement; and (4) greatest opportunity to consolidate City maintenance facilities. The cons could be (1) not as simple to assess; (2) longer-term; phasing; and (3) reliance on a master developer.

The recommendation would be a package larger selection of City-owned properties for a combined RFQ/RFP to (1) Combine with Civic Center and near Civic Center properties (Economic Development office; Rankin Street parking deck; etc.); and (2) Offer opportunities to expand development opportunities to other areas (Eagle-Market Street; transit maintenance facility; etc.).

Implementation issues would be (1) Staff expertise in evaluating responses; (2) Staff expertise in negotiating deal; (3) Scale of project; and (4) Facilities consolidation. Response would be to (1) Hire consultant from RFQ/RFP fees; (2) Selected firm(s) fund independent consultant to assist staff; (3) Discrete phasing allows for market absorption and infrastructure installation; and (4) Develop facilities consolidation plan.

Mayor Bellamy noted that the West End/Clingman Avenue Plan calls for the removal of the bus depot and the Parks & Recreation maintenance facility. Council hasn't talked about creating a Tax Increment Financing (TIF) district and she felt there are a lot of opportunities out there, but more importantly looking long-range.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: do we own land or will we have to purchase land to consolidate our City services;

will the cost of the land to be purchased more than the tax benefit of putting our land on the tax rolls; how old is the Public Works Facility; what is the anticipated cost of a new consolidated facility; are there any plans to use the West Asheville Armory site; has any thought been given to combining our services and development at the same location; Council would like to see the list of potential sites for combined City facilities when it is available; and how can we push the creative edge for what can be developed on our property.

Mr. Shuford said that this is an opportunity for us to take the Asheville name to get the best designer as possible. We would make our objectives known that (1) we would like to see park space as part of the South Charlotte Street redevelopment but certainly we are expecting a great deal of sensitivity to both the Eagle/Market Street commercial area and the Pack Square Renaissance Project; and (2) we are expecting there to be a substantial workforce housing component to the project. We will work with the consultant to tailor our RFQ to make sure that those issues are known and there will be opportunities for the responders to indicate to Council what their experience has been in addressing those issues so we will be able to accomplish many of those goals. He said that City Council will be highly involved in the RFP/RFQ process. He thinks we will be rewarded with ideas that exceed what we might even think about ourselves.

Councilwoman Cape said she would be a supporter of good, quality design, density and height in our downtown to make this the most functional environmentally supportive City we can.

Mayor Bellamy responded to Councilwoman's request to start preserving the 30 acres of greenspace behind Memorial Stadium.

Councilman Newman supported staff's recommendation to package a larger selection of City-owned properties for a combined RFQ/RFP. He was concerned that if we receive a big development interest, we don't want to shut out the smaller scale developers who may be interested in developing 1-5 acres. Mr. Shuford responded that Council has the option, in your criteria, to award some points for working with the local development and design community. Typically on something of this scale, there will be some major efforts to get the local players in the development game involved in a proposal for a variety of reasons – they know the area, they know a lot of the details about design and what works here, and also because there is a recognition they are local and they bring with it the perception of working fully with the community.

Mr. Shuford said that he will meet with the City Manager and see how we can move forward with Council direction.

STRATEGIC PLAN UPDATE

Assistant City Manager Jeff Richardson presented City Council with the short-term and long-term Strategic Plan updates based on Council's January 2006 retreat and subsequent budget worksessions during the Fiscal Year 2006-07 budget planning process.

The City Council adopted a Strategic Operating Plan approximately two years ago, in coordination with the adoption of the Fiscal Year 2004-05 budget. Since that time, staff has provided Council with quarterly operational updates on progress in each of the identified focus areas. At City Council's January 2006 planning retreat, Council discussed short-term and longer-term goals. Since that time, Council has discussed and modified these goals, in conjunction with any continuing interest identified in the 2004 Strategic Operating Plan. As result, he reviewed the final draft of the updated 2006 Strategic Operating Plan for council's review and direction.

Consideration:

- Multi-year Strategic Plans provide elected officials and staff the opportunity to do multi-year planning and prioritization of the city's longer term needs.

Once City Council reviews this document and provides any amendments necessary, staff recommends formal endorsement of this document.

Vice-Mayor Jones asked that the cleanliness of downtown be included. Mr. Richardson said that it is covered under "improve/enhance basic city services and customer services." He said it can be amended to focus on the downtown Central Business District, because we have enhanced garbage pick-up and are continuing to look at ways to spruce up the downtown area.

Councilman Davis did say there is a strong desire to more forward quickly with better core services in the Central Business District.

Councilwoman Cape suggested adding under economic development's short-term goals of pursuing available City property development opportunities.

Councilman Freeborn asked that we don't lose focus on the downtown bathrooms and hoped that if we have extra money this year, that some of it go toward that issue. Mayor Bellamy noted that our Economic Development Director has a presentation on that issue coming to Council soon.

Councilman Mumpower felt that a lot of the language we use in this document is arrogant and unrealistic to our abilities, i.e., provide sufficient, safe and affordable housing opportunities for all citizens. He felt our ability to implement most of the Strategic Operating Plan is marginal at least. Even though this is an attractive printed document, he felt we shouldn't spend our tax dollars or staff time on a printed-document such as this.

Upon inquiry of Councilwoman Cape, Mr. Shuford updated City Council on the ordinance amendment on the hillside and ridge top regulations, noting that his timeframe would be to gather public input in August, take the amendment to the Planning & Zoning Commission in September and to City Council the last Tuesday in September.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to arrange interviews for Joseph Malki, Chip Hood, Tebbe Davis and Timothy Laughlin for vacancies on the Civic Center Commission.

Regarding the vacancies on the Community & Economic Development Alliance, Vice-Mayor Jones said that Council received very few applications and there is some expertise that Council wants to share on behalf of the City that did not come from the existing applications. Since the City has five appointments to make, she offered four options for Council (1) continue on in the process and interview from the existing resource list with interviews on August 22, 2006; (2) use the resource list in additional to two names each from Council and appoint the highest five vote-getters at this meeting; (3) re-open the application process with a deadline of August 10, and Council to interview on August 22, 2006 (noting that the City's five appointments will not be seated at the Committee's first meeting; however, noting that Mayor Bellamy and Councilwoman Cape are already members for City representation); or (4) if a member of Council recommends a name and all Council member support that appointment, then make that appointment at this meeting. It was the consensus of Council to re-open the application process with a deadline date of August 10, 2005, with Council members contacting two individuals, if they wish, would they feel will bring expertise to the Committee and have them fill out an application form.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Stephanie Cooper and James Lewis to the Police Officers and Firefighters Disability Review Board. She said that the Buncombe County Medical Society is in the process of making a recommendation for the licensed physician.

It was the consensus of City Council to arrange interviews for Wendy Kussrow, William Langdon and Martha Jane Peiser for a vacancy on the River District Design Review Committee.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:39 p.m.

Magdalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – July 25, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. APPOINTMENT OF KEISHA ROBERSON LIPE AS CITY CLERK OF THE CITY OF ASHEVILLE, EFFECTIVE AUGUST 2, 2006

Mayor Bellamy said that the Mayor and Council have just completed a search process to replace Maggie Burleson, City Clerk, who announced her retirement earlier this year after 31 years of exceptional service to the City of Asheville. While this process has proven to be quite challenging, given Maggie's past track record, she was very excited to announce that she and Council have chosen Keisha Lipe, an eight year employee in the City of Asheville who has an excellent work record and strong dedication to the customers she serves.

Vice-Mayor Jones moved to appoint Keisha Lipe as the City Clerk of the City of Asheville, effective August 2, 2006. This motion was seconded by Councilman Mumpower and carried unanimously.

ADDITIONS TO THE AGENDA

At the request of Vice-Mayor Jones, it was the consensus of Council to add a resolution appointing the Chairman of the Civil Service Board be added under New Business after New Business "B".

At the request of City Manager Jackson, it was consensus of Council to add a resolution authorizing the possession and/or consumption of malt beverages and/or unfortified wine for an event on August 17, 2006, under the Consent Agenda.

At the request of Mayor Bellamy, Consent Agenda "I" was pulled from the Consent Agenda for an individual vote.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 11, 2006; THE SPECIAL MEETING HELD ON JULY 17, 2006; AND THE WORKSESSION HELD ON JULY 18, 2006

B. ORDINANCE NO. 3375 - BUDGET AMENDMENT REGARDING THE COMMUNITY DEVELOPMENT SECTION 108 FUND

Summary: The consideration of a budget amendment, in the amount of $97,520, regarding the Community Development Section 108 Fund.

The purpose of this budget amendment is to budget $82,000 in Community Development Block Grant funds as revenue in the Section 108 Fund, as provided for in the 2006 Community Development Block Grant/HOME Action Plan. Additionally, this action will budget $15,520 in previously received program income in the Section 108 account. The revenue from these sources will provide sufficient funds to cover the principal and interest payments due to HUD on the City's Section 108 Community Development Block Grant loans in Fiscal Year 2006-2007.

Considerations:

- Correctly budgets funding already planned to cover payments due on the Section 108 loans

Staff recommends that Council approve the budget amendment, in the amount of $97,520, regarding the Community Development Section 108 Fund.

ORDINANCE BOOK NO. 23 – PAGE 47

C. RESOLUTION NO. 06-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HAYNES ELECTRIC UTILITY CORPORATION FOR THE INSTALLATION OF FIELD LIGHTING AT MONTFORD RECREATION COMPLEX

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Haynes Electric Utility Corporation for the installation of field lighting at Montford Recreation Complex.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of renovation is the Montford Recreation Complex, which is situated behind the Montford Recreation Center. The Complex is one of the many locations for the City's Adult Softball Program and many other user groups. This project has become a necessity within the last few years because of safety issues surrounding the existing system. Existing poles are too deteriorated for repair companies to work on them, light fixtures do not illuminate enough of the playing field, and "banks" of lights are going out in the middle of scheduled activity. In order to initiate this project, staff prepared bid specifications for the removal of the old system and for the installation of a turn-key field lighting system. Bid specifications were sent out to electrical contracting companies to see of their interest. The following two contractors were the only companies to respond:

Haynes Electric Utility Corporation	$106,523
Newco Sports and Outdoor Lighting Co.	$125,200

Haynes Electric was the lowest responsible bidder, at the cost of $106,523. The bid process and Haynes Electric have complied with the Minority Business Plan. This project will be funded out the Parks and Recreation Department's Capital Project Fund.

Pros:

- This project will provide a safe lighting system that will be state-of--the art for all users of the facility.

- Due to current technology, the new system will be more energy efficient and the City of Asheville will receive a 25-year warranty that will cover material and labor.

Cons:
- The City of Asheville will spend Capital Project Funds for this project.
- The facility will be closed for a period of two weeks for the system to be installed.

City staff recommends the City Manager be authorized to enter into a contract with Haynes Electric Utility Corporation for the removal of the old lighting system and the provision and installation of a new lighting system at the Montford Recreation Complex.

RESOLUTION BOOK NO. 30 – PAGE 60

D. RESOLUTION NO. 06-132 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION INC. FOR THE CONSTRUCTION OF THE REED CREEK GREENWAY - PHASE I

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Carolina Cornerstone Construction, Inc. for the construction of the Reed Creek Greenway - Phase I.

The City of Asheville Parks and Recreation Department is expanding its greenway system throughout the City of Asheville. The Parks and Recreation Department has been acquiring land along Reed Creek Greenway (parallel to Broadway) for a number of years in order to initiate the construction of this high priority greenway. The Reed Creek Greenway, along with the nearby Glenn's Creek Greenway, will provide a model greenway system between neighborhoods, commercial and institutional districts.

Phase I entails the construction of this linear park between Catawba and Cauble Street. The work will entail the construction of a 10 wide paved trail and associated trailheads. Staff prepared plan documents that were then bid out. Carolina Cornerstone Construction, Inc. submitted the lowest responsible bid for the project of $183,644. The bid process and Carolina Cornerstone Construction have complied with the Minority Business Plan. This project will be funded out of the Parks and Recreation Department's Capital Project Fund.

Pros:
- This project will provide a safe, accessible bike and pedestrian route along a strategic corridor in the city.
- The project will provide an alternative mode of transportation as the city's street system becomes more congested.
- The greenway will protect and education the public about the environment, especially watershed systems.

Cons:
- The City of Asheville will spend Capital Project Funds for this project.
- The greenway will entail more landscape and cleaning maintenance than its current use as vacant land.

City staff recommends the City Manager be authorized to enter into a contract with Carolina Cornerstone Construction, Inc. for the construction of the Reed Creek Greenway - Phase I.

RESOLUTION BOOK NO. 30 – PAGE 61

E. RESOLUTION NO. 06-133 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH APAC-ATLANTIC FOR THE FAIRVIEW ROAD WATER LINE REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the Mayor to sign a contract with APAC-Atlantic for the project known as Fairview Road Water Line Replacement; and the associated budget amendment, in the amount of $193,099.

The Water Resources Department is installing a new water line on Fairview Road. The Department requires asphalt overlay of approximately 7,920 LF by 22 feet wide plus 25 intersections with a 2 inch overlay and stripe the center line on Fairview Road after installation of a new water line and connections to all side streets along the road. Funding is available in the Water Capital Projects Fund by reprogramming funds from the N.C. Dept. of Transportation ("NCDOT") Sweeten Creek II Project, which was completed at a cost below NCDOT's estimate for the project. Staff has to rely on NCDOT's estimate of projects. In this case, NCDOT underestimated the cost of the Sweeten Creek Project and the excess funding due to the final payment being lower than originally estimated by NCDOT can be reprogrammed to fund an additional $193,098.30 in water line installation costs for the Fairview Project. This cost exceeds the original budgeted funding due to higher than expected water line installation costs which were $274,000 more than the engineers estimate due to escalating construction material cost.

Water Resources requested quotes for the road overlay with APAC-Atlantic – Asheville Division being the low bid at $193,098.30.

PRO:

- This project will enhance the water system and the asphalt overlay will create better road infrastructure for the Oakley Community and the City of Asheville.

CON:

- The cost of the asphalt overlay is $193,098.30, which is available in the Water Capital Projects Fund due to the NCDOT Sweeten Creek Phase II Project being completed under budget.

City staff recommends City Council approval of the Mayor signing contract agreement with APAC-Atlantic, Inc. for the asphalt overlay of Fairview Road as well as approval of a budget ordinance amendment to provide adequate funding.

RESOLUTION BOOK NO. 30 – PAGE 62

F. ORDINANCE NO. 3376 - BUDGET AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR THE FAIRVIEW ROAD WATER LINE REPLACEMENT PROJECT

See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 23 – PAGE 49

G. RESOLUTION NO. 06-134 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT 8 CEDAR STREET, ASHEVILLE, N.C.

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at 8 Cedar Street pursuant to the upset bid process provided in N. C. Gen. Stat. sec. 160-269.

On March 14, 2006, City Council authorized marketing property at 8 Cedar Street (PIN 9657.07-58-4903) that the City originally acquired for proposed street improvements, which are no longer needed. The next step in this process is advertising the offer through the upset bid process. The property has been offered for sale and a bid has been received in the amount of $158,600. The proceeds of the sale will be General Fund revenue.

The property is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It is improved with a circa 1926 two story Dutch Colonial with white clapboard siding on a 0.1745 acre lot with typical residential landscaping, fencing, etc. It needs some repairs in order to obtain a Certificate of Occupancy.

The bid from R & G Properties is equal to the minimum price of $158,600.

Pros:

- The bid is equal to the appraised value and the upset bid method of sale will ensure a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.
- It is an efficient use of resources, because un-needed property will return to private ownership.
- It will make available moderately priced housing in a fully serviced neighborhood.

Cons:

- Future growth and development in the area could require street improvements that could result in the need to reacquire the property, but that is not likely in the foreseeable future due to the residential character of the neighborhood and the number of inter-connecting neighborhood streets which provide alternative routes. Additionally a portion of the property along Fairview Road is being retained by the City to provide an improved turning radius and sidewalk.

Approval of the resolution will authorize advertisement for upset bids as provided in N. C. G. S. 160A-269.

City staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase property at 8 Cedar Street pursuant to the upset bid process provided in N. C. Gen. Stat. sec. 160-269.

RESOLUTION BOOK NO. 30 – PAGE 63

H. THE RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CONVENTIONAL WISDOM TO DEVELOP A COST ANALYSIS FOR REFURBISHMENT AND UPGRADING THE CURRENT CIVIC CENTER FACILITY WAS CONTINUED FROM JUNE 23, 2006, TO AUGUST 8, 2006. DUE TO THE FACT THAT THE AUGUST 8, 2006, MEETING HAS BEEN CANCELLED, THIS MATTER WILL BE CONSIDERED ON AUGUST 22, 2006

I. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A FUNDRAISING RECEPTION AS PART OF THE ASTON PARK TENNIS CENTER ENHANCEMENT CAMPAIGN ON AUGUST 17, 2006, AT THE COVINGTON CLUBHOUSE AT ASTON PARK TENNIS CENTER

At the request of Mayor Bellamy, this item was pulled from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 06-135 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A FUNDRAISING RECEPTION AS PART OF THE ASTON PARK TENNIS CENTER ENHANCEMENT CAMPAIGN ON AUGUST 17, 2006, AT THE COVINGTON CLUBHOUSE AT ASTON PARK TENNIS CENTER

Summary: The consideration of a resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at a fundraising reception as part of the Aston Park Tennis Center Enhancement campaign on August 17, 2006 at the Covington Clubhouse at Aston Park Tennis Center.

Asheville Parks and Recreation will produce the fundraising reception to help raise funds to support the cost of renovations at Aston Park Tennis Center. The reception will be held at the Covington Clubhouse located in Aston Park Tennis Center.

The Asheville Parks and Recreation Department recommends City Council adopt the resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at the fundraising reception as part of the Aston Park Tennis Center Enhancement campaign on August 17, 2006 at the Covington Clubhouse at Aston Park Tennis Center.

Councilman Newman moved for the adoption of Resolution No. 06-135. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 64

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

Mayor Bellamy said that on May 23, 2006, the petitioners requested this public hearing be continued to July 25, 2006, in order to address street signage. That request was granted. On July 7, 2006, the petitioner again requested the public hearing be continued to September 12, 2006. Therefore, Councilman Mumpower moved to continue this public hearing until September 12, 2006. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 37 ARLINGTON STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PARKING LOT

ORDINANCE NO. 3377 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 37 ARLINGTON STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PARKING LOT

Mayor Bellamy said that this public hearing was continued from May 23, 2006, and July 11, 2006, at the petitioner's request in order to have a full Council present because a valid protest petition had been filed. She then opened the public hearing at 5:08 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located on 37 Arlington Street from RM-16 Residential Multi-Family High Density District to Office District/Conditional Zoning for use of a parking lot in conjunction with the building on 37 Arlington Street. This public hearing was advertised on May 12 and 19, 2006.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

The subject property is located within the City Limits, off of Arlington Street approximately half a block east of the intersection of Arlington with Charlotte Street. The property does not abut a street but is accessed via the driveway to 37 Arlington Street. While we have advertised it as a part of 37 Arlington along with the Parcel Identification Number, it really is a separate free-standing property right now. It does have an association with the property on 37 Arlington in that it is the same ownership and the request concerns the salon that is located there and the needed parking for the salon. Surrounding properties to the north and east are zoned for multi-family development, the property to the west is zoned CBII and the property to the south is zoned Office. A variety of uses are found in the area including: vacant commercial land used for parking (immediately to the west); office uses (to the south); multi-family residential (to the north and east); and a small hotel (along Furman to the east).

The applicants wish to rezone their property in order to use the portion of it that is detailed in the petition for a gravel parking lot for the salon located at 37 Arlington Street. The balance of the property would remain RM-16. The number of stations in a salon determines the minimum parking requirements. This salon has ten (10) stations and would require twenty-six (26) spaces. The salon currently provides nine (9) parking spaces in an asphalt lot on the property at 37 Arlington.

The proposal is to rezone 10,372 square feet of the approximately 16,117 square feet in the subject parcel. This portion of the parcel would need to be combined with the parcel on which the salon is located to make the parking area conforming. There is already an existing parking lot there. The proposal is for a gravel lot containing fourteen (14) parking spaces. The applicant is proposing no new access to the property that is currently accessed via the drive at 37 Arlington. The applicants purchased the property about one year ago and proceeded to work on the parking area. They received a notice a violation from the City in November of 2005 when it was brought to our attention that they were clearing on the lot. They immediately came in and started working with City staff on an attempt to bring what they wanted to do with this particular property into compliance.

Their landscape plan is to establish a gravel parking lot with 14 spaces and this would bring their parking more closely into compliance with the requirements of the Unified Development Ordinance ("UDO") for the particular salon there. The salon as it exists now needs 26 spaces and this would give them 23 spaces and would hopefully take some of the parking off the street for the clients of the salon. The balance of the property would remain RM-16 and

access to this portion of this property, if ever developed, would be most likelihood be an easement or a recorded right-of-way off of Furman because it is a land-locked piece of property. Regarding the landscaping of the lot, the owners have worked with City staff to do a nice mix both of existing vegetation as well as a considerable amount of proposed vegetation.

One thing that has been a concern of those opposed to this is the access off of Furman Avenue and it has been suggested as a condition by both the Technical Review Committee ("TRC") and the Planning & Zoning Commission that access not be allowed off of Furman. The applicant has agreed to that condition and has also placed additional vegetation along the Furman side to preclude access from this parking area out that way.

At their meeting on April 17, 2006, the City of Asheville TRC reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

The Planning and Zoning Commission, at their meeting on May 3, 2006, reviewed the conditional zoning request and recommended approval (4-1). At this meeting the Commission added the condition that access to the parking area not be afforded via Furman Avenue.

She asked that Council further condition this plan that the parking be used in the future only in conjunction with the conforming permitted use located at 37 Arlington Street. In addition, another condition requested is that this piece of property be combined with 37 Arlington Street property. In that case, if this property were ever sold and turned into another conforming use, that the parking in the future could only be used in conjunction with whatever use was on the other part of 37 Arlington Street.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with most all of the City's development standards and the applicant is working with City staff on full compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The applicant is proposing to leave substantial vegetation to the north and south so as to leave this portion of the property in its natural vegetative state.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of property surrounding this site is varied. There exist commercial and hotel parking areas in the immediate vicinity. Commercial and office uses, in addition to multi-family and single-family residences, are found in the area. The applicant is proposing landscaping, both existing and new plant materials, in order to buffer the parking area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** Other non-residential uses in this area have parking located at the rear of

heir building. This parking area appears to be a little larger in scale than some of the others.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development supports the 2025 Plan regarding allowing appropriate nonresidential development within and adjacent to residential areas.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities and other service centers.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed use will actually create a better situation for traffic along Arlington Street. The minimum parking requirement for this salon is 26 spaces. The current parking situation at 37 Arlington only provides for 9 off-street spaces. This additional parking will mean that fewer patrons will park on the street along Arlington.

Considerations:

- Improves parking situation for an existing use.
- Places service use parking adjacent to multi-family residential uses.
- The applicant is providing landscaping on all sides of the parking lot in compliance with all City regulations.
- The parking area is larger than many in the area used for non-residential uses. However, there are a number of non-residential use parking areas in the immediate vicinity.

Based on the above findings and the analysis provided in the report, staff and the Planning and Zoning Commission find this request to be reasonable. Staff recommends the approval of this conditional zoning request with the conditions as stated in the TRC report. The Planning and Zoning Commission, at their meeting on May 3, 2006, reviewed the conditional zoning request and recommended approval (4-1). At this meeting the Commission added the condition that access to the parking area not be afforded via Furman Avenue. City staff also requests the addition of the following two conditions: (1) that the parking be used in the future only in conjunction with a conforming permitted use located at 37 Arlington Street; and (2) that this piece of property be combined with 37 Arlington Street property.

City Attorney Oast said that late today he received information from Ms. Patsy Brison, attorney representing the neighbors who are opposed to the rezoning, with respect to some right-of-ways or easements that she contends crosses the property. It was his opinion that this is an issue that does not preclude City Council from considering this request. He said he will investigate that further and if turns out that it true, then the zoning is void from the beginning and he will advise Council. He is also talking with the applicant's attorney about this matter as well.

Mr. Robert Malkin, landscape architect representing the property owners, said that he has furnished to Council 15 letters in support of this rezoning request. He explained a brief history of the property noting that in 1999 the previous owner did receive a grading permit for the existing parking lot. When the property was bought by the current owners, it was assumed by both buyer and seller that the parking lot went with the building at 37 Arlington Street. At this time they would like to officially make that connection and allow the owners to use the existing parking lot as such. If Council chooses not to rezone this property, (1) there will be 14 cars parking on Arlington Street, which is currently congested; and (2) the minimum parking requirements of the

UDO cannot be met. He then explained the landscaping of the property, noting that they began working with the City as soon as they found out about the violation. Regarding the issue recently raised by Ms. Brison about an unopened street, he said that should be left up to the attorneys to decipher. They held a neighborhood meeting that generated 15 letters of support and in fact one property owner who signed the protest petition stated that the landscape plan was beautiful. He had a concern about the validity of the protest petition. In summary, he asked Council to approve this rezoning request and bring the parking lot into compliance.

Ms. Linda Cohen, resident of 4 Oak Park Road, presented City Council with a petition containing 78 signatures who are "opposed to the conditional zoning for the property at 37 Arlington Street and rezoning of the lot at 78 Furman Avenue for a parking lot." She urged Council to deny the rezoning request.

Ms. Gabrieal Cyr, resident at 291 E. Chestnut Street, said that she signed the protest petition because the rezoning will further erode the residential property in the area. She had no problem with the landscape design of the property. She felt the area needed to remain residential.

Reverend Christopher Chiaromonte spoke in opposition of the rezoning and felt that the buyers should have investigated the property thoroughly and not relied on the previous owner's assurances.

Ms. Patsy Brison, attorney representing neighbors who are opposed to the rezoning, felt this is truly an encroachment of a commercial use into a residential area. She said that the applicant, Mr. Higgins, sent a bull-dozer, knocking down trees, through the property right next to the access of Furman to get to the back of the existing parking lot. That created the concern in the neighborhood, who in turn contacted the City last fall. She said that a police officer arrived and asked Mr. Higgins to not continue the work but Mr. Higgins still persisted and did it over the weekend and the City later cited him for a zoning violation of not having a proper permit. She believes that this is part of the same lot as 37 Arlington Street and so the access off Furman Avenue is an issue. She then presented City Council with a letter dated July 25, 2006. She summarized the letter by explaining that late yesterday she received from her clients "information from the Parker family files that there is a twenty (20) foot wide unopened street running from Furman Avenue westward through the lot which is the subject of the rezoning request to the intersection of that street with a twenty-five (25) foot wide unopened street running from Chestnut Street south through the middle of the block." Attached to her letter were the deeds. She felt the City would need to resolve whether or not this property is still subject to the street dedication before proceeding with the rezoning request. She inquired of the City Clerk as to whether or not there had been a closing of this street and none of the street closings she found in her files indicated a closing of that street. She has not conducted a further investigation of the status of this street, as it would appear to be incumbent upon the applicant to make that investigation. She provided this information to the City Attorney and Mr. Bill Biggers, the attorney for the applicants. She noted that the Princess Ann Hotel will be bringing a rezoning request to the Planning & Zoning Commission, which will also chip away the good residential character of the neighborhood. As to Ms. Cogburn's suggestion of adding a condition that this parking lot be connected to the lot at 37 Arlington Street, technically she feels there may be an advertisement problem. She felt on that basis alone, the request should be defeated. If Council chooses to go forward, she requested Council revise Ms. Cogburn's condition that the parking lot only be used in the future for the existing use of the structure on 37 Arlington, because perhaps in the future a smaller use may not require that much parking.

Mr. Dean Nanney, resident at 79 Furman Avenue, showed City Council a video of the lot being graded. He spoke in opposition of the rezoning in that he felt that this would be spot zoning

for the Arlington property and it would erode the residential property. He felt Council would be rewarding the action of Mr. Higgins who continued to grade his property after being instructed by the police officer to stop. He said that when the grading was done for the original parking lot, the neighbors contacted the Planning Department and they were told that since the grading was done there was nothing the City could do. He urged Council to deny the rezoning request.

Mrs. Fredia Higgins, property owner, said that she is requesting this rezoning to have a place for her clients and employees to park off the street. She said that approximately 25-30 cars would be parked on the lot. She said they have no plans to pave the lot but are willing to do the landscaping.

At 5:50 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Councilwoman Cape, Ms. Cogburn said that the business did receive an appropriate zoning permit at the time the salon was established.

When Councilwoman Cape asked about Ms. Brison's concern about the street running through the lot, City Attorney Oast said that that is a question of underlying ownership and City Council should not be called on to resolve that issue.

Councilwoman Cape said that we are trying to manage the growth of our community and we understand the value of small businesses to our community. We need to be responsive to the community in a lot of different ways. She was concerned about the additional cars on Arlington Street and noted that the area is already mixed use. She wanted to make the area as safe as possible.

When Councilwoman Cape asked about the land-locked piece of property, Ms. Cogburn said that the only thing that can be built is a single-family home, but prior to them doing that they would have prove to the City that they have legal access from Furman Avenue.

Vice-Mayor Jones confirmed that the lot is not being used as a parking lot now and the cars are currently parking on the street. Ms. Cogburn agreed in that the owners were asked to not park in the existing lot since November of 2005 until this matter was resolved.

Upon inquiry of Councilman Mumpower about the Planning & Zoning Commission vote, Ms. Cogburn said that the majority felt like this is a situation that had historically been there and that the applicants had come in and were trying to make it conforming and it would make situation related to the business more in conformance with the UDO. The one in opposition was regarding encroachment into a residential neighborhood.

Upon inquiry of Councilman Newman, Ms. Higgins said that previously the existing parking lot would only hold approximately ten cars which were basically for the employees of the salon.

Mr. Randy Higgins, property owner, explained that he was the person who called the police because someone had their vehicle blocking the right-of-way and he had asked them several times to move the vehicle, but they refused. The pile of debris showed in the video was debris he was wanting to haul away, but the vehicle was blocking his access. At first he wanted to tow the vehicle out of the way, and when the police came, they said it was a civil matter and that he should wait until the following Monday and talk with his attorney. All he did after the police officer left was go back onto his parking lot and continue piling up the debris and cleaning off his lot (old tires, beer bottles and cans, fallen tree limbs, etc.) so when he could get his equipment in there, he would only have to load it up and leave. He has not been cited by the City for anything other than the zoning violation.

Councilman Davis felt that the property owners have worked hard to make this lot something better than a run down parking lot in the past.

Councilman Mumpower felt this would take parking off of the street and feels that the cut-off for the access to Furman Street is a reasonable condition. In addition, it is an existing parking lot. He felt the information about the old street seems to reflect documentation that doesn't have relevancy today. This business employs people and he felt we need to make a reasonable accommodation to try to work with each other and he thinks this is reasonable.

Councilman Davis moved for the adoption of Ordinance No. 3377 to conditionally zone property located on 37 Arlington Street from RM-16 Residential Multi-Family High Density District to Office District/Conditional Zoning for a proposed parking lot, subject to the following conditions: (1) all conditions in the TRC being met; (2) access to the parking area not be afforded via Furman Avenue; (3) that the right-of-way access question be resolved; and (4) that the parking be used in the future only in conjunction with a conforming permitted use located at 37 Arlington Street, noting that this request is reasonable based on the information provided in the staff report. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Vice-Mayor Jones voting "no".

ORDINANCE BOOK NO. 23 – PAGE 51

C. ORDINANCE DIRECTING THE HOUSING CODE COORDINATOR OF THE BUILDING SAFETY DEPARTMENT TO VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE

Mayor Bellamy said that the property owner, Mr. Joseph McCarson, is working with the City of Asheville for a resolution to the problem and has asked for a continuance of the public hearing. Therefore, Councilman Mumpower moved to continue the public hearing until September 12, 2006. This motion was seconded by Councilman Newman and carried unanimously.

D. PUBLIC HEARING TO CONSIDER REZONING 15 STATE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3378 - ORDINANCE TO REZONE 15 STATE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:22 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance to rezone 15 State Street from RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on July 14 and 21, 2006.

He said the subject site is located in West Asheville, within the City of Asheville's corporate limits, half a block south of Haywood Road. The property, approximately one-half acre in area, previously had a single-family residence, but has recently been cleared of any structures. The parcel is currently split zoned, with approximately .35 acre on the east side zoned RM-16 Residential Multi-Family High Density District and approximately .15 acre on the west side zoned RM-8 Residential Multi-Family Medium Density District.

The surrounding zoning is RM-16 to the north, east and south, and RM-8 to the north, west, and south. In addition, there is Community Business II zoning to north/northeast close to Haywood Road. The adjacent residential areas are a mix of single-family homes, duplexes, and vacant residential lots. The closest duplex is located on one of the adjacent lots to the south. The Rainbow Mountain Children's School's rear entrance extends onto the east side of State Street across from the southeastern corner of the subject property. The average lot size in the area is roughly 0.25 acres.

The current zoning line matches property lines for the properties to the north and south, but divides the subject property into two zoning districts.

The applicant, Michael Figuras as agent, has applied for a rezoning to designate the lot entirely RM-16. Based on acreage and density permitted with the current zoning configuration, either seven or eight units could potentially be permitted on this lot (staff cannot determine the exact number without a survey). The proposed rezoning would allow for the permitting of one additional unit. The RM-16 zoning district was intended to permit a full range of high density multi-family housing types along with limited institutional, public, and commercial uses appropriate to the area.

The RM-8 zoning district was established to provide a transitional area between high-density single-family uses and multi-family areas and to permit medium density multi-family development in areas where existing conditions make higher density development inappropriate.

As of this writing, planning staff has received two communications from neighbors seeking more information about the proposed rezoning. Neither citizen expressed opposition.

At their July 5, 2006, meeting the City of Asheville Planning and Zoning Commission voted unanimously to recommend approval of the proposed rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposed zoning would be compatible with the existing zoning of other parcels along State Street south of the commercially-zoned properties fronting Haywood Road.
- The potential for higher density infill development is consistent with both the City's Comprehensive Plan and Strategic Plan.
- Proposed rezoning would potentially allow a single additional unit within a multi-family development over what would be permitted under the existing zoning.
- Proposed rezoning would eliminate a split-zoned parcel.

Mr. Michael Figuras, agent for the applicant, spoke in support of the rezoning.

Mayor Bellamy closed the public hearing at 6:26 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3378 to rezone 15 State Street from RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Residential Multi-Family High Density District and finds that the request is reasonable based on information provided in the staff report and as

stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 55

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 3820 SWEETEN CREEK ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3379 - ORDINANCE TO ZONE 3820 SWEETEN CREEK ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:27 p.m.

Urban Planner Julia Cogburn said that this is consideration of an ordinance to zone 3820 Sweeten Creek Road to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on July 14 and 21, 2006.

The City of Asheville has recently completed the voluntary annexation of a single lot located at 3820 Sweeten Creek Road (effective June 30, 2006). This area is currently in the Limestone Township of Buncombe County and is zoned low-density residential. The lot is approximately .72 acres in size. The lot is bordered to the south and south west by multi-family and institutional zoning and uses. To the north and east, the uses are predominately single-family in nature.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and existing infrastructure.
- Places higher density development opportunities where the infrastructure is appropriate for such development.

The City's Technical Review Committee, at its meeting on June 19, 2006, concurred with this recommendation. At a meeting on July 5, 2006, the Planning and Zoning Commission unanimously recommended approval of this initial zoning. (5-0).

Mr. John Couch, owner of the property, spoke in support of this initial zoning.

Mayor Bellamy closed the public hearing at 6:31 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3379, to zone 3820 Sweeten Creek Road to RM-16 Residential Multi-Family High Density District, and find that this initial zoning to be reasonable/unreasonable based on information provided in the staff report. This motion was seconded by Councilman Mumpower and carried unanimously.

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F. **PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 4 LOTS ON ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT**

ORDINANCE NO. 3380 - ORDINANCE TO ZONE 4 LOTS ON ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:31 p.m.

Urban Planner Julia Cogburn said that this is consideration of an ordinance to zone 4 lots on Rockwood Road to Highway Business District. This public hearing was advertised on July 14 and 1, 2006.

The City of Asheville has recently completed the voluntary annexation (effective June 30, 2006) of four parcels off of Rockwood Road in South Buncombe County. These parcels are currently in the Limestone Township of Buncombe County and are zoned Employment. The four parcels combined are a total of 6.54 acres in size. There are currently four site plans that have been approved by Buncombe County for which the developer has obtained vested rights for five years. These plans show commercial (retail, restaurant, and hotel) usage of the property.

Other properties in the Airport Road area that are within the City's jurisdiction are zoned Highway Business District. Staff proposes the same zoning for these parcels. The Technical Review Committee had no issues with this zoning classification for these properties.

At a meeting on July 5, 2006, the Planning and Zoning Commission unanimously recommended this rezoning (5-0).

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of this initial rezoning.

Considerations:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.
- Complies with the strategy of identifying appropriate areas for the location of larger commercial uses.

Mr. Steven Hankins, owner of property, spoke in support of this initial zoning.

Mayor Bellamy closed the public hearing at 6:33 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3380 to zone 4 lots on Rockwood Road to Highway Business District and find that the request is reasonable based on information provided in the staff report. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Freeborn voting "no."

G. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

In order to have some modifications reviewed by the Planning & Zoning Commission, this matter was pulled from the Council meeting agenda.

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO BRING PROVISIONS CONCERNING JURISDICTION IN ALIGNMENT WITH RECENT POLICY CHANGES

ORDINANCE NO. 3381 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO BRING PROVISIONS CONCERNING JURISDICTION IN ALIGNMENT WITH RECENT POLICY CHANGES

Mayor Bellamy opened the public hearing at 6:34 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to bring provisions concerning jurisdiction in alignment with recent policy changes. This public hearing was advertised on July 14 and 21, 2006.

On June 13, 2006, the Asheville City Council, looking at opportunities for improved management of growth in the City's extraterritorial jurisdiction (ETJ), voted to undertake extension of the full range of development review services into this area. Specifically, the Council voted that as of July 1, 2006, the City would not only regulate and administer the zoning aspects of the UDO in the ETJ, but would also administer sedimentation and erosion control, stormwater management, and floodplain management in the ETJ. This development review improvement, approved by Council, would also include the provision of building inspection services into this area.

This wording amendment simply makes needed code changes to reflect the policy and management decision concerning development review.

Considerations:

- Codifies policy and management decision of Asheville City Council.
- Change will lead to greater consistency and efficiency in the application and enforcement of development standards.

At its meeting on July 5, 2006, the Planning and Zoning Commission unanimously (5-0) recommended approval of this wording amendment. Staff recommends approval.

City staff recommends City Council adopt the ordinance to amend the UDO to bring provisions concerning jurisdiction in alignment with recent policy changes.

Mayor Bellamy closed the public hearing at 6:34 p.m.

Upon inquiry of Councilman Davis, City Attorney Oast said that the City has the legal ability to extend public enterprise within reasonable limitations.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3381. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 – PAGE 64

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-136 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Rhett Grotzinger and Albert Anderson, as members on the Asheville Regional Airport Authority, expire on June 30, 2006.

At City Council's worksession on June 20, 2006, the City Council instructed the City Clerk to arrange interviews for Rhett Grotzinger, John Panarites, David Hiller and Martha Marshall. On June 27, 2006, Mr. Grotzinger submitted a letter to City Council stating "I would like to have my name withdrawn from consideration for reappointment to the Asheville Regional Airport Authority at this time. It has been an honor and privilege to serve our community on this board and I look forward to serving our community in a similar manner in the future."

When Councilwoman Cape asked if Mr. Grotzinger had written a letter asking that he be re-considered as a candidate, Mayor Bellamy said that she has talked with Mr. Grotzinger and he has officially put his name back in for consideration of reappointment to the Airport Authority. Councilwoman Cape asked that in the future all Council members be made aware of any change in status concerning appointments, and suggested that the candidate be required to submit that request in writing.

Vice-Mayor Jones said that three Council members were not notified by the applicant that he was putting his name back in for reappointment. She felt that as Chair of the Boards & Commissions Committee, that was problematic.

At this time, John Panarites received 2 vote; David Hillier received 5 votes; Martha Marshall received 3 votes; and Rhett Grotzinger received 4 votes. Therefore, Mr. Grotzinger was reappointed to serve an additional four-year term respectively and Mr. Hillier was appointed to serve a four-year term respectively, both terms to expire June 30, 2010 or until their successors have been appointed.

RESOLUTION BOOK NO. 30 – PAGE 65

B. RESOLUTION NO. 06-137 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the term of Sophie Dixon, as a member of the Civil Service Board, expired on May 21, 2006.

At City Council's worksession on June 20, 2006, the City Council instructed the City Clerk to arrange interviews for Sheryl Near and Sharon West.

By a unanimous vote, Sharon West was appointed to serve a two-year term, term to expire May 21, 2008, or until her successor has been appointed.

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C. RESOLUTION NO. 06-138 – RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Jones said that City Council must appoint a Chairman of the Civil Service Board annually.

It is the recommendation of the City Council Boards & Commissions Committee to reappoint T. Clark Brown, who currently serves as Chair, to serve at the pleasure of City Council.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Bellamy moved for the adoption of Resolution No. 06-137. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 67

C. RESOLUTION NO. 06-139 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Frank Thomson and Curtis Walk expired on July 1, 2006. In addition, Keith Hargrove has resigned from the Historic Resources Commission, thus leaving an unexpired term until July 1, 2007.

On June 20, 2006, City Council instructed the City Clerk to arrange interviews for William Allison, Todd Williams, Tebbe Davis, Amanda Starcher, Lupe Perez, Christopher Lyman, Timothy Ownbey and Tom Gholson. Mr. Davis was not interested in the vacancy. Mr. Gholson and Mr. Allison were unable to attend the interview.

After Council spoke highly of the candidates, Todd Williams received 5 votes; Amanda Starcher received 6 votes; Lupe Perez received 7 votes; Christopher Lyman received 2 votes, and Timothy Ownbey received 1 vote. Therefore, Lupe Perez and Amanda Starcher were appointed as members of the Asheville-Buncombe Historic Resources Commission to each serve three-year terms respectively, terms to expire June 30, 2009, or until their successors have been appointed. In addition, Todd Williams was appointed to serve the unexpired term of Mr. Hargrove, term to expire July 1, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 68

D. RESOLUTION NO. 06-140 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Sam Camp, Frank Fishburne, Carol Ann Pothier, James Grant and Laura Williams, as members

on the Recreation Board, expire on June 30, 2006. In addition, Matt Davis and Eleanor Campbell have resigned, thus leaving two unexpired terms until June 30, 2008.

At City Council's worksession on June 20, 2006, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Sam Camp, Carol Ann Pothier and Laura Williams to each serve an additional three-year term respectively, terms to expire June 30, 2009, or until their successors have been appointed.

Also at Council's June 20, 2006, worksession, the City Clerk was instructed to arrange interviews for Wind Peter Motika, Pastor Spencer Hardaway, Randolph Walter, Scott Barnwell and Shelley Booth. Mr. Walter called the City Clerk and withdrew his name from consideration for physical reasons.

By unanimous vote, Wind Peter Motika and Pastor Spencer Hardaway were appointed as members of the Recreation Board to each serve a three-year term respectively, terms to expire June 30, 2009, or until their successors have been appointed; and Scott Barnwell and Shelley Booth were each appointed to serve the unexpired terms of Mr. Davis and Ms. Campbell, terms to expire June 30, 2008, or until their successors have been appointed.

In addition, Sam Camp, Carol Ann Pothier and Laura Williams were each reappointed to each serve an additional three-year term respectively, terms to expire June 30, 2009, or until their successors have been appointed.

RESOLUTION BOOK NO. 30 – PAGE 69

VI. OTHER BUSINESS:

Board and Commission Appointments

Vice-Mayor Jones was very disappointed around the process of the Airport Authority appointments. Her number one criteria for appointment for any board is not knowledge (because the right people can learn), and it is not a certain status (although very important, she doesn't believe that political correctness of representation should trump over-qualifications). Her number one criteria is that a person understands their role as a board member. Part of that understanding is what is off-limits for board members to do. Board members do not amend by-laws because they are dissatisfied with the operational aspects of the board. Another important criteria is conclusive communication. Last night our state representative who was appointed to the Airport Authority and calling in on a conference call was not given the courtesy of one minute to get off hold in order to participate as a voting member of that board. She would have hoped for better behavior particularly our City appointees. The behavior of this board, as recently as last night, has not met either of her standards. She works for a board of directors for a living and has also served on numerous boards and observed many up close and personal. This Airport Authority has been very dysfunctional. Sadly, the pattern of odd maneuvers continue and the dysfunction lives on. Back-door deals sicken her and must stop. The Airport is critical to our economic future and as one of our excellent candidates stated "boards are instruments of public service, not vehicles to build resumes or exercise personal agendas." She will hold out hope for a better future for that board.

Councilman Mumpower agreed with Vice-Mayor Jones in that politics for board positions is distasteful. He will look forward to hearing more details about this. But in fairness to Mr. Grotzinger, he specifically raised the question at our last Board & Commission meeting as to whether he was still a candidate or not. We had heard some rumors about that. So, he didn't think we are coming into this blind. He thinks there was ample opportunity to reach out to Mr. Grotzinger and confirm that.

Vice-Mayor Jones confirmed with the City Clerk that there was no written correspondence from Mr. Grotzinger asking that he be re-considered for reappointment. The last correspondence that she saw was the letter from Mr. Grotzinger asking that "his name be withdrawn from consideration for reappointment to the Asheville Regional Airport Authority at this time."

Miscellaneous Topics

Councilman Mumpower thanked the volunteers for helping build the Top-A-Stop on Fairview Road. In addition, he thanked former Councilwoman Barbara Field for her good effort helping come up with the design for the Top-A-Stop.

Councilman Freeborn thanked Mr. Bill Hensley and a large number of parents to have worked on the playground at Vance Elementary School.

Councilman Newman spoke about the successful evening transit service and announced the 90-day ride for free promotional campaign starting on August 14, 2006.

Councilwoman Cape spoke about her participation in the Design Science Lab, which is a design science program formed in conjunction with the United Nations and other organizations to look at a problem-solving mechanism for regional issues.

Claims

The following claims were received by the City of Asheville during the period of June 30 – July 13, 2006: Hilbert Councell (Sanitation), Riley Cleveland (Transit Services), Ben Trotter (Streets), Sabrina Hilario Gilbert (Streets) and Progress Energy (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Reverend Christopher Chiaromonte asked Council to encourage the Bele Chere food vendors to give to the poor what they would only throw away.

Mr. Gene Hampton spoke about how the quality of life begins with quality education.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:03 p.m.

Keesha Lee
CITY CLERK

Terry M. Bellamy
MAYOR

Monday – July 31, 2006 - 9:00 a.m.
Room 202 – Haynes Building
A-B Technical Community College
Enka Campus

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman (participating via speaker phone); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Buncombe County Chairman Nathan Ramsey, Presiding; Vice-Chair Bill Stanley; Commissioner David Gantt; Commissioner Carol Peterson; Commissioner David Young; County Manager Wanda Greene; County Attorney Joe Connolly; and County Clerk Kathy Hughes

Present: Senator Tom Apodaca; Senator Martin L. Nesbitt, Jr.; Representative D. Bruce Goforth; and Representative Susan C. Fisher (Absent: Representative Wilma M. Sherrill)

Mayor Bellamy called the meeting to order at 9:00 a.m. in Room 200 of the Haynes Building at the A-B Technical Community College's Enka Campus. Vice-Mayor Jones then moved to recess the meeting to Room 128 in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Cape and carried unanimously.

At 9:50 a.m., Mayor Bellamy recessed the closed session to reconvene the meeting in Room 200.

At 10:10 a.m. Mayor Bellamy and Chairman Ramsey called their respective boards to order to discuss water-related issues.

Mayor Bellamy recapped the City's position from the last meeting on July 17, 2006, noting that each offer has received consensus.

Mayor Bellamy recapped the City's position from the County's latest proposal, noting that each item has received consensus by the City: County's latest proposal points: (1) water will be a municipal system – the City agrees to that; (2) the County and the water districts will transfer to the City both the title and responsibility for all water facilities – the City agrees to that; (3) there will be no differential rates – the City could agree to that, subject to tax equity payments with a Consumer Price Index (CPI) attached on a 20-year agreement; (4) there will be no diversion of water revenues, and this will be verified annually through an independent review – the City could agree to that, subject to tax equity payments with a CPI attached; (5) water will not be used as a tool to force annexation – the City will accept the provision from the County's June 2005 offer that new developments within a half-mile can be annexed using the same criteria other North Carolina cities utilize; (6) the City will transfer to the County both title and responsibility for McCormick Field, Nature Center, Golf Course, Recreation Park and the Civic Center. (This relieves the City of a net operating loss that is currently $1.1 million annually and which will grow substantially in the future. Additionally, the County could address the much-needed and long-deferred issue of improving or replacing the Civic Center.) – the City is open to discuss this but wants to focus on water prior to any discussions on this provision; (7) all lawsuits on water issues and any related claims will be dropped – if the City receives support on the above responses, then this provision

would be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement. She said that if there are changes to the offer made by the County, she will ask for a recess in order for Council to consider those changes.

Commissioner Gantt said that the County believes very strongly that an independent authority is a much better choice for the people they represent. An independent board will save millions in betterment costs as that money could go back into the system. The County's principles are that everyone should be treated the same, money brought in from water should go back into fixing the system, and delivering water at the lowest possible cost. The independent board would be non-political and by far the most economical way to achieve those goals for the people they represent. The Metropolitan Sewerage District ("MSD") model is a successful model. The offer from the City on July 17, 2006, was basically $125 Million over the next 20 years payment or some compensation to City Council and the water would be a City-run department along with some negotiation about the ½ mile annexation. On the County's last offer, they offered a City-run department and $1.1 Million to settle the matter. They will not enter into any serious discussions about using County money in any way for the $6.2 Million, plus a CPI, over 20 years without some accountability for where the money is going to go and how it's going to be spent. We also believe the package should include the community assets, such as the Civic Center, Recreation Park, etc., that were in the Water Agreement in 1981. We concede these are regional assets and we think the County should be at the table from a financial standpoint. Our understanding from the last meeting that that was something City Council wanted to discuss separately, however, we feel that it was very important to put that together with the water discussions, just as it was 25 years ago.

Upon inquiry of Senator Nesbitt, Mayor Bellamy said that the City will commit to this agreement for 20-years.

Upon inquiry of Representative Fisher, Mayor Bellamy explained that the $6.2 Million tax equity payment is 85% of the average differential across the State of North Carolina.

Councilman Mumpower said that Asheville should be treated like all other cities who own their water assets, noting that the City of Charlotte is essentially the whole County of Mecklenburg and is in no way similar to Asheville. He felt that the City has already compromised going down from 100% of the differentials to 85%, noting that City taxpayers will be paying 40% of that.

In response to Senator Nesbitt, Councilman Mumpower said that City Council has talked about how important it is that the differentials be implemented incrementally over time. In fact, one of their proposals was a 40% rate differential over a 7-year period and the freedom to go beyond that later, which would represent an increase in the County bill of approximately $7 a month.

Upon inquiry of Representative Goforth, Mayor Bellamy said that the City's non-betterment costs to the N.C. Dept. of Transportation over the past five years was approximately $600,000.

Representative Goforth felt the City should solicit proposals to see what they can get for their investment if the water system is run by an independent authority.

Vice-Mayor Jones said that there are other issues, other than money, with an independent authority. An independent authority is removed from the people and a City-run department holds direct accountability to City Council.

Chairman Ramsey said that if the City Council is willing to consider an independent authority, then we need to find out the numbers so there can be a weighing of the different attributes of each model.

Mayor Bellamy said the County's concern over the $6.2 tax equity payment was that they can't justify where the funds would go. The County can designate a portion of funds to go to the Civic Center or to the Golf Course, etc. and it is easy for the City to track those funds so the County can have that direct accountability. City funds are easily trackable and that should not be a hindrance to the negotiations.

Upon inquiry of Mayor Bellamy of where the County's offer of $1.1 Million came from, Chairman Ramsey said that figure is the annual operating costs of McCormick Field, the Nature Center, the Golf Course, and the Civic Center. That figure doesn't include the capital costs and under our offer the County taxpayers as a whole would take over the financial responsibility for the capital needs of those facilities. In reality, it will potentially be much greater than $1.1 Million. If the County taxpayers as a whole take over the financial responsibility for those facilities, then the County should have the control of those facilities and they can work with the City and the local delegation on the ultimate needs for those facilities, e.g., location, needs, etc., and find funding of those needs.

Mayor Bellamy felt that if the water system will be a municipal run system and the County's concern is the $6.2 tax equity payment, she feels that can be negotiated.

In response to Councilman Mumpower, Chairman Ramsey reiterated that it is the County's contention that the City doesn't own the entire water system and the court system will make that determination.

Senator Nesbitt felt it would be beneficial for the City and the County to exchange data to support each's position on who owns how much of the water system lines.

A brief discussion took place regarding condition of the Civic Center and the City's efforts in addressing the issue.

In response to Senator Nesbitt, Mayor Bellamy said that it's important to honor the past, but we have been elected to look at the future.

Chairman Ramsey said that we do want to settle this without litigation. He feels that what is separating the City and County, if we are talking about a municipal department, is the money. Our Board would still like to consider an independent authority and would be open to that discussion. If the City would agree to an independent authority, we realize the City would be making a major concession and based on that, there would be significant more compensation to the City and how that compensation would be paid would be open for negotiation.

Vice-Mayor Jones felt that our offers are much closer. The last litigation that was settled around this in 1958 with Candler, one of their conclusions was "the City of Asheville, however, still has the right to establish a different rate for service outside it's corporate limits to persons, firms and corporations not located or residing in a district that has constructed and maintained at its own expenses water and water systems." This is part of the trail that we are trying to honor.

Councilman Davis explained that when the City terminated the water agreement, we were at a point to where the Water Authority was dysfunctional and the system was not functioning. The City had a study performed, which directed the repair of the system and we are moving rapidly towards fixing the system. We are providing good water at a reasonable rate, as reasonable as you can when you live in the mountains. Our water bills look extorted because of

the MSD charge is printed on our bills. We are trying to get people to pay their fair share. He would not be willing to consider an independent authority.

Councilwoman Cape explained that an independent authority isn't accountable to the citizens. She felt the City of Asheville is doing a great job in managing their water system and should have the right to continue to do so.

Councilman Mumpower's position was that he didn't care if it was a city-owned system or an independent authority, as long as the City is fairly compensated for giving up control of the water system.

Councilwoman Cape felt that if the County thinks an independent authority is the answer, then give Council the data to support why the County thinks it's in the City's best interest.

Commissioner Gantt felt that the County provided that data in the 2004 offer combining recreation and water.

Councilwoman Cape didn't think that mixing everything in one pot is the best way to make decisions. We are all interested in working together on all those things, but it just doesn't have to be in one bundle to best represent our citizens.

Chairman Ramsey said some benefits of an independent authority include: (1) takes away the non-betterment costs; and (2) guarantees that 100% of the water money goes back into the system; and (3) since 45% of the customers live outside the City limits, it better reflects that it is a community-wide collaborative approach. He said that the County is willing to agree to a municipal-run system, and we also understand the concerns that Councilman Davis has that if the City absorbs additional costs that other municipalities in Buncombe County don't have to occur, then we are willing to look at those tax equity pieces to come up with a package to make sure that City of Asheville residents aren't unfairly burdened. But if the City is asking for $6.2 Million and the County is offering $1.1 Million, then we won't be able to come to terms.

Mayor Bellamy said that we all understand that the City wants a municipal-run system, the County doesn't want any diversion of funds, and the County doesn't want any rate differentials. We agree to that for 20 years. Regarding the compensation, she suggested we direct our respective managers to discuss that issue and report back to their respective bodies.

Councilman Mumpower asked that Asheville be allowed to start an aggressive differential process and cap our differential at 25% for five years and then after than make it incremental. Then we have a clean system and don't get into all these other complexities.

Representative Fisher asked if the City can show how much money of that money will go to the Civic Center, Golf Course, McCormick Field and Recreation Park, and how much of those facilities are used by County residents, City residents, and regional people. If that can happen, then why can't we just look at that piece and go on with the water agreement alone.

Councilman Gantt said that the County is willing to take those facilities back and that the County still has bonds that they are paying off at about $400,000 a year.

County Manager Greene asked that she and City Manager Jackson be given a compensation number to work with.

In response to Senator Nesbitt, Councilman Davis said that he does have difficulty in giving the recreational assets to Buncombe County, particularly the Civic Center. He feels that the County did a major renovation at McCormick Field but there is a quality of service by the

County that he is not comfortable with. We need to be accountable to our people and if we give that to the County, the City will lose that control.

Regarding the Civic Center, Senator Nesbitt said that the people of this area deserve more than the current Civic Center. They deserve a place where we can bring culture to this area, a meeting place for this area, and we can draw major events. He doesn't think that venue does that or that it will do that.

Chairman Ramsey said that after listening to City Council, an independent authority is off the table. His Board will have to discuss (1) the 20-year term because his Board would prefer a longer term; and (2) the title and responsibility for recreational facilities. Again, his Board does not want any rate differentials. He would support giving our respective managers direction but was uncertain what that direction would be, given the City's $6.2 Million offer and the County's $1.1 Million offer.

Mayor Bellamy said that the City has spent the last eight months working on a plan of action for the Civic Center that includes looking at Parkside, a renovated arena, a performing arts center, etc. We can't do any of the proposals by ourselves. Are you willing to assist us in renovating the facility, whether it's where it is or moving it. Vice-Chair Stanley said that the County has been willing to assist from the very beginning. Mayor Bellamy said that since the County is willing to help us, then how is that different from our $6.2 Million we are asking the County to assist with the funds if we know that we need help on this facility that you have agreed to help us. That can get us where we need to go and that fund would be set up differently with County oversight. The main point is how can we help each other. If the County needs an oversight committee, we would not be opposed to that.

Mayor Bellamy said that it appears that the recreation facilities and the compensation issue are intertwined. She feels that the respective managers should look at this issue because whatever plan the City comes up with at the Civic Center, the City cannot do it alone. We need the help of the County Commissioners and the state legislators. City Council is willing to discuss McCormick Field and the Nature Center.

Chairman Ramsey said that in the County's most recent offer asked that we be given title to those recreational facilities because we recognize that significant money needs to be spent on them. We would need to be able to issue bonds against those facilities to pay for that work. It was our hope that in the future we could receive alternative revenue sources to pay for those, but we also understood that the alternative revenue sources would not pay for 100% of the capital improvements. So it would need additional County tax dollars. The debt service on a $50 Million debt is $3 Million a year. If you combine the $1.1 Million operational costs and the $3 Million annual debt service, the amount is $4.1 Million. He would not support the County paying $6.2 Million.

At 11:46 a.m., Mayor Bellamy recessed the meeting in order for City Council to reconvene their closed session in Room 128 in order review the $6.2 Million tax equity amount.

At 12:25 p.m. Councilman Davis moved to come out of closed session and reconvene the meeting in Room 200. This motion was seconded by Vice-Mayor Jones and carried unanimously. (At this time, Councilman Davis left the meeting.)

Commissioner Gantt said that they unanimously indicated that the County is not comfortable in giving unearmarked money to City Council under any circumstances. We can't borrow the money unless we have title to the facilities. The offers that the City has made indicate almost a presumption that there is a right to charge differential rates and a right to use the money for other purposes other than water, which we believe you do not have that authority. Any

discussions we have concerning agreements need to be permanent and not a 20-year duration because we don't think it is in the best interests of the people we represent to come back in 20 years and do this all over again.

Chairman Ramsey said that the only other alternative to raise the funds would be a General Obligation Bond to be voted on by the taxpayers.

Mayor Bellamy confirmed that the County's offer of $1.1 Million will not change unless the City gives them title to the facilities.

Mayor Bellamy noted that the County has debt on McCormick Field and they don't have title to it. County Manager Greene responded that they had to pledge another asset because they didn't have clear title to McCormick Field.

When Vice-Mayor Jones asked if we have the appraised value of the Civic Center, McCormick Field, Recreation Park and the Golf Course, City Manager Jackson said that he did not have those figures available.

Mayor Bellamy said that the reason why the water agreement was terminated was because Asheville wanted to be treated like all other municipalities in North Carolina. Today we were willing to reduce on our rate differentials because that is something that other municipalities are negotiating, however, the City of Charlotte has other funding mechanisms to help with other things in their community. We need help with our regional facilities and we have heard clearly from the County that they are willing to help, but we need a commitment from our legislators as well.

Senator Nesbitt said that the legislative delegation is ready, willing and able to help with the Civic Center, but they need to have a product to sell. He was agreeable in taking the studies and needs already identified by the community, however, he wanted someone to take a regional look at the Civic Center so that we make sure when we spend this money that we are doing what we need to do for the next 30-50 years.

Mayor Bellamy said that Council is now offering the compromise from a $6.2 tax equity payment from the state average of 85% to a $4.5 Million tax equity payment, which represents approximately a 64.5% of the state average. With the water agreement, we were at $2.4 for law enforcement and $1.1 that we received from the water system to help with these issues. We are now only asking for $1 Million, which would represent 65% of the state average. When we terminated the water agreement, we wanted to make sure that the system was being effectively repaired and we wanted to make sure we had orderly growth and management. Over the last 18 months we have proven that we can run that system. Again, we are willing to come down to $4.5 Million, which represents 65% of the state average to prove to you that we can do a good job.

Chairman Ramsey said that based on the current offer on the table by the County, if the County took over title to the Civic Center, the debt service on a $50 Million debt is $3 Million a year. If you combine the $1.1 Million operational costs and the $3 Million annual debt service, the amount is $4.1 Million. Again, he said that the County would need title to the Civic Center, Recreation Park, McCormick Field and the Nature Center so they can issue debt on those.

Vice-Mayor Jones felt there are other ways to re-direct money that would not impact the County's bottom line, i.e., how the sales tax is allocated now. If there is a genuine willingness to dig deep, there are ways to come up with the money.

Mayor Bellamy said that City Council has given direction to City Manager Jackson to work with the County Manager on the $4.5 Million tax equity payment to see what kind of an agreement could be worked out.

Chairman Ramsey said that the County has given the City the scenario of the $4.1 Million tax equity payment.

Vice-Mayor Jones felt that the County Manager needed to have broader discretion in how to come up with compensation, other than the only way to get to the $4.1 Million is for the City to give title to the facilities so the County can issue debt. If that is the only way, then she is not willing to go down that road.

Senator Apodaca said that this is like a marriage in that we dated in the 1920's and decided to get married around 1935-40. Then a couple of years ago our partner wanted a divorce - didn't tell the other partner, just went to a lawyer and got a divorce. He said we now have issues about who brought what assets to the marriage and that issue has to be decided first. The other issue is that the partner who instituted the divorce now wants child support in addition to other things. The City wants their cake and icing too. The City doesn't want to give up the Civic Center, McCormick Field, etc. but still wants to keep the water monies. He said they have to draw the line somewhere. It may come to the point where the delegation may have to decide and they don't want to do that. He said that temporarily they did, but they can undue whatever they did if they are so inclined - if it is going the way it should.

Chairman Ramsey and Mayor Bellamy agreed that the respective managers will sit down and discuss the tax equity issue and see what the next steps will be. In addition, they directed them to arrange another follow-up meeting date.

At 1:10 p.m., Mayor Bellamy and Chairman Ramsey adjourned their respective meetings.

Sonja Lyle
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday -- August 15, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

TAX BILL EDUCATION

Chief Financial Officer Ben Durant said that per City Council's request, staff has prepared a report on the Fiscal Year 2006/2007 tax bills for real property, which taxpayers will begin receiving during the month of August.

He said the Buncombe County Tax Office mails out tax bills on real property (residential, commercial, & industrial) in early August of each year, and the bills are due on September 1st. There is, however, a four month grace period that allows taxpayers to pay their bills up to January 5th before interest is added. In effect then, January 5, 2007, is the deadline for paying Fiscal Year 2006-07 property taxes.

All City of Asheville taxpayers pay property taxes to both the City of Asheville and to Buncombe County. In addition, approximately 65% of City taxpayers also pay the City School District property tax. Each of these taxing jurisdictions adjusted their property tax rates for Fiscal Year 2006-07 in response to the recent revaluation. The City of Asheville adopted a revenue-neutral tax rate, but Buncombe County set its rate above revenue-neutral. The table below highlights the Fiscal Year 2006-07 tax rate changes:

Jurisdiction	FY 2005-06 Tax Rate	FY 2006-07 Tax Rate
City of Asheville	53 cents	42.38 cents
Buncombe County	59 cents	53 cents
City School District	20 cents	15 cents

He reviewed two sample tax bills for City taxpayers whose property increased by the city-wide average of 45%.

Upon inquiry of Councilman Mumpower, Mr. Durant said that we are not realizing any more revenue this year than last year, except through growth and except for the adjustment we had to make to compensate for the loss of sales tax revenue.

In response to Vice-Mayor Jones, Mr. Durant said that the County-wide average property values went up was 45% due to re-evaluation. He explained that there are many different scenarios that could show a reduction in property taxes as well, since the City's tax rate is revenue-neutral. He said that he could provide additional information to Council showing the different property values in different areas of Asheville.

When Councilman Mumpower asked what the average increase was for a City resident's tax bill increase, noting City residents are also County residents, Mr. Durant said that it was a little more than 10%.

Mayor Bellamy proudly noted that the City started this fiscal year "in a hole" and still decreased our tax rate for Asheville citizens.

In response to Councilwoman Cape, Mr. Durant said that the City has very little influence in the reevaluation process, since counties are statutorily responsible.

Mayor Bellamy urged elderly residents to call the Buncombe County Tax Collector to see if they are eligible for the Homestead Exemption for a reduction in their property taxes.

DOWNTOWN POLICY DIRECTION AND SERVICE LEVELS

Economic Development Director Sam Powers said that the purpose of this staff report is to provide a brief review on limited specific issues and to "test the aim" on these specific issues relative to Council's policy wishes.

City Council has outlined downtown priorities through documents such as Council's Strategic Operating Plan, and the Asheville Center City Plan. These plans share a vision for Downtown Asheville as a safe, clean, physically attractive, vibrant business and residential area with a strong sense of place.

Public Restrooms: In 2002, City staff, led by Parks and Recreation staff, conducted a survey of publicly owned or available restroom facilities, and also outlined options from other cities that provide public restrooms. This survey was updated in July 2006. The updated survey shows that there are 32 publicly-owned facilities in the downtown area, some being, but are not limited to: 29 Haywood Street, Pack Library, Civic Center, Skateboard Park, City Hall, Courthouse, Transit Center, etc. Availability for use by the public and hours of operation for many of these facilities is limited. New public restrooms will be part of the new Pack Square Park when it is completed, however, the facilities will not be available until 2008.

He showed examples of public restrooms located in Black Mountain, N.C.; Boulder, Colorado; and Atlanta, Georgia, briefing outlining the budgets, type of restroom, and maintenance schedule.

Mr. Powers said that the restrooms at 29 Haywood Street were closed in February of 2002. If those restrooms are to be re-opened, the issues would be the operation and maintenance and the need for an attendant. Determination of a user profile for development of any new downtown public restrooms will be a policy decision to be answered as any process moves forward.

Cleanliness/Graffiti: Part of the challenge for downtown is the lack of a sustainable, dedicated funding source for many of the elements that community leaders observed on a recent trip to Greenville, SC. In Asheville, services such as sidewalk cleaning, litter and trash pickup and the provision of receptacles, landscaping and streetscapes, graffiti, policing, street maintenance and bulb outs, are under different city departments, and there is no "downtown" department to coordinate efforts. City staff, led by the Assistant City Manager, has convened a "Downtown Staff Task Force" to keep abreast of initiatives downtown and to coordinate activities that affect downtown, such as the Pack Square construction project. Increasingly, downtown is subject to very large amounts of pedestrian traffic from visitors/tourists which strain the City's ability to keep up with trash generated and which heavily contribute to the dirty conditions on the sidewalks.

Wayfinding/Kiosks: The need for a comprehensive Wayfinding/Signage Program has been identified as a goal of the Center City Plan. Recent public presentations by nationally known expert Roger Brooks heightened awareness of the need to redevelop a comprehensive system that includes color coding and uniformity in signage, and incorporates other elements such as kiosks and banners into the overall program. The City's MPO Coordinator, Dan Baechtold, is serving as the Project Manager for the Wayfinding initiative, and Dan has met with Buncombe

County Tourism officials to begin development of the specifications for the signage development portion of the Wayfinding Program. Buncombe County Tourism leaders have expressed a strong interest in moving the gateway and signage element forward in cooperation with the City and other partners. Expectations for the type of kiosk system, i.e., static stationery vs. electronic interactive, to be incorporated into the overall Wayfinding program, will determine the kiosks development and where the kiosks are to be located.

Pack Square Park: The Pack Square Park is scheduled to be completed in 2008. Once the park has been completed, there will be additional operational and programming expectations. The park will become the showplace for the downtown area and will be in high demand for use by many groups and individuals. Prior to construction, over 80 groups used this area which will rise to well over 100 due to everyone wanting to be in this area. A management plan will need to be agreed upon between the City of Asheville and Pack Square Conservancy to ensure that this area is maintained to a high level and that overuse does not result in increase maintenance and destruction to the park. This management plan will need to allow for certain areas of the park to be closed periodically for protection of the grounds and turf management. In addition, a clear delegation of responsibilities will need to be outlined as it relates to programming of the space. Pack Square Park will add to the economic vitality of the surrounding area, much like what has occurred around Pritchard Park after that renovation. A strong revitalization plan for the surrounding area should be explored as completion of the new park occurs. Currently, Parks and Recreation staff is working with the Management Committee of the Conservancy to develop a management plan that will meet everyone's expectations.

He said that the Center City Plan can serve as the Master Plan for Downtown. Staff recommends that major stakeholders in the downtown area be convened to look at resource development and division of responsibilities. The stakeholders will review Council's goals relative to the Center City Plan and report back to Council with specific recommendations. These stakeholders include: Asheville Downtown Association, Tourism Development Authority, Chamber of Commerce, Buncombe County government, representatives of social service agencies such as A Hope, Quality Forward, Downtown Commission, Sustainable Economic Development Commission, City Council Planning and Economic Development Committee, DARN (Downtown Asheville Residential Neighbors), and key city departments.

Councilman Mumpower advocated for some action now on the public restrooms and the downtown kiosks. Regarding graffiti, Mr. Powers said that the City does work with Quality Forward by supplying materials on graffiti removal; however, the rate of graffiti is growing dramatically.

Councilman Mumpower would like to see us consider a reward fund for people who can identify vandals. He felt we could get people to contribute to that fund.

Vice-Mayor Jones also supported moving forward with public restrooms.

Councilwoman Cape asked for additional research on the cost of public restroom attendants, noting that the City should partner with groups. Mr. Powers said that some preliminary research has been done. We have talked with stakeholders and service providers and the possible solution seems to revolve around working with agencies like A Hope. They have expressed a willingness to do that and provide an attendant. He said that City staff's two issues with public restrooms are having them attended and where they are visible. A preliminary budget necessary for substantial upgrades to the 29 Haywood Street restrooms would be approximately $70,000.

It was the consensus of City Council to move forward on opening the public restrooms at 29 Haywood Street and instructed City staff to bring forward to Council a budget.

Mayor Bellamy said that in opening up the restrooms at 29 Haywood Street with an attendant, the idea came up about putting a kiosk in the corridor, or some public art, or individual vendor booths that have a product to sell. People will be traveling in and out of the corridor and it will make the people feel safe. In addition, we need to make sure that the parking deck stairwells are cleaned on a regular basis. She suggested some signage be placed in the stairwells of where the public restrooms are located.

Mr. Powers believed that there is funding in the budget that will help with the maintenance in the stairwells.

Councilwoman Cape also envisioned the corridor at 29 Haywood Street as being one of the kiosk areas.

Councilman Freeborn requested information on the stainless steel, self-cleaning facilities. Mr. Powers said that he would provide more information; however, they are in the neighborhood of approximately $100-$200,000.

Councilman Newman said that the Buncombe County Tourism Development Authority (TDA) is very excited at the Wayfinding Program and suggested that we talk to them about some capital costs out of their earmarked product development monies since Asheville is the product.

Councilman Davis agreed with Councilman Newman that we should explore with the TDA a percentage of their product development monies to maintaining our core services, like street cleaning, restrooms, signage, etc. He also felt we should consider restrooms that are family-oriented.

Councilman Davis felt it was an appropriate time to revisit the Downtown Social Issues Task Force Report, which Council accepted. They made several recommendations and we should work with them as partners. In addition, Mr. Dwight Buckner, member of the Downtown Social Issues Task Force, has requested permission from City Council to put up the "Spare Change for Real Change" boxes, the program for people to put their change in the boxes instead of to the homeless.

Upon inquiry of Councilwoman Cape, Mr. Powers said that we will talk with private companies with public restrooms, i.e., BB&T Building, Pack Place, about their hours of service when the restrooms are open.

Councilwoman Cape also asked for information if there are restrooms located under the Pack Square monument.

Councilman Mumpower said that one of the main reasons most public restrooms are not open to the public is because they are abused, and public safety should be an important component. He also spoke more strongly in stand-alone kiosks in public view.

Mayor Bellamy felt that the individuals that traveled to Greenville, S.C., recently would be a good group to be included in the stakeholders. She looked forward to having the stakeholders review the Center City Plan, with Council's goals in mind, and bring their recommendations back to Council.

Mayor Bellamy asked that City staff investigate a policy regarding the placement and maintenance of newspaper stands.

Mayor Bellamy also asked that the Transit Facility be more inviting with perhaps hanging baskets.

Councilwoman Cape asked City staff to look into the possibility of recycling containers downtown.

In response to Councilman Freebom on a timeframe for the stakeholders meeting, Mr. Powers said that the TDA, last week, had a public meeting where they rolled out their marketing plan for the coming year. The TDA expressed a strong commitment in partnering with the City to push the Wayfinding issue forward. Mr. Baechtold has taken the lead role of project manager and has had several meetings with the TDA staff. As soon as the TDA designates a staff person, he will work with Mr. Baechtold. He feels we are moving at a good pace for getting a Request for Proposals developed and certainly within 120 days we should be able to start developing criteria for the Request for Proposals to move the project forward.

Vice-Mayor Jones said that in terms of the Wayfinding Program, we should design our signs or ordinances around what works for our community.

Vice-Mayor Jones stressed that cigarette butts are trash and people should be educated to not throw them on the ground. In addition, she asked that the cleaning of the sidewalk grates be cleaned on a more frequent basis.

Councilwoman Cape explained why she felt the graffiti should be removed as quickly as possible instead of having of a reward fund for people turning in vandals.

In response to Councilwoman Cape, Councilman Davis said that he would take the Downtown Social Issues Task Force Report back to the Downtown Commission for their updated review prior to bringing it back to City Council.

It was the consensus of City Council to have the stakeholders review the Center City Plan, with Council's goals in mind, and bring their recommendations back to Council.

WATER UNIFORM RATE DIRECTION

Councilman Newman said that earlier this year Council held a lot of discussions about the analysis that has been done about what we need to do to investing in the long-term repair and maintenance of our water system. We have begun a Capital Improvement Plan that begins implementing repair of our long neglected water system. We also had discussions about what is our plan going to be in terms of the overall rate structure since the City is running our water system again. Did we want to continue with the rate structure under the old Regional Water Authority or do we want to look at some other models. We had discussions about moving toward a uniform rate policy. Some members of Council were interested in making that policy during the budget process, but it was decided to deal with that as a stand-alone issue.

He reminded Council that during the budget process, we approved a new meter based fee to fund the Capital Improvement Plan. Separate from any tweaking or fundamental changes we might want to make to the meter based fee, he asked Council to consider (1) do we want to move towards phasing in a uniform water structure over the next 4-5 years; and (2) if we do move towards phasing in the uniform water structure, do we want to maintain our existing rate structure for our manufacturing customers, due to the economic climate and the importance of that sector to retain jobs in our community. He supported both.

Councilman Davis felt that he could not support moving towards a uniform water structure at this time because small businesses are having to pay a stormwater fee, business license fee, meter based fee, parking fees, etc.

Councilman Freeborn felt we should move toward a uniform rate. He felt we should go back and review the Capital Improvement Plan meter based fee and base it on consumption, not on meter size. He felt everyone should pay the same for the quality of water they get.

Mayor Bellamy felt that next month we will have had almost 3 months data with the Capital Improvement Plan fee and that can be discussed at the next worksession. She has asked City staff to report back to Council on bonds.

Councilwoman Cape supported the uniform rate structure being phased in over five years. She felt that we needed to be a partner with businesses and residences in the community to help them find ways to make water cost-effective. We need to be good stewards and look the long term of our water usage, especially with development pressures, more people moving into our community etc. The best way to do that is to make sure that everyone is using water a cost-efficiently as possible. She thinks that in five years we should have some best practices that will help people reduce their bill, but they must also work toward efficiencies. She, too, would be interested in getting more information on possible changes to the Capital Improvement Plan meter based fee.

Councilman Mumpower felt that we should revisit this issue at another time since not only have we not ironed out some of the confusion on the Capital Improvement Plan meter based fee, but we are in serious water agreement negotiations.

Councilwoman Cape felt that if we do have the exclusion for manufacturers, that we must be clear on the definition of a manufacturer.

Vice-Mayor Jones would be supportive of a uniform water rate being phased in and asked for information on the wholesale rates.

As a secondary issue, Councilwoman Cape asked for information about the flood and the relationship with the amount of water we are overflowing.

Mayor Bellamy said that instead of making a decision at this time about a uniform water rate, to begin in 2007, it would make sense that we challenge staff at the next worksession to (1) look at our ability to issue debt; (2) see what our capital improvement needs are for the water department; (3) look at our Capital Improvement Plan rate; and (4) look at the best way to put money back into the system.

MAXWELL STREET TRUCK REGULATION

Police Chief Bill Hogan said that City Council has continued to receive concerns from citizens regarding traffic problems along Maxwell Street, specific to truck deliveries that occur at the west end of the Greenlife Grocery Store, adjacent to Maxwell Street.

I. Physical Conditions
- Area includes a mix of zoning districts (CB-II, RM-8, NCD and HB)
- Affected roadways include Merrimon Ave., Maxwell St., and Marcellus St.
- Maxwell Street is split-zoned CB-II & RM-8
- Uses in the area include single and multi-family residential, small office and service uses, and a 20K square foot grocery store with an 89 space parking lot.

II. Past Actions
- Redesign of loading dock, parking lot, and driveways to minimize use of Maxwell Street by trucks

- Enforcement and direction as described by the Asheville Police Department (APD). A summary of citations are as follows from 1/1/05 to 6/30/06: 64 calls for service regarding improper parking on Maxwell Street. APD has issued 24 parking citations, 2 warning parking citations, and 63 other traffic citations issues to vehicles on Maxwell Street.
- Direction of trucks to enter and exit via Merrimon Avenue, using Maxwell only at the loading dock
- Posting of 'No Trucks' signs on Maxwell. ('No Truck' signs are intended to restrict through truck traffic but allow local truck delivery).
- Loading dock chained to prevent deliveries between 6 pm and 6 am.
- Trash dumpster was replaced with a trash compactor to more readily handle garbage disposal.
- Affected parties have participated in mediation efforts.
- Installation of a wood panel privacy fence along the loading dock area in addition to the landscape buffer was approved for the project.

III. Current Traffic Patterns

- Trucks are supposed to access to and from Merrimon Avenue.
- A few trucks still enter via Broadway to Maxwell.
- Some parking encroaches into neighborhood, but Greenlife has mostly curtailed this through direction to employees and addition of more on-site parking.
- Driveway on Maxwell provides a good route to the signal at Merrimon & Chestnut, a safer means of exiting than at the Greenlife driveway on Merrimon.
- Truck Delivery Volume: Over a recent four day period, Greenlife received 56 truck deliveries. Approximately 25% of those trucks were large trucks, which assess the larger loading dock; most trucks utilized Maxwell Street in order to access the smaller loading dock because this loading/unloading area only has an entrance/exit from Maxwell Street.

IV. Concerns

- Proliferation of Traffic Violations (illegal parking & blocking of public right-of-way)
- Increased Opportunity for Noise Violations
- Land Use Conflict – although the residential area is zoned to allow medium density multi-family, the majority of residences are single family and are adjacent to a medium impact grocery retailer.

V. Options/Alternatives

Traffic Engineering Options:

1. **Prohibit trucks on Maxwell except getting in and out of loading dock.**
   Considerations:
   - Requires Council ordinance.
   - Affects everyone on Maxwell Street; i.e. moving trucks would be prohibited for residences.

2. **Construct devices in street to physically prevent trucks from bypassing.**
   Considerations:
   - Removes parking.
   - Limits access for all large vehicles, not just those bound for Greenlife.

3. **Limit truck size and/or number. Application proposed use of ~40' single-unit trucks. Subsequent conversations estimated one large truck per day, or 4-5 per week.**

400

Considerations:

- Burdensome economic impact on business.

City Attorney is researching legal grounds for such restrictions.

Planning Options:

1. Add a noise wall or other noise mitigating measure around the existing loading dock area.

Considerations:

- Various mitigation measures can vary significantly in cost and effectiveness (i.e. Bamboo Screening = inexpensive & easy to install but limited effectiveness vs. Engineered Noise Wall = very costly but more effective).
- Developer has already exceeded current development requirements.
- Lack of adequate space to create a fully effective measure – cannot physically eclipse the entire loading area due to its existing configuration.

2. Possible reconfiguration of loading area to keep all truck maneuvering on site.

Considerations:

- Loading docks would remain in their present location.
- Will require additional land & development costs
- The additional property required is not owned or leased by Greenlife Grocery and would require acquisition.
- Would result in the loss of one single family home.
- Could be designed to keep all truck maneuvering and parking off of Maxwell Street.
- Would allow for additional buffering/screening of loading docks and trucks.

3. Conduct a zoning study to analyze compatibility of various zoning alternatives with the RM-8 properties in the area (two possible options are listed below).

Rezone RM-8 properties to NCD

Considerations:

- Allows for a greater mix of uses with more options for redevelopment.
- Resolves land use conflict issues over the long term.
- Eliminates the split-zoned right-of-way on Maxwell Street.
- Would correct some non-conforming uses while rendering others non-conforming.

Apply 'Adaptive Re-use' Overlay zoning to RM-8 properties

Considerations:

- Allows for redevelopment while maintaining the residential character of the structures.
- Does not eliminate the split-zoned right-of-way on Maxwell Street (underlying zoning remains the same).
- Would correct some non-conforming uses while maintaining conformity of other existing uses.
- Would encourage the conversion of residential uses to low-impact non-residential uses.

Economic Development Options:

1. Explore development plans of the Greenlife site with property owners to determine if opportunities exist to mitigate impacts through redevelopment.

2. Explore ways to estimate cost and design issues associated with the relocation of the loading dock.

3. Explore opportunities to plan for infrastructure and parking improvements that support redevelopment of the Greenlife properties and surrounding areas.

City staff recommends continuing to enforce city statutes pertinent to this site. In addition, to approach the property owners and discuss expansion plans in an effort to proactively address long-term parking and traffic issues associated with the site development.

Councilwoman Cape wanted the City to be much better at planning than just permitting. We need to be more sensitive in the future about integrating two different uses right up next to each other. She would love to have Mr. Swann to expand his store and move the loading dock. She wanted to make sure that the intent of our buffering and landscape laws are met.

Mr. Richardson said the officers at Greenlife Grocery have been pleased with the performance of the store. The performance of the store is outdistancing its physical capabilities in some ways. They want to be a neighborhood grocery store and a partner in the community. They feel they have taken significant efforts to mitigate the issues associated with the concerns of City Council. It is his understanding that Greenlife officers have talked with property owners; however, he did now where those discussions are at this point. But, City staff has expressed an interest to be at the table proactively at the front end of those discussions to look strategically long-term at traffic, parking and the effect on the adjacent streets.

Upon inquiry of Councilwoman Cape, Mr. Richardson said that he would research the cost to the City of the 64 calls for service.

Councilwoman Cape stated that she didn't like Maxwell Street being used for trucks and asked for clarification of the "No Truck" signs on that street. City Attorney Oast said that we run into a problem of where there is residential and commercial use on a street when we use those signs. We are still reviewing that issue. He also said that "No Truck" signs mean no trucks are allowed on that street unless the use of Maxwell Street is the only way to get to your point of destination.

Vice-Mayor Jones would like the loading dock to be moved. However, in that we don't have that power, she would like for there not be big loading trucks on Maxwell Street. If Council prohibits trucks on Maxwell Street, you are cutting off the Maxwell Street service entrance for Greenlife, which has always been there. If you prohibit all trucks on Maxwell Street, then you prohibit any trucks, including personal moving vehicles, on that street and that creates other unintended consequences. He said we have and will continue to work with the owners and operators of Greenlife Grocery in order to mitigate the traffic that has to go on Maxwell Street. Some steps have already been undertaken and have to some degree been successful. His opinion is that you will have a very difficult time prohibiting trucks on Maxwell Street and that an ordinance of that nature might be invalidated.

In response to Councilman Mumpower, Mr. Richardson said that in general "No Truck" signs mean no through trucks. You cannot use Maxwell Street as a street to carry you to a point of destination on property that does not abut Maxwell. There are two exceptions to the Code. The one exception that applies to this matter is the one that allows for the loading or unloading of a truck to and for property located adjacent to that public street - meaning that if a truck is accessing Maxwell Street to specifically access the loading dock, it is an exception to our code.

Mr. Anthony Butzek, Traffic Engineer, said that the signs were put up as we worked with Greenlife to mitigate and minimize the amount of trucks on Maxwell Street. We placed them at

points where trucks were coming in and making deliveries. Greenlife also made some changes to their driveway so the trucks could access to and from Merrimon Avenue. He said that we can remove the confusing "No Truck" signs and replace them with worded signs of "No Through Trucks." The intent was to make it obvious to the truck drivers that they were not to use that street.

When Councilman Freeborn asked if there was information available about how many of the 63 traffic violations were from people who live on Maxwell Street, how many generated from Greenlife, or how many were people just driving through the neighborhood. Mr. Richardson said he will have to get that detailed information, however, it is his understanding it is a combination of all those.

Councilman Freeborn felt the only real option is to make it physically impossible for trucks to go down Maxwell Street. He felt that this matter needs to be addressed and suggested a public involvement session where people from Maxwell Street and Greenlife work something out.

Councilman Newman's goal would be to get the trucks off Maxwell Street entirely for safety reasons as well. He did think there are different design ideas for that to happen and if there are future redevelopment opportunities he would be supportive of those conversations.

Vice-Mayor Jones requested that the gate that is open to the dumpster closed.

Councilman Mumpower thinks we have an unfortunate situation, but not a catastrophic situation. He thinks we are on the right track of working with the Maxwell Street neighborhood and Greenlife for a workable solution.

Mayor Bellamy said that the City Council will receive a report from Professor David Owens regarding his third party review of this issue and after that discussion, then Council can decide of how they wish to move forward.

When Councilman Davis asked what percentage are the 64 calls for service from residents living on Maxwell Street, Mr. Richardson said that approximately 90% of those calls are from Mr. Reid Thompson and some have been from Greenlife as well.

Councilwoman Cape recommended trucks be allowed in the loading docks and after they are unloaded, the gates are shut. And, that staging of the trucks not be on Maxwell Street.

Mayor Bellamy agreed there are ways to address this concern and we need the assistance of Greenlife to address this situation.

At 5:52 p.m., Mayor Bellamy announced a one-hour recess, at which time City Council would hold a closed session. Councilman Mumpower then moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: the City of Asheville and the State of North Carolina. The statutory authorization is contained in N. C. Gen. Stat. sec. 154-318 (a) (3). This motion was seconded by Councilman Davis and carried unanimously.

At 6:52 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

ILLEGAL IMMIGRATION POLICY DIRECTION

Councilman Mumpower said that this is a follow-up to the July 18, 2006, worksession item. He said that the problem is as follows:

1. Illegal aliens represent a significant public safety threat – DUIs, uninsured motorist risks, drug distribution, violent crime, repeat offenses, terrorism, etc.
2. Due to language barriers, ID falsification, legal and political restraints, and lifestyles founded outside of our society's civil structure, enforcement of our laws is spotty, inefficient, and expensive.
3. Illegal aliens represent a persisting social expense in terms of medical care, public education, social services, the judicial system, and other unfunded drains on our system.
4. There are currently 300,000 to 600,000 illegal aliens in North Carolina operating outside of the law under circumstances poorly conducive to cultural integration, personal accountability, and sustainable social order.
5. With the exception of the governments of other countries that generate broad based despair in their people, those who employee illegal aliens in this country represent the primary cause and solution to many of our issues with illegal immigration. If we begin enforcing our existing laws and expanding efforts to address those who illegally fund the exodus as a means to personal gain and circumventing the self-correcting nature of a fairly applied free market economy, we can reverse that exodus and strengthen the fragile top soil of our civilization and culture.

Recent State and Federal Actions that Impact on Local Government

1. NC SB 602 – Requires proper documentation to obtain a drivers license
2. NC SB 1523 – Requires all state schools to verify legal status of all new employees.
3. NC SB 1523 – Allows authorized state and local enforcement officers to perform immigration enforcement.
4. Congressional authorization has been created for local law enforcement officers to participate in a Delegation of Authority Program (287-G of the Immigration and Naturalization Act)
5. There is a local regional pilot initiative by Congressman Taylor (the first in the Country) involving WNC law enforcement bodies (strongly led by Henderson and Buncombe Counties) to solve the need for temporary jail facilities, legal authorization, and transportation issues.

What Can We Do?

1. Seek authorization of 2 or more existing APD officers (hopefully Spanish-speaking) as in the Federal Delegation of Authority Program.
2. Begin participation in the regional initiative to identify and intervene with illegal aliens who break our laws.
3. Take action (formal resolutions, direct contact, etc.) to request Federal and State authority to hold accountable those who knowingly employee illegal aliens without proper work permits, temporary resident status or citizenship.

Councilman Mumpower read the following letter he received from Congressman Charles H. Taylor on August 10, 2006: "As you are no doubt aware, the issue of illegal immigration is one touching communities across the nation -- including our own, here in Western North Carolina. The illegal aliens present in the State of North Carolina now place us in the unenviable position of eighth in the nation for population of illegal individuals, at an estimated 300,000. While the responsibility for addressing the ever-growing illegal immigration problem rightly rests with the federal government, it is very often our own local law enforcement agencies who first encounter

illegal aliens, during the course of their daily policing duties. In such instances, these officers can find themselves working against a morass of confusing jurisdiction, legal and bureaucratic obstacles, rather than moving swiftly toward the goal of ensuring that those who break our nation's immigration and public safety laws are incarcerated and deported. Fortunately, a federally-authorized program exists to assist our local law enforcement agencies with this growing challenge. Section 287 (g) of the Illegal Immigration Reform and Immigrant Responsibility Act created a program of intergovernmental cooperation to facilitate the handling of illegal aliens by state and local law enforcement officers. Pursuant to a memorandum of understanding between federal immigration and Customs Enforcement (ICE) officers and their local counterparts, local law enforcement officers may receive particularized training and the necessary resources and latitude to pursue investigations relating to illegal aliens -- including violent crimes, human smuggling, gang and organized crime activity, narcotics smuggling and money laundering. Officers in the Charlotte area have executed such an agreement with ICE agenda, and have experienced tremendous success in pursuing and prosecuting criminal cases involving illegal aliens. Based on interest expressed to me by several local law enforcement agencies in Western North Carolina, it is my hope to create a regional 287 (g) program in our area. As the largest metropolitan area in the Eleventh District, the City of Asheville certainly has a role to play in the success of such a program. Accordingly, I want to extend to the City my enthusiastic invitation to participate actively in a regional 287 (g) initiative. I look forward to working with you and the City of Asheville's law enforcement community to advance this program."

Police Chief Bill Hogan responded to various questions/comments from Council, some being, but are not limited to: out of the 13,711 arrests in 2005, how many were created by illegal immigrants and what was the nature of their arrests; if City Council approved two additional police officers, where would those officers be placed and would those officers be assigned to illegal immigrants; what is the guidelines for bail for illegal immigrants, especially relating to violent crimes; does the Police Department consider Driving Under the Influence a serious crime; have we had any illegal immigrants create violent crimes or drug trafficking in the last 90 days; what group is the leading provider of hard drugs in Western North Carolina; how many beds are in the Buncombe County Jail; how is an illegal immigrant identified if they have no identification; what percentage of illegal immigrants are in the ICE system; what percentage of the people arrested and taken to the Buncombe County Jail come from the City; are our officers experiencing frustration with arresting people who have no identification; and can you adjudicate someone with an identification.

When Councilman Freeborn asked if illegal immigrants are a problem for the Asheville Police Department since out of the 13,711 arrests in 2005 approximately 6.2% were suspected illegal immigrants, Police Chief Hogan said that this is not an overwhelming problem for us now.

Upon inquiry of Councilman Mumpower, Police Chief Hogan said he has no objection to participating in the Federal Delegation of Authority Program.

Mayor Bellamy said that at the July 18, 2006, worksession, there was support on Council to adopt a resolution.

City Attorney Oast presented City Council with a resolution adopted by the National League of Cities Board of Directors on July 21, 2006, which supports comprehensive immigration reform. He also presented City Council with a draft Asheville resolution in support of immigration reform. In the Asheville resolution, it reads "The City Council does hereby recognize the substantial contributions that immigrants have made to the City of Asheville, and requests that action be taken at the federal level to enforce immigration laws, and to devote sufficient resources to enforce those laws, as set out in the above-referenced National League of Cities resolution. The City Clerk is hereby directed to transmit a copy of this resolution to Senators Elizabeth Dole and Richard Burr, and to Congressman Charles Taylor."

Councilman Freeborn felt that the resolution should be placed on Council's August 22, 2006, regular meeting agenda, and not the Consent Agenda.

Councilman Newman welcomed Chief Hogan's further guidance about what we need to do to address these issues in a way that is practical for our community as this is a very complex and entrenched issue. He does agree with the idea that employers should be held accountable, but we need federal policies to set up the framework to do that. He welcomed Chief Hogan's advice on if there are additional policies needed to protect our community from dangerous criminals. But absent some specific request from him, it seems like the tools are already there for him to handle those problems and there needs to be some additional processes set up that we can plug into on a national and regional level to make some meaningful differences. He understood Chief Hogan say that if regional programs are developed, certainly we would be part of them.

Councilman Davis encouraged the Police Department to get involved in what is happening in the Charlotte area with the agreement with ICE.

Councilman Mumpower confirmed that City Council supports the Police Chief in doing the things that he feels is helpful and necessary for the public safety of our community in this area.

PUBLIC ARTIST OF THE YEAR/ASHEVILLE FILM ARTIST OF THE YEAR

Councilman Mumpower said that this is a follow-up proposal to Asheville City Council to advance our measured support for the arts in our community.

By supporting the arts (1) We know Asheville is a premier arts destination; (2) We know that the Arts have a significant impact on our economy; (3) We know that it is Council policy to support the arts in Asheville; and (4) We know that money is tight and that the private sector carries the Arts in Asheville.

Arts matter because (1) The arts are an economic engine – one of many that pulls an important train – Asheville; (2) The arts, at least many of them, have a constructive impact on our quality of life; (3) The arts, in one form or the other, touch every living person in Asheville – through everything from Country Music to Mozart, ballet to swing, finger painting to the grand masters, majestic art deco buildings to majestic mountain touched by the hand of God – art surrounds us.

The following is what the City does to help (1) The city provides roads, streets, and sidewalks to help people access the arts; (2) We work hard to help Asheville remain a safe place for people to enjoy the arts; (3) We fund the Civic Center – a major venue for the arts in our community; (4) We provide limited funding to nudge the arts forward in our community; and (5) We keep it on the radar screen.

He said that it is not just dollars. Some of us have philosophical disagreements with using forced tax payer monies to directly fund the arts. Yet we also realize that the arts need help – the City of Asheville can have a major impact on the arts through our policies. There are other ways we can help that involve limited dollars.

He feels we should use our clout and (1) appoint an official "City of Asheville Public Artist of the Year," (2) And a "City of Asheville Film Artist of the Year," (3) and once we've got it down, look toward other artistic groups we might support in similar fashion.

Regarding the Public Artist of the Year, he has have collaborated with Mr. David Mitchell of the Parks and Recreation staff and the Public Arts Board in reviewing and improving the

proposed parameters for this award that he now wishes to submit to you today for policy consideration. With these broader policy guidelines, he believes the Public Arts Board can begin their good work in bringing this initiative to full potential.

He then outlined the Public Artist of the Year 10 Point Plan: (1) This would be an annual competition – culminating during an unveiling and award presentation at Bele Chere. (A visible venue that can contribute to the enthusiasm around this award while enhancing Bele Chere.); (2) The competition would be open to artists who live, work, or study in Asheville and Western North Carolina. (We need a broad pool of potential applicants to assure that we obtain quality public art annually through this initiative. Asheville is the hub of public art in WNC and this is one means to assuming a regional leadership role in the arts.); (3) There would be a $10,000 award to the competition winner. (The Public Arts Board would be charged with raising 50% of those monies – he would assume responsibility for the first year) - additional 50% will come from general fund, grants, and other sources; (4) There would be an understanding that the winning piece would be donated to the community to be added as a permanent and maintained component of the city's public art opportunities; (5) There would be collaboration with the organized arts community (Asheville and area arts councils, college arts programs, etc.) in implementing this awards process; (6)The model of competition used in the Bele Chere poster contest in past years and other legitimate arts competitions would be considered with an eye on developing criteria that are inclusive, fair, and conducive to the long-term success of the effort; (7) A plaque to honor winners would be placed in a prominent location in the city; (8) Potential sites for locating the public art piece would be a factor in the competition – including but not limited to city parks; (9) Judges would represent a diverse cross section from Asheville and WNC with an interest in public art and the broader cultural, economic, political and social interests of the community. The panel is to include an out of area artist of recognized talent and the judging will be conducted on a blind basis; and (10) Our goal would be to make the process fun and festive as we propel our artists with strong recognition and enhance the availability of public art in Asheville.

Regarding the Film Artist of the Year, he said there is a second group we can recognize that offers additional opportunity to support the arts in our community.

He explained that (1) This competition would be open to all Asheville and Buncombe County residents and students in the film arts; (2) It would be an annual competition – culminating during the film festival; (3) There would be a $1,000 honorarium for the Film Artist of the Year provided through the general fund, grants, and other means; (4) The Board would be charged with raising additional funds as needed; (5) Opportunities would be developed to display recognized works on our city channel, public access channel, and other means; (6) Collaboration with the organized arts community would be requested; (7) Models of other successful competitions would be considered and/or duplicated; (8) A plaque to honor winning film artist would be placed in a prominent location in the city; (9) The full spectrum of film art skills should be eligible for award – including production, acting, direction, screenplay, etc.; and (10) Judges are to represent a diverse cross section from the community with an interest in film art and the broader cultural, economic, political and social interests of the community.

From here, City Council can (1) Deliberate the merit of these requests; (2) Officially endorse the efforts if the majority wishes; (3) Refer the concepts to the respective Boards with these broad parameters for developing and implementing a plan; and/or (4) Fund up to $11,000 per year, but only with the understanding that this program will result in our obtaining a public art piece for our community each year.

In conclusion, he said that (1) The money matters, but what really matters is the recognition and honor; (2) Through this program we can begin building our public art in meaningful, but economic fashion – it's past due; and (3) We have an opportunity to use the national reputation of Asheville to propel local artists forward toward their own fuller potentials…

Councilman Davis felt this was a good thing; however, he was concerned about keeping the piece of art forever. He also felt we may consider giving more than a $1,000 honorarium for the Film Artist of the Year.

Upon inquiry of Councilwoman Cape, Mr. Butch Kisiah, staff member to the Film Commission, said that the Film Commission reviewed Councilman Mumpower's proposal but took no official action. They were intrigued with the idea; however, they wanted to take a closer look at it. Regarding the $1,000 honorarium, the Commission discussed using that money to support other agencies that are involved in the arts.

Councilwoman Cape noted that the Film Commission was concerned about having to be fund-raisers and that was not the purview of their Commission. She expressed concern in that film-making is different from art in that film-making is a collaborative process and takes a team and didn't know where we would draw the line on who contributed the most. The Commission was concerned about the criteria that would be used to award the honorarium. She felt that if the City is interested in supporting the arts, there is a lot of ways to leverage that through existing organizations that are trying to do that. She felt we should work with what is existing already and see how the City can assist.

When Mayor Bellamy suggested Councilman Mumpower present this proposal to the Film Commission for their support, Councilman Mumpower said that the Film Commission formally approved the concept a couple of years ago when he was a member of the Commission and they were positive about it.

Councilman Freeborn felt we should remand this back to the respective boards and charge Councilman Mumpower to come up with an actual formalized plan with buy-in from the various players in the community.

Mayor Bellamy liked the idea of taking the proposal back to the boards for the criteria, but first asked if there was Council support for the initiatives or not.

Councilwoman Cape asked for additional information on what money already exists with the Public Art Board and what they are charged with. She wanted to know if we are honoring the money we have already given to the Public Art Board. She was frustrated when the Council reviewed the outside agency requests and didn't give any money to existing agencies that are supporting the arts in incredible ways. She would not support funding these two initiatives and would rather see the money go to the existing organizations to leverage that money.

When Vice-Mayor Jones asked if the Public Art Board was supportive of them raising money, Councilman Mumpower said that he would relieve them of that responsibility and try a three-year pilot program in which he would take personal responsibility for raising the $5,000, if the Public Art Board doesn't raise it. Vice-Mayor Jones would be supportive of that and suggested an evaluation at the end of the first year.

Regarding the Asheville Film Artist of the Year, Councilman Mumpower said he would be happy to let Councilwoman Cape that the proposal back to the Film Commission for review. But, with regard to the Public Artist of the Year, he asked for Council's support in providing the Public Art Board with these broad guidelines for them to work with and come back to Council with a proposal.

Mayor Bellamy said that the majority of Council supported giving the Public Art Board these broad guidelines for them to work with and come back to Council with a proposal.

Councilman Davis asked at some point to be brought up to date on the Film Festival.

BOARDS AND COMMISSIONS:

Mayor Bellamy suggested that City staff meet with Chairmen of the various boards they are responsible for to advise them of their role.

After a brief discussion on the appointment process for the five vacancies on the Community & Economic Development Alliance, it was the consensus of City Council to (1) appoint Scott Dedman; (2) interview Steve Cochran, Joyce Dorr, Cheryl McMurry and Ty Hallock; and (3) consider as candidates, but not interview: Greg Walker-Wilson; Chuck Tessier, David McConville, Becky Anderson and Kim MacQueen.

It was the consensus of Council to reappoint Tom Byers and Steven Sizemore to the Planning & Zoning Commission.

It was the consensus of Council to reappoint Herman Turk to the Buncombe County Tourism Development Authority.

OTHER BUSINESS:

Councilman Newman was pleased to report that on the first day of the pilot free ride on the Asheville Transit System program, our ridership was up almost 60%.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:23 p.m.

Keesha Lipe
CITY CLERK

Terry M. Bellamy
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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Tuesday – August 22, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

CITY'S TAX RATE

Mayor Bellamy said that she would like to take a moment to talk about an issue that has been the focus of several media reports in the last few days: the city's budget process and tax rate. It is important to every member of Council that citizens understand their upcoming tax bills, and so she appreciated the opportunity to briefly address this issue again tonight.

At the City Council retreat in January, City Council set a goal of adopting a revenue neutral tax rate. There is a state statute that defines revenue neutral as the rate that will produce the same amount of revenue produced by the current tax rate if no reappraisal had occurred.

Once Council said that was their goal, staff calculated Asheville's revenue neutral tax rate at 41 cents. And even though the city started the budget process with a $2.4 million dollar shortfall, the city manager worked to fill that gap and propose a budget with the revenue neutral tax rate. The proposed budget document made City Council's intentions clear: to hold the line on property taxes at the 41 cent revenue neutral rate.

However, after the proposed budget was presented to the public, Buncombe County announced that it was looking at increasing its property tax rate from the revenue neutral rate. This was important because the County's tax rate directly impacts the amount of sales tax revenue Asheville receives. Buncombe County's sales tax formula is based on the amount of property taxes a local government takes in; so, the higher a jurisdiction's property tax rate, the more sales tax revenue it receives.

She reviewed a slide from a public meeting held on May 8, 2006, where we discussed this impact. At that same meeting, we also discussed how the city's tax rate would have to be adjusted to avoid losing sales tax revenue.

In essence, City Council had to adjust our property tax rate to keep overall revenues coming into the city equal to the overall expenses. We were looking at Asheville's entire financial picture. It's in this context that the tax rate was referred to as an adjusted revenue neutral rate. Many of you are small business owners, and you know that by this definition, City Council's objective was not to raise new money. Our objective was to hold the line on taxes without having to cut critical public services. Our objective was to keep revenues equal to expenses without raising the tax burden above what was required to keep the city's finances in order.

The next slide she showed was how this affected the statutorily defined revenue neutral rate. Asheville's tax rate was adjusted by 1.38 cents in order to make up for the lost sales tax revenue. If Council had not adopted the additional 1.38 cents, Asheville would have been lacking $1.5 million in revenue. We discussed this information at a public meeting on June 20, 2006, so that Asheville citizens would understand what was happening with the city's tax rate and why.

City Council included tax bill education on our agenda last week to make sure our tax rate information right before tax bills were mailed. After that presentation, City staff discovered that the final budget document did not include how and why the tax rate was adjusted from 41 cents to 42.38 cents. Staff has acknowledged this administrative oversight and corrected the adopted budget document. In fact, we are in the process of printing revised budget documents that will be available to the public.

Having acknowledged that mistake, it's important to also acknowledge the efforts of staff and my fellow Council members to make this budget process one of the most open and accessible we've had since she has been a part of City Council. We had seven public meetings on the budget that were all televised live and rebroadcast on the city's government channel. We made all of our budget documents and supporting information available on our website and through the city's e-newsletter. And we've gone to great lengths to explain what tax bills will look like and how Asheville's tax rate will impact citizens.

As Mayor, she can look each of you in the eye and say that Asheville went above and beyond to make the budget process transparent and, most importantly, to hold the line on taxes.

It's important to the entire City Council to conduct business in the open, particularly when it comes to financial matters. As soon as we receive quarterly financial reports, they are also made available to the public. When we have questions about the city's financial performance, we ask those questions during televised meetings. We are dedicated to working with citizens at the table.

When she was sworn in as Mayor, she made a promise to the people that the City's business was their business. And she believes every member of Council and every member of staff has lived up to that same promise during our budget process. It was not easy to dig ourselves out of a $2.5 Million hole, but we did. And it was not easy to hold the line on taxes, but we did when you take into consideration the City's entire revenue base. And every citizen in Asheville deserves to hear that part of the story.

Finally, she wrapped up by encouraging citizens to sign up for the city's e-newsletter, where they can get City Council's agenda, supporting documents and other city information every week. Citizens who would like to obtain budget documents or DVDs of past Council meetings can request those by calling our City Clerk Keisha Lipe.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 11, 2006, AS "GLOBAL DAY OF MUSIC FOR PEACE"

Mayor Bellamy read the proclamation proclaiming September 11, 2006, as "Global Day of Music for Peace" in the City of Asheville. She presented the proclamation to Mr. Richard Hall, President of the Asheville Sister Cities Inc. who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the City Manager's request, Consent Agenda Items "L" and "N" will be removed from the agenda entirely.

Mayor Bellamy asked that Consent Agenda "R" be removed from the agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 25, 2006; THE SPECIAL MEETING HELD ON JULY 31, 2006; AND THE WORKSESSION HELD ON AUGUST 15, 2006

B. RESOLUTION NO. 06-141- RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AN OFFER TO PURCHASE PROPERTY LOCATED AT 8 CEDAR STREET FROM R & G PROPERTIES

Summary: The consideration of a resolution authorizing the Mayor to accept an offer to purchase property located at 8 Cedar Street from R & G Properties, in the amount of $158,600.

On July 25, 2006, City Council authorized advertising for upset bids pursuant to a bid from R & G Properties for house and land at 8 Cedar Street in the amount of $158,600. The advertisement was published on July 28, 2006, and no upset bids were received.

The property is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It is improved with a circa 1926 two story Dutch Colonial with white clapboard siding on a 0.1745 acre lot with typical residential landscaping, fencing, etc. It needs some repairs in order to obtain a Certificate of Occupancy.

The bid from R & G Properties is equal to the minimum price of $158,600.

Pros:

- The bid is equal to the appraised value and the upset bid method of sale has ensured a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.
- It is an efficient use of resources, because un-needed property will return to private ownership.
- It will make available moderately priced housing in a fully serviced neighborhood.

Con:

- Future growth and development in the area could require street improvements that could result in the need to reacquire the property, but that is not likely in the foreseeable future due to the residential character of the neighborhood and the number of inter-connecting neighborhood streets which provide alternative routes. Additionally a portion of the property along Fairview Road is being retained by the City to provide an improved turning radius and sidewalk.

Economic Development staff recommends adoption of the resolution which will authorize the Mayor to accept an offer to purchase property located at 8 Cedar Street from R & G properties in the amount of $158,600.

RESOLUTION BOOK NO. 30 - PAGE 70

C. RESOLUTION NO. 06-142- RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: This is the consideration of appointing members to the Police Officers and Firefighters Disability Review Board.

The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members of the Police Officers and Firefighters Disability Review Board expired on July 19, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper and Mr. Lewis to each serve an additional two-year term respectfully, terms to expire July 19, 2008, or until their successors have been appointed.

In addition, at the July 18, 2006, worksession, it was the consensus of City Council to wait for a recommendation from the Buncombe County Medical Society for the licensed physician vacancy.

RESOLUTION BOOK NO. 30 – PAGE 71

D. RESOLUTION NO. 06-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND AN AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER IN CONSIDERATION OF A GRANT FOR THE PURPOSE OF IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE REDEVELOPMENT AREAS

Summary: The consideration of a resolution authorizing the City Manager to amend the original agreement dated 4/26/05 with the North Carolina Rural Economic Development Center for adjustments to the approved budget and for the extension of the termination date of the agreement from 8/31/06 to 7/31/07.

The City was successful in obtaining grant funds totaling $820,000 for planning and implementation of the River Redevelopment Plan. Over the past year the City has worked with the merchants and property owners in Biltmore Village to refine and prioritize the use of the grant funds. Based on this effort, staff proposes the following adjustments, which have been accepted by the Merchant's Association and the NC Rural Economic Development Center. The Biltmore Village Merchants have requested that the infrastructure improvements be put on hold until after January 1, 2007, resulting in a need to extend the termination date. The floodway buyout program appears to be able to be accommodated through other state funding sources.

Existing Allocation	
Loan Program	$375,000.00
Floodway Property Buyout	$200,000.00
Tax Increment Finance Study	$50,000.00
Biltmore Village Infrastructure	$75,000.00
Planning Grant Remainder to be Reallocated	$40,000.00
Storm Sewer Improvements All Souls	$80,000.00
Total	$820,000.00

Proposed Reallocation	
Loan Program	$467,965.00
Unallocated Loan Funds	$74,035.00
Floodway Property Buyout Appraisals	$4,500.00
Tax Increment Finance Study	$25,000.00
Biltmore Village Infrastructure/Streetlights/Wiring	$125,500.00
Storm Sewer & Sidewalk Improvements/All Souls	$123,000.00

Total	**$820,000.00**

PROS:

- Fosters "Community Building" through citizen involvement in the identification of priority needs for use of the funding within the community.
- Improves the public infrastructure in Biltmore Village

CON: None noted.

The Planning and Development Department recommends adoption of the resolution authorizing the City Manager to execute an amended grant agreement with the NC Rural Economic Development Center.

RESOLUTION BOOK NO. 30 - PAGE 72

E. RESOLUTION NO. 06-144 - RESOLUTION AUTHORIZING DAWSON PLACE IN EAST ASHEVILLE TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Dawson Place in East Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Dawson Place is a developer-constructed street that has an average paved width of 22 feet and a length of 0.14 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Dawson Place will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Dawson Place in East Asheville as a City maintained street.

RESOLUTION BOOK NO. 30 – PAGE 73

F. RESOLULTION NO. 06-145 - RESOLUTION AUTHORIZING MOSER'S PLACE IN WEST ASHEVILLE TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Moser's Place in West Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Moser's Place is a developer-constructed street that has an average paved width of 25 feet and a length of 0.16 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Moser's Place will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Moser's Place in West Asheville as a City maintained street.

RESOLUTION BOOK NO. 30 – PAGE 75

G. RESOLUTION NO. 06-146- RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH COOPER CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS GROVESTONE AREA WATER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the Mayor to sign a contract in the amount of $557,915 with Cooper Construction for the project known as Grovestone Area Water System Improvements Project; and the associated budget amendment, in the amount of $74,234 which will provide the additional funding needed to complete the project.

The Water Resources Department is installing a new water pump station, water storage tank, various connections and modifications to the water system along Lake Eden Road and abandoning approximately 8,000 LF of the more than 100 year old twin 16 inch water lines that run through the Grovestone quarry.

Three bids were received for this project, (1) Cooper Construction Company- $557,915.00; (2) McCall Brothers, Inc. - $618,917.00; and (3) McCarroll Construction Company - $965,450.00. Recommendation from our consulting engineering firm of McGill Associates was to award the construction contract to Cooper Construction Company, an area company located in Henderson County. Because of increased prices for materials, the total cost of the project is $74,234 more than the current budget appropriated for the project. Staff recommends that budget savings in the 2003 Annexation project and the Sweeten Creek Phase I NCDOT project be used to cover this $74,234 cost increase.

PROS:

- This project will enhance the water system by enabling the Water Resources Department to abandon approximately 8,000 LF of 100 year old problematic 16 inch cast iron lines that break regularly causing customer water outages in the Swannanoa valley area.
- These water lines have also been a safety concern due to the depth of the lines in many places throughout the quarry of more than 70 feet deep.

CON:

- The cost of the project is more than the original engineering estimate done in 2004 but with the rise in material pricing the past two years the bid price is in line with other area projects as determined by the consulting engineer.

City staff recommends City Council approval of the Mayor signing contract agreement with Cooper Construction Company for the installation of a new pump station, storage tank and other connections to enable the abandonment of 8,000 LF of the old twin 16 inch water lines as well as approval of a budget ordinance amendment to provide adequate funding.

RESOLUTION BOOK NO. 30 – PAGE 77

H. ORDINANCE NO. 3382 - BUDGET AMENDMENT FOR THE PROJECT KNOWN AS GROVESTONE AREA WATER SYSTEM IMPROVEMENTS

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 23 – PAGE 67

I. RESOLUTION NO. 06-147 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $1,093,870.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $1,093,870, is for the Airport Improvement Program Project No. 3-37-0005-31. This project consists of acquiring aircraft rescue and fire fighting vehicle and modifying the terminal building (design).

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-31.

RESOLUTION BOOK NO. 30 – PAGE 81

J. RESOLUTION NO. 06-148- RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE AUGUST 29, 2006, COMMUNITY MEETING

RESOLUTION BOOK NO. 30 – PAGE 82

K. RESOLUTION NO. 06-149 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH McGILL ASSOCIATES FOR ENGINEERING SERVICES ASSOCIATED WITH THE NEIGHBORHOOD WATER SYSTEM IMPROVEMENTS PROJECT - PHASE III

Summary: The consideration of a resolution authorizing the Mayor to sign a contract with McGill Associates, PA for engineering services in the amount of $108,250 for Neighborhood Enhancement Water System Improvements.

With the assistance of McGill Associates, the Regional Water Authority received a $3 Million grant for Critical Needs Water System Improvements. These projects are now called Neighborhood Enhancement Water System Improvements. Following completion of the original projects, approximately $750,000 of the grant proceeds was not spent due to favorable contract

pricing. Grant funding projects have to be identified prior to requesting construction bids and the low bid was $750,000 less than the available grant funds. McGill Associates assisted the Water Resources Department with obtaining N.C. Dept. of Environment and Natural Resources (NCDENR) approval to utilize the remaining funds for additional projects. This was a 24 month process with recent approval to expend the remaining funds with the deadline for the expenditure of these funds being July 2007. McGill Associates has completed the majority of the design work associated with the additional Neighborhood Enhancement projects. Approval of this Engineering Services Contract will ensure that the much needed water system improvements occur within the time limits imposed by NCDENR.

McGill Associates prepared the Preliminary Engineering Report that was the basis of the NCDENR's approval of the original $3 Million grant. McGill Associates also did the engineering design and contract administration on the original Critical Needs Water System Improvements projects. McGill Associates did another Preliminary Engineering Report which resulted in NCDENR's approval to expend the remaining $750,000 grant proceeds and have completed the design of the additional Neighborhood Enhancement water system improvement projects.

PROS:

- These projects will enhance the water system by enabling the Water Resources Department to replace approximately 13,120 linear feet of existing 2-inch waterline with new 8-inch ductile iron waterline.
- These new waterlines on 8 roads will dramatically improve water service to existing customers, provide fire protection for the adjoining properties and reduce maintenance and operation expenses.
- Continuation of the contract with McGill Associates will ensure that the remaining grant funds are expended within the time constraint established by NCDENR.

CON:

- Failure to move forward with the engineering services contract with McGill Associates would jeopardize completion of the projects within current time constraints and could lead to forfeiture of $ 750,000 of grant proceeds.

City staff recommends City Council approval of the Mayor signing contract agreement with McGill Associates for Neighborhood Enhancement Water System Improvements.

RESOLUTION BOOK NO. 30 – PAGE 83

L. RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF INTENT REGARDING EXECUTION OF A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER AT 224 LOUISIANA AVENUE

This item was removed from the Consent Agenda.

M. RESOLUTION NO. 06-150 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHSAE PROPERTY OFF OF CLEMMONS STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property off Clemmons Street.

A bid has been received from Russell Keith in the amount of $2,600 for the purchase of land off Clemmons Street.

The land off Clemmons Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped fragment lot comprising 0.03 acre±. It has no access and was intended to be sold to an adjoining property owner. It is zoned RS8, and it is not suitable to build on. The bid from Russell Keith is in the amount of $2,600. We have in file an appraisal letter prepared by Gordon F. Lucks dated March 30, 2006, estimating the market value of the property at $2,600. Mr. Keith proposes to acquire the subject parcel for assemblage with the property he owns next door.

PROS:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program income.

Economic Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 30 – PAGE 84

N. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND CONVEY AN EASEMENT OVER A PORTION OF CITY OWNED PROPERTY AT 224 LOUISIANA AVENUE TO BELLSOUTH TELECOMMUNICATIONS INC.

This item was removed from the Consent Agenda.

O. RESOLUTION NO. 06-151 - RESOLUTION AMENDING RESOLUTION NO. 01-118 AUTHORIZING A LICENSE AGREEMENT WITH MOTIENT COMMUNICATIONS INC.

Summary: The consideration of a Resolution amending Resolution No. 01-118 authorizing a License Agreement with Motient Communications, Inc. (Motient) for an antenna at 36 Reservoir Road.

Motient has operated an antenna and related equipment at 36 Reservoir Road since October, 1995. The current lease with Motient was authorized by Resolution No. 01-118. As a result of a recent review of the file a technical error was discovered in the authorizing resolution. The term of the license agreement was defined as "3 years with 2 one year renewal terms at an annual license fee of $5,400". The intended definition of the term, as presented in the Staff Report, was "three years at an annual license fee of $5,400, with 2 three year renewal terms with a 10.5% increase in the annual license fee at the beginning of each renewal term". The license agreement is consistent with the latter definition of the term.

Approval of the resolution will amend Resolution No. 01-118 to correct the technical error.

Economic Development staff recommends adoption of the Resolution amending Resolution No. 01-118 authorizing a License Agreement with Motient Communications, Inc. (Motient) for an antenna at 36

RESOLUTION BOOK NO. 30 – PAGE 85

P. **RESOLUTION NO. 06-152- RESOLUTION REAPPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION**

Summary: The consideration of appointing members to the Planning & Zoning Commission.

The term of Tom Byers and Steven Sizemore, as members on the Planning and Zoning Commission, expired on August 14, 2006.

At the City Council worksession on August 15, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Byers and Mr. Sizemore to each serve an additional three-year term respectively, terms to expire August 14, 2009, or until their successors have been appointed.

Staff recommends City Council appointing members to the Planning & Zoning Commission.

RESOLUTION BOOK NO. 30 – PAGE 86

Q. **RESOLUTION NO. 06-153 - RESOLUTION REAPPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Summary: The consideration of a resolution appointing a member to the Buncombe County Tourism Development Authority.

The term of Herman Turk, as a member of the Buncombe County Tourism Development Authority, will expire on August 30, 2006.

At the City Council worksession on August 15, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Turk, representing the owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units, to serve an additional three-year term, term to expire August 30, 2009, or until his successor has been appointed.

Staff recommends City Council adopt a resolution appointing a member to the Buncombe County Tourism Development Authority.

RESOLUTION BOOK NO. 30 – PAGE 87

R. **RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE RIVER RAFT RACE FESTIVAL ON AUGUST 26, 2006; AND THE RIVER SCULPTURE FESTIVAL OPENING AND CLOSING EVENTS ON SEPTEMBER 1 AND OCTOBER 28, 2006**

This matter was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 06-154 - RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE RIVER RAFT RACE FESTIVAL ON AUGUST 26, 2006

RESOLUTION NO. 06-155 - RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL OPENING AND CLOSING EVENTS ON SEPTEMBER 1 AND OCTOBER 28, 2006

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Rockin' The River Raft Race Festival on August 26, 2006, and at the River Sculpture Festival Opening and Closing Events on September 1 and October 28, 2006.

The below listed groups have requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at the following events and to allow for consumption at these events.

- The Rockin' The River Festival, which is a benefit for RiverLink, Inc., has requested that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on August 26, 2006 in the infield area of Carrier Park.

- The River Sculpture Festival, which is an Asheville Area Arts Council event, has requested that City Council permit them to serve beer and/or unfortified wine at their opening and closing events and allow for consumption on September 1, and October 28, 2006, in the French Broad River Park.

The Asheville Parks and Recreation Department recommends City Council adopt the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Rockin' The River Raft Race Festival on August 26, 2006, and also at the River Sculpture Festival Opening and Closing Events on September 1 and October 28, 2006.

Councilman Newman moved for the adoption of Resolution Nos. 06-__ and 06-__. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 06-154 - RESOLUTION BOOK NO. 30 – PAGE 88
RESOLUTION NO. 06-155 - RESOLUTION BOOK NO. 30 – PAGE 91

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT AND ASSOCIATED MASTER PLAN FOR MILLS CREEK CONDOMINIUMS, LOCATED OFF MILLS GAP ROAD AND SWEETEN CREEK ROAD FOR A CHANGE IN ACCESS**

ORDINANCE NO. 3383 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT AND ASSOCIATED MASTER PLAN FOR MILLS CREEK CONDOMINIUMS, LOCATED OFF MILLS GAP ROAD AND SWEETEN CREEK ROAD FOR A CHANGE IN ACCESS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Assistant Planning & Development Director Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of an amendment to the conditional use permit and associated Master Plan for Mills Creek Condominiums located off Mills Gap Road and Sweeten Creek Road for a change in access.

The ***Asheville City Development Plan 2025 (ACDP 2025)*** describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing market (or zoning) conditions. The ***ACDP 2025*** encourages a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property to meet the increasing housing needs of the City of Asheville's work force population. This property, located on a major corridor, is already zoned to allow for a high-density residential development and is one of many development projects proposed for this growing area of the City.

While the proposed plan and amendment still appears to achieve one of the City's social goals of providing reasonably priced work force housing, the ***ACDP 2025*** also discusses the need for transportation and development to meet other physical and economic goals. The proposed amendment eliminates the secondary entrance onto Sweeten Creek Road resulting in a less desirable road layout that does not meet the City of Asheville's physical technical standards and does not provide the interconnectivity desirable for positive economic development.

The applicant, Stan Robinson, is requesting an amendment to a previously approved Master Plan and conditional use permit (CUP) for a 76 unit condominium development. The proposed development is located on 9.75 acres off of Mills Gap Road (City Exhibit 3 - Aerial Map). The new residential construction will all be 2 story, attached condominiums clustered in groups of 2, 3, and 4 units. The property is within City limits and is zoned RM-16 (Residential Multi-family, High Density). This property is subject to Hillside Development Standards and the total number of units is well within the allowable density for RM-16.

The original review of this Master Plan also included the consideration of a new public road that would provide a valuable connection between Sweeten Creek Road and Mills Gap Road (City Exhibit 3 - Old Master Plan). Since approval by the City Council in January 2006, the adjacent property owner who had previously agreed to the road connection through their property is no longer supporting this proposal. The applicant, in an effort to keep the residential

development moving forward, is proposing an alternative emergency access through the parking area of the adjacent apartment complex; this secondary access, like the primary, will also exit onto Mills Gap Road (City Exhibit 3 - New Master Plan). Because the secondary connection is not public road and gated for emergency access only, the second connection is not considered a full access point and does not meet the City of Asheville's maximum cul-de-sac length of 1000 feet and is exceeding it by 600 feet (60%). A recent ordinance amendment approved in June 2006 allows the City Council to vary dimensional and other technical standards applied to Conditional Zonings and Conditional Use Permits.

The original proposal was approved in January of 2006 with the added condition that the applicant work with the City traffic engineer on developing some appropriate traffic calming measures to discourage cut-through traffic on the new road.

From a technical standpoint the applicant has several options: (1) provide a second full access point, if not on Sweeten Creek then somewhere else; (2) reduce the road length and the number of units; (3) redesign the site and perhaps consider a different housing product that wouldn't rely on a public road; or (4) request an amendment to the approved Master Plan and CUP along with a request to vary the City's maximum cul-de-sac length requirement – which the Council now has the authority to do as a result to an Ordinance amendment approved in June of this year.

It's also important to note that the applicant is proposing a gated emergency access point as an alternative that would route emergency traffic through the parking area of the adjacent apartment complex. Although staff recognizes appreciates the alternative proposed, this option fails to meet our minimum technical standards and cannot be supported by staff primarily due to (1) anticipated problems with traffic stemming from providing only a single point of access; (2) delayed emergency response times; and (3) problems with providing service and maintenance.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed Master Plan amendment has been reviewed by City Planning, Engineering, and Asheville Fire Department staff which finds that the proposed amendment does not meet all public health and safety related requirements by not meeting the technical standards set forth in the Standards and Specifications Manual for maximum cul-de-sac length. The following concerns have been cited by the City Fire Marshal and Traffic Engineer: (1) a single point of access provides very poor traffic access and circulation, requiring all site traffic to access via one driveway. This substantially increased the possibility of future traffic challenges. Mills Gap Road is a busy road that will only get busier; (2) A single point of access also makes maintenance a major challenge. As the only access the road is very difficult to repave or construct, utilities cannot be reasonable accessed or reconstructed, and common maintenance activities are complicated; (3) Any number of occurrences can and do close streets or intersections around the city; crashes, tree fallings, water line breaks, debris spills; leaving residents with no alternative; (4) Dead-end streets discourage activities such as walking and bicycling because streets are not interconnected; and (5) Emergency access is reduced as responders have to have proper equipment ready for gated accesses in the city limits. The gate also imparts delay on responders.

it is important to note that both the Fire Marshal and Traffic Engineer feel that the secondary access proposed is a better alternative than providing no alternative.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   As described in the original report, the proposed amendment remains reasonably compatible with natural features of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   As described in the original report, the proposed amendment will not result in a negative impact to adjacent property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed amendment does not affect the massing or home layout that had been previously considered and approved.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The ***Asheville City Development Plan 2025 (ACDP 2025)*** describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing market (or zoning) conditions. The ***ACDP 2025*** encourages a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property to meet the increasing housing needs of the City of Asheville's work force population. This property, located on a major corridor, is already zoned to allow for a high-density residential development and is one of many development projects proposed for this growing area of the City.

   While the proposed plan and amendment still appears to achieve one of the City's social goals of providing reasonably priced work force housing, the ***ACDP 2025*** also discusses the need for transportation and development to meet other physical and economic goals. The proposed amendment eliminates the secondary entrance onto Sweeten Creek Road resulting in a less desirable road layout that does not meet the City of Asheville's physical technical standards and does not provide the interconnectivity desirable for positive economic development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The project area is located in clear and close proximity to major road facilities, interstate connections, service centers, and easily accessed employment centers; however, the compromised access can delay emergency response.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

As described in Standard No. 1, the proposed single access point results in very poor circulation and access and can result in undesirable traffic congestion or blocks due to emergency street closings.

For the reasons outlined above, staff finds the proposed site plan amendment to be unreasonable.

Considerations

- Amendment to proposed road does not meet City's technical standard for maximum cul-de-sac length and provides a single point of access for a high density development.
- Gaining a second full public access requires the cooperation of adjacent property owners and may not be feasible.
- Maximum cul-de-sac length has been waived by the City Engineer on previous occasions but all instances involved a very limited number of single family homes where full access would require an excessive amount of earth moving.
- Under the current building form, meeting the maximum cul-de-sac length would reduce the total number of units from 76 to 50 (approximately).
- Public right-of-way to adjacent property is still proposed allowing for a future connection if feasible.

Planning staff defers to the recommendation of the City Fire Marshal and Traffic Engineer that the proposed amendment be denied and the applicant pursue a full public access easement with the adjacent apartment complex owner and/or other design or development options for this property.

Planning staff recommends denial of the Master Plan amendment for the Mills Creek Condominium development project. However, should City Council move to approve the proposed amendment, staff would recommend the following conditions: (1) A full right-of-way to vacant property to the south to allow for future connections; and (2) Full compliance with all other technical standards identified by the TRC as a result of the final detailed review.

Mr. Craig Justus, attorney representing the applicants, explained that all the good reasons this project was approved for back in January are still there - infill development, housing prices are modest (average price is $159,000), lower density, etc. He said that the road's shape is dictated by the shape of the properties. One option that they have is to cut 20 units, bringing the total to 54 units but 54 units would not make the project feasible. In reviewing the January staff report, the second access was necessary for emergency purposes. Because they were unable to acquire the property in the original Master Plan for the second access, they met with City staff to talk about other options. The best option available to them was through Mr. George Morosani's adjoining property through his apartment complex, and he asked that it be for emergency access only. Therefore, they feel that they have met the intent of providing a second access. Mr. Justus pointed out that Council has approved a project in the past that had only one full access, with a requirement for an emergency access (which is gated). He urged Council to approve the amendment to the Master Plan for a change in access and to also waive the 1,000 feet maximum cul-de-sac length requirement.

Mr. Ken Putnam, traffic engineer with Mattern & Craig, said that when this project is fully built out, it is expected to generate about 500 trips a day. After an analysis, we get acceptable levels of service indicating that there should be no problems with the intersection functioning from a traffic standpoint. Regarding the emergency access, emergency vehicles are already accessing the adjacent apartment complex by existing access points and there seems to be no problem there. It is reasonable that the emergency vehicles should go into the new project just as easily (Applicant Exhibit 1).

After rebuttal, Mayor Bellamy closed the public hearing at 5:37 p.m.

Upon inquiry of Councilman Davis, Fire Marshall Wayne Hamilton explained the different devices used for gates. His recommendation would be a 20-foot wide gate and that the access road be 20-foot wide. It is the intent of the State Fire Code that emergency access points allow emergency vehicles to pass one another in the event of an emergency. The lowest we have allowed is 16-feet which meets the City's alley standards.

Mr. Chris Eller, with Civil Design Concepts, said that the proposed access road will be 16-feet (with shoulders) and they have a 20-foot easement reserved. He feels the 20-foot gate could be accommodated, along with the 16-foot of access. He said that he would work with Fire Marshal Hamilton to agree upon a common gate that would be acceptable. The road in Mr. Morosani's parking lot is at least 24-feet in width.

Upon inquiry of Councilwoman Cape, Fire Marshal Hamilton said that they always encourage the use of sprinklers and if they sprinkler the units, that would alleviate his concern of two access points. He would still support the connectivity issue, even with sprinkler protection.

Upon inquiry of Councilman Mumpower, Fire Marshal Hamilton said that if they have a 16-foot width for the emergency access road, they can negotiate that. In addition, they would reduce the gate width to accommodate the road width.

When Councilman Mumpower asked about the cost of sprinklers, Fire Marshal Hamilton said that the statewide average is about $2.40 a square foot and that does not take into account any infrastructure needs.

Mr. Justus spoke against the sprinklering because it will drive the cost of the project out of their price range. He noted that they are preparing a cross-easement to the Morosani property so that they have a second point of access, which will be through this property.

There was a brief discussion about the other projects that have been approved with similar circumstances as this project.

Upon inquiry of Councilwoman Cape, City Traffic Engineer Anthony Butzek said that the City would enforce the sight triangles at Mills Gap Road similar to any project and at the final review we will check to make sure that sight triangle is abundantly clear.

Councilman Mumpower moved for the adoption of Ordinance No. 3383, granting an amendment to the conditional use permit and Master Plan for the Mills Creek Condominiums, subject to the following conditions: (1) a minimum 16-foot paved surface for the emergency access road with gate; (2) waiver of the 1,000 feet maximum cul-de-sac length requirement; (3) if the applicant develops the property on Sweeten Creek Road, that it would be a point of access as well; and (4) full compliance with all other Technical standards identified by the TRC as a result of the final detailed review. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 69

D. PUBLIC HEARING TO REZONE PROPERTY LOCATED AT 45 TOMS ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RESORT DISTRICT

ORDINANCE NO. 3384 - ORDINANCE TO REZONE PROPERTY LOCATED AT 45 TOMS ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RESORT DISTRICT

Mayor Bellamy opened the public hearing at 6:02 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 7+ acres at 45 Toms Road from RM-16 Residential Multi-Family High Density District to Resort District. This public hearing was advertised on August 11 and 18, 2006.

As this site is located near the western edge of the extraterritorial jurisdiction (ETJ) area, much of the property around it is not zoned. Additionally, it is worth noting that the property lies within the Manufactured Housing Overlay District as well as the Manufactured Housing Community Overlay District.

The *Asheville City Development Plan 2025* lists the "Smart Growth Land Use Policies" adopted by the City Council in 2000. The plan also recognizes the "New Urbanism" concept and includes as an appendix this movement's charter, which mentions tenets such as the promotion of neighborhoods with a variety of land uses and increased land use intensity. Beyond that, there are no specific goals of the plan that this project would be furthering, but neither can it be said that the project is out of compliance with the plan.

With the exception of perhaps encouraging a small business, approval of the proposed plan would neither support nor hinder the goals and tasks of the Strategic Operating Plan.

On October 12, 2005, City Council voted to approve a rezoning of roughly 31 acres off of Dogwood Road from Industrial to RS-4. The rezoned area is approximately one-half mile north-northwest of the Toms Road site.

On January 24, 2006, City Council voted to deny a rezoning of several properties along Smoky Park Highway and Rutherford Road from RM-16 and CBII district to HB district. That area is approximately one-half east-northeast of the Toms Road site.

On January 24, 2006, City Council voted to approve a rezoning of properties located at 16 Forsythia Lane from CBII and RM-16 to entirely RM-16. The properties are slightly more than half a mile east-northeast of the Toms Road site.

On June 7, 2006, City of Asheville staff issued a notice of violation to the applicant (Suzanne DeJohn and Dale Lane) for operating a bed and breakfast homestay without having obtained a permit for the change of use from a single family residence. The bed and breakfast homestay use is a use by right subject to special requirements under the existing zoning; the applicant can bring the property into compliance for this use without the approval of this rezoning request

The subject site is located near the western edge of the City's ETJ area, about 200 yards south of Smoky Park Highway on Toms Road (the property also has a significantly smaller frontage on Short St). The property consists of just over 7 acres and is currently zoned RM-16. The majority of the property is vacant with the exception of a single-family residence, a barn and some smaller outbuildings. Railroad tracks cross Pallet Road between the applicant's property and Smoky Park Highway. Surrounding land uses include manufactured housing, vacant land, a quarry, and a pallet manufacturing operation. Large properties to the south and west of the site are outside of the City's Zoning Jurisdiction.

The larger area in which the subject site is situated has a variety of uses represented. The mix of the commercial area fronting Smoky Park Highway, the presence of a 36-acre mobile home park about 100 feet east of the property, and the aforementioned quarry and manufacturing operations make the area difficult to classify with a single label. The current low-intensity use of this property is in contrast with the neighboring high-intensity uses, though it should be noted that the site cannot be intensively developed owing to the substantial fraction which lies in floodway and floodplain hazard areas.

The applicant has applied for a rezoning of the lot from RM-16 (Residential Multi-family High Density District) to Resort District. The residential density allowed within the Resort district is essentially the same as that of the existing RM-16 district; the applicants wish to have the flexibility to use the property for future tourism-related businesses. The Resort zoning district was established to provide an area for the development of resort oriented uses and conference/retreat facilities and the development and expansion of facilities which serve primarily tourists and vacationers.

The intent of the RM-16 Residential Multi-Family High Density District (the existing zoning) is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas.

The Resort District does require a minimum lot size of 5 acres, a requirement which this property meets. The district also has design and operation standards specifically added to protect adjacent residential areas. Given the limited extent of developable land on the site (due to flood hazard areas) and the design and operation standards, staff does not see the potential impact of development under the proposed zoning to be significantly different from that which could be pursued under the existing zoning. Further, staff is of the opinion that, given the presence of varied high-impact uses nearby, a seven-acre resort district provides opportunities for appropriate land uses.

As of this writing, staff has received one communication from a neighbor who was seeking more information but voiced no opposition to the proposed rezoning.

On August 2, 2006, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Maximum residential density for the proposed zoning is essentially the same as that for the existing zoning.
- Flood hazard areas on the subject site would prevent high-intensity development of much of the property.
- The site's proximity to quarrying and industrial uses make it well suited for small-scale non-residential activities.
- The Resort District requires compliance with standards specifically designed to ensure compatibility with neighboring residentially zoned areas.

Staff views the proposed zoning district to be equally appropriate for the site as the existing zoning and recommends approval of the request.

Mr. Dale Lane, applicant, said that this zoning gives them a great deal of flexibility to create a variety of micro-businesses.

Mr. Fred English felt that Asheville has to stop allowing people to cut trees down.

Mayor Bellamy closed the public hearing at 6:09 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3384, to rezone 7+ acres at 45 Toms Road from RM-16 Residential Multi-Family High Density District to Resort District, and find the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 73

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-157- RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of a resolution appointing members to the Civic Center Commission.

The terms of Jerri Goldberg and George Keller, as members of the Civic Center Commission, will expire on June 30, 2006. In addition, Jean Ann Taylor has resigned as a member, thus leaving an unexpired term until June 30, 2006.

At the City Council worksession on June 20, 2006, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint George Keller to serve a three year term, term to expire June 30, 2009, or until his successor has been appointed.

Also at the June 20, 2006, worksession, City Council instructed the City Clerk to re-advertise for the vacancies another month.

At the July 18, 2006, worksession, City Council instructed the City Clerk to arrange interviews Joseph Malki, Chip Hood, Tebbe Davis and Timothy Laughlin.

After Council spoke highly of the candidates, Joseph Malki received 0 votes; Chip Hood received 1 vote; Tebbe Davis received 7 votes; and Timothy Laughlin received 6 votes. Therefore, Tebbe Davis and Timothy Laughlin were appointed as members of the Civic Center Commission to each serve a three-year term respectively, terms to expire June 30, 2009, or until their successors have been appointed.

In addition, George Keller was reappointed to serve a three year term, term to expire June 30, 2009, or until his successor has been appointed.

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B. RESOLUTION NO. 06-158 - RESOLUTION APPOINTING MEMBERS TO THE COMMUNITY & ECONOMIC DEVELOPMENT ALLIANCE

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Community & Economic Development Alliance.

Pursuant to Resolution No. 06-100 adopted by the City Council on May 9, 2006, endorsing the HUB Project's governing structure, City Council needs to appoint five members to this board.

At the July 18, 2006, worksession, City Council instructed the City Clerk to re-advertise the vacancies.

On August 15, 2006, City Council instructed the City Clerk to arrange interviews for Joyce Dorr, Cheryl McMurray, Ty Hallock and Steve Cochran. In addition City Council will consider the following candidates, but no interview was necessary: Greg Walker-Wilson, Chuck Tessier, David McConville, Becky Anderson and Kim MacQueen. Ms. McMurray is unable to attend the interview.

Also at the August 15, 2006, worksession City Council instructed the City Clerk to prepare the proper paperwork to appoint Scott Dedman to serve a term to be established once the entire board has been convened.

After Council spoke highly of the candidates, Joyce Dorr received 4 votes; Cheryl McMurray received 5 votes; Ty Hallock received 1 vote; Steve Cochran received 5 votes; Greg Walker-Wilson received 3 votes; Chuck Tessier received 1 vote; David McConville received 4 votes; Becky Anderson received 1 vote; and Kim MacQueen received 4 votes. Because of a tie, City Council re-voted on the 3 or 4 vote-getters: Joyce Dorr received 4 votes; Greg Walker-Wilson received 3 votes; Kim MacQueen received 4 votes; and David McConville received 3 votes. Therefore, Cheryl McMurray, Steve Cochran, Joyce Dorr and Kim MacQueen were appointed as members to the Community & Economic Development Alliance to serve a term to be established once the entire board has been convened.

In addition, Scott Dedman was appointed to serve a term to be established once the entire board has been convened.

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C. RESOLUTION NO. 06-159 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the River District Design Review Board.

Ms. Maureen Grozier has resigned from the River District Design Review Board, thus leaving an unexpired term until September 1, 2007.

On July 18, 2006, City Council instructed the City Clerk to arrange interviews for Wendy Kussrow, William Langdon and Martha Jane Peiser.

After Council spoke highly of the candidates, Wendy Kussrow received 6 votes, William Langdon received no votes and Martha Peiser received 1 vote. Therefore, Wendy Kussrow was appointed as a member of the River District Design Review Committee to serve the unexpired term of Ms. Grozier, term to expire September 1, 2007, or until her successor has been appointed.

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At 6:20 p.m., Mayor Bellamy announced a 25-minute recess.

D. THIRD PARTY REVIEW BY PROFESSOR DAVID W OWENS OF DEVELOPMENT PLANS

Mayor Bellamy said that at Council's request, Professor David W. Owens, professor of Public Law and Government at the UNC-CH School of Government, conducted a review of three recent development projects. His expertise in the areas of law and zoning and his familiarity with other cities' practices made his review to us very valuable. We asked for this review to take an objective look at the projects and application of Asheville's Unified Development Ordinance (UDO). Professor Owens and the School of Government are well-respected and credible authorities on this subject, and we appreciate their time and expertise.

The report has been available to Council and the public since late June and Professor Owens is here to formally present his report to City Council.

Mayor Bellamy said that this review will help us - as a community - work to clarify our goals and to amend the UDO to more closely reflect those shared goals. She asked for both the participation and the patience of our citizens as we continue this process. Only by coming together and trusting one another can we achieve the community's vision for Asheville. She said that after Professor Owens makes his presentation, the City Manager will give a brief status report on actions and milestones related to the UDO, both those that have already taken place and those that are upcoming. Then Council will take public comments on the report, after which City Council will have an opportunity to ask Professor Owens any questions related to his report.

Professor Owens said that City Council asked for his review of three controversial development decisions - Staples and Greenlife on Merrimon Avenue and Prudential on College Street. He noted that he submitted a letter with his findings on June 23, 2006, and at this time he will summarize his findings and address any questions:

"I. Purpose and Scope of Review: I examined the files of these three cases to address the question of whether the permit approvals were consistent with the terms of the Asheville Unified Development Ordinance. In addition to technical and legal adherence to the standards, I was also particularly mindful of two points raised by Mayor Bellamy in requesting this study. She noted there must be a "basic level of trust in our ordinances, staff and city officials" and that it was paramount to have ordinances that are "clear and understandable." Therefore I was particularly watchful for any indications of intentional wrongdoing on the part of those charged with ordinance implementation and for areas where improvements in ordinance clarify were needed.

It is important to emphasize that the purpose of this review was an examination of three past controversial decisions in order to learn how the city's ordinances and decision-making process can be improved in the future. This review was not an adjudication of the ongoing legal disputes in these cases nor was it a mediation to achieve resolution of these particular cases.

2. Comments on the Individual Decisions:

(a) Prudential Realties Sign. This case was the least complicated of the tree in that there was only one central issue - the number, placement, and size of signs allowed - but even it was far from simple.

I concluded that one of the two signs - the sign on the north side over the entrance - was within the ordinance requirements. I found it was properly characterized as a "wall sign" and that it was within the height and size limits of the ordinance.

The second sign, however, as acknowledged early on by the staff, does not comply with the ordinance. How far out of compliance it is depends on several factors. First, the ordinance only allows a second tenant identification sign for a side of the building with an "exterior public business entrance." It was not clear to me that the east side of the building had a public entrance. Second, if a sign is allowed on that side, it is limited to a total area of one square foot per lineage footage of that side of the building. The second sign that was permitted far exceeds this size.

(b) Staples. Two principal issues were raised by the Staples case - (1) the size and location of the four signs along the top of the building; and (2) the location and design of the building along its street frontage.

The key issue with the sign size is how much of the red background behind the lettering should be considered part of the "sign." The ordinance provides that the background is included if it is "an integral part of and related to the sign." A reasonable argument can be made that the entire red rectangle is a standard part of the corporate logo and should be included, thereby making the permitted sign too large. While I am inclined to agree with that view, a reasonable argument can also be made that this area is not "integral" and can be characterized as an architectural detail rather than a part of the sign. A secondary issue is the applicability of the sign height limitation. As an attached sign, I found the height limit for freestanding signs would generally not apply. The exception would be if the area to which the sign is attached is a "parapet," in which case the ordinance does limit the height. I was not inclined to view this as a parapet, but that would not be unreasonable, and if so, the signs are too high (particularly if the background area is included.)

A building in this zoning district is allowed to have a zero street setback based only if it is a "pedestrian oriented design." I found such a characterization of this building to be problematic. While it has some of the elements that meet this definition in the ordinance, its lack of street side entrances and street level windows leave me questioning whether it is consistent with the council's intent for pedestrian interaction. Also, the ordinance provision does not clearly allow this same setback exemption for side streets and it is imprecise in defining the reference points for calculation of the required sight triangle (particularly regarding whether the sidewalk can be included.)

(c) Greenlife Grocery. A key issue raised by the Greenlife project was the location and operation of loading facilities on the Maxwell Street side of the project. Resolution of this question involves consideration of ordinance provisions on nonconformities, renovations, loading docks, buffers, landscaping, driveways, sight triangles, and street use.

In my review I found the interrelationship of these various provisions to be complicated and somewhat confusing. Even though the building had once housed a grocery store, its nonconforming status for zoning purposes had been long abandoned. The application inadequately addressed the scope of additions and the cost of renovations. The ordinance standards for use of alternative compliance with buffer requirements likely delegate undue discretion to staff. While the ordinance provisions can be read to allow use of the buffer area for "operation" of the loading dock, I would question whether that is consistent with the intent of the buffer requirements. Similarly, allowing a dock entrance to adjoin a driveway may not technically violate driveway width requirements, but it does raise questions of adherence to the intent of access point separation requirements in the ordinance. Also, it appears truck traffic should not have been allowed to use Maxwell Street for access, but whether the street can be used for truck maneuvering is much less clear.

3. Conclusion. I did not find any evidence of intentional wrongdoing by the staff nor any flagrant disregard of the clear provisions of the ordinance. The staff did make several mistakes, which is not uncommon when reviewing the many dimensions of complicated projects and applying the multiple provisions of a complicated ordinance. My sense of the overall staff performance was that there was a good faith effort to carry out the terms of the ordinance. Several judgment calls were made to the benefit of the developers and to the considerable dismay of neighborhood advocates, but I found no conscious effort to subvert the ordinance's intent. At the same time, I found a number of instances where key parts of the ordinance are unclear, confusing, and ambiguous.

4. Recommendations.

(a) Consider modifications to the development review process

(1) *Improve the application form and the review for completeness at the initiation of permit review.* The application forms must elicit all of the information necessary to review compliance. Examples of problems in these projects include imprecise building frontages and entrances in the Prudential case and inadequate information on additions and renovations cost in the Staples case.

(2) *Clearly address the impact of application modifications during the permit review process.* Multiple changes are often made over the course of a permit review, as with the Staples façade and the Greenlife loading area. It is important for all involved - the applicant, neighbors, and staff - to have a clear and common understanding of exactly what the project actually is. At some point modifications are significant enough to warrant a re-start to the process. It should be clear when that is required.

(3) *Consider opportunities for meaningful public comment at key stages of important permitting determinations.* A wide variety of tools are available, including for example pre-application neighborhood meetings, community advisory councils, expanded public notices, listserves, internet postings of application materials, comment by advisory boards, formal hearings, and many others. It is important to carefully tailor the public review process to the particular decisions being made.

(4) *Review the process and standards for some critical preliminary determinations.* Some preliminary determinations are critical, as with the alternative buffer and landscape election in the Greenlife project and the pedestrian oriented design determination for Staples. The ordinance should be clear as to when the applicant is requesting these determinations, the criteria for and process for approval need to be clearly delineated, and careful thought should be given to the nature and timing of public review. Any delegation to staff for these determinations must be accompanied with adequate guiding standards for decision. If the council wants to include standards that involve judgment and discretion, a quasi-judicial review process is required. An administrative review process can be used only if objective standards are used.

(b) Clarify council intent on critical issues

(1) *Improve the standards and review process for projects along major corridors and other sensitive areas.* Several significant policy issues were raised by these projects. Is the Staples project within what the council considers pedestrian oriented design? Should the signage guidelines for the downtown and adjoining areas continue to be advisory only? Are the design and location standards for developments along major corridors clear and adequate and what the council intends? As the recent Merrimon Avenue study report illustrates, creation and maintenance of a vibrant, attractive, and successful corridor requires attention to a

number of issues beyond the UDO, but the development code plays a critical role in the overall success of these efforts.

(2) *Clarify the standards for infill development.* Redevelopment of existing neighborhoods poses significant opportunities and challenges, as the Greenlife project amply illustrates. Clear standards and decision-making procedures are necessary to address traffic, noise, buffering, landscaping, appearance, scale, and a variety of other factors. Where flexibility is allowed, clear goals and ample opportunity for participation by affected parties is very important.

(3) *Establish a regular process for ordinance clarification and improvement.* Project reviews invariably identify unanticipated questions on an on-going basis. Novel sign placements and design, calculation of mandatory sight lines, and the interplay of separate ordinance provisions are examples in these projects. It is reasonable to ask staff to collect these, develop potential solutions, secure review of affected persons and the planning board, and to regularly bring options for clarifications and solutions to the council for action. I understand from Gary Jackson that staff work is already underway to address a number of the specific difficulties raised in the June report. It will be important for Council to not only follow through with the corrections, clarifications, and refinements identified through review of these projects, but to also establish an on-going process for ordinance clarification."

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods, thanked City Council, Professor Owens and City staff on this review process.

Regarding the Prudential sign, Mr. Joe Minicozzi asked Council (1) to amend the confusing table that has led some to interpret that sign height standards apply to attached sign, or at least a moratorium be placed on sign permits until the table is amended; and (2) if it's determined that there is not a legitimate business entrance on the east side of the building, that the sign be removed on that side; or if it does constitute a business entrance, we ask that they come forward for a variance.

Regarding the Staples sign, Mr. Minicozzi recommended Council (1) to amend the same sign table as requested for the Prudential sign; (2) calculate the red area in the background of the Staples sign as part of the logo which would make the permitted sign too large; (3) all the signs be brought down to the 25 feet height; and (4) have the parapets match by a green screen or some sort of landscaping to soften the building.

Regarding the Greenlife Grocery, Mr. Minicozzi recommended Council (1) require the owner to apply for a variance on the driveway cut or that the project be amended to meet the 36-feet requirement; (2) screening brought to Maxwell Street; (3) buffer separation between the commercial use and residential use; (4) retract the letter by Police Chief Hogan about exception of delivery vehicles blocking the rights-of-way; (5) apply a moratorium on the standards of alternative compliance until we find a better way to articulate the policies and procedures for alternative compliance.

Mr. Fred English commented about truck delivery in the Greenlife issue.

Mr. John Swann, one of the owners of Greenlife Grocery, passed out to City Council a report regarding Greenlife. He explained the beneficial efforts of Greenlife on the neighborhood and City, noting that tax revenues generated from July 17, 2004 - August 8, 2006 was $1,127,312. He pointed out that Greenlife employs approximately 150 people and had a 2005 weekly payroll of approximately $43,000. He said they have taken a lot of steps to try to mitigate the neighborhood concerns, including, but not limited to: memos and maps to the truck drivers regarding traffic; putting up chains across the loading dock after 6:00 p.m. until 6:00 a.m.; overlaid

asphalt in the gutter swale at the Maxwell Street to eliminate the problem of trucks hanging up; replaced dumpsters with roll-off trash compactors; screened the loading and compactor area from adjoining streets; installed a groundwater processing system to eliminate runoff from compactor area; installed a sound absorption panel and fencing to help block the sound generated by refrigeration compressors; and entered into mediation with Mr. Reid Thompson but it ended with no resolution. As of today, Greenlife has spent $107,000 to try to take the neighborhood needs into account, none of which were required by the City. The three closest grocery stores to Greenlife do not have any screening and several of them are visible to nearby residential houses, noting that Greenlife is willing to go well beyond what is being required of other grocery stores. He then reviewed with Council the proposals considered by Greenlife to mitigate the impact on the neighborhood and the reasons why those actions were not taken.

Mr. James Judd, resident in Chunns Cove, felt that the area to which the Staples sign is attached is a parapet, resulting in the signs being too high.

Mr. Hugh Bradburn, General Manager of Greenlife Grocery, said that many Greenlife employees are residents of the surrounding area and it is their intent to mitigate the situation as much as possible. They do work with the truck drivers making their deliveries a safe and quick process. He feels like Greenlife is an asset to the community and they are making their best effort in keeping the community in mind.

Mr. Benjamin Gilliam felt there was no question that the red area in the background of the Staples sign is part of the Staples logo, opposed to just the text lettering. He asked that the City work with Staples to reduce their sign size. He also asked that Council take under consideration that the side street setback on the Staples building is not allowed by our ordinances. Regarding the Greenlife Grocery, he felt that they turned Maxwell Street into a commercial alley.

Mr. Walter Plaue felt that Council is spending their valuable time on minor issues such as the Staples and Prudential signs. However, he did feel that the neighborhood has legitimate concerns regarding the use of Maxwell Street by Greenlife Grocery.

A resident of Asheville thanked Council for taking time to review these issues. She felt that the visual integrity of the City is important.

City Manager Jackson said that there have been significant efforts by Council and City staff on the overall planning and development process and to the three projects specifically. Using a timeline, he showed how those efforts have been made and Council's commitment to community and economic development. He also noted that in November or December the Planning and Zoning Commission will be reviewing proposed amendments to the UDO and those amendments will be presented to Council. City staff is committed to continuous improvement. Specifically with regard to Greenlife, a presentation was made to Council on August 15, 2006, regarding the traffic issues on Maxwell Street. Council challenged Greenlife to respond and Mr. Swann has presented to Council today some response to that challenge. He expected Council would want staff to continue discussions with Greenlife about their mid- and long-term plans to expand, improve and make that facility more capable with the existing neighborhood and their customers as well. Regarding Staples, Mayor Bellamy and Vice-Mayor Jones have sent a letter to re-open the dialogue regarding that issue. Regarding the Prudential sign, City staff has indicated to the property owner that they have until the end of August, 2006, to bring the City a modified sign plan that will be consistent with the ordinance.

Discussion surrounded Professor Owens' responses to various questions and/or comments from Council, some being, but are not limited to: can a UDO document be perfected; as you try to fix certain provisions of the Code, is there a tendency to break other provisions; can you cite some examples of better zoning models; in terms of our development process, how is

Asheville, a size of 70,000 people, doing; is there a shorter, more simplified way to guide our development process; is the Staples building pedestrian oriented; is Merrimon Avenue or Orange Street the front of the Staples building; does the entrance from the sidewalk on Orange Street meet the Americans with Disabilities Act (ADA) requirements; are the sight triangle requirements for the driveway leading to Orange Street met; is Maxwell Street residential in nature or commercial in nature; does the loading dock meet the alternative compliance requirements on buffering; explanation of when staff can be delegated to make alternative compliance determinations or when a quasi-judicial review process is required; does staff have the authority for sight triangle modifications in our existing UDO; and what actions do cities take when they find a discrepancy.

Councilwoman Cape spoke in support of not looking back on these issues, but moving forward. She felt that the red square is part of the corporate logo and that area is a parapet and the sign is too large. She also felt that the pedestrian oriented building amenities aren't there in the manner and intent the community expects out of the UDO. She proposed that the Downtown Commission be re-engaged in the process of working with Staples on some pedestrian oriented amenities that the community feels are acceptable. Regarding Greenlife, she feels the loading docks on Maxwell Street are non-conforming and the building was not a continuous use and therefore for those docks to be there is wrong. She felt that the buffer is inadequate. She appreciated Council is looking at these issues. She agreed that Greenlife and Staples are assets to our community, but they need to be done right. Our community needs to be more willing to incorporate those type businesses closer in. She said that she and Councilman Newman talked about giving the following direction to the City Manager and City Attorney. In terms of Maxwell Street, the purpose and goal of protecting the residential character of Maxwell Street means we need to eliminate the uses of the street by commercial loading trucks. We do not feel it is appropriate to use Maxwell Street for commercial loading trucks either to access the grocery store or for maneuvering to access the loading dock. We ask all parties to explore possible design solutions that would eliminate the need for the use of Maxwell Street at all. We are open to the idea that they meet short-term as well as long-term solutions to this issue. And open to even considering rezoning of adjacent properties as necessary to facilitate design solutions. Also would like to offer support to Greenlife should they make a choice to expand or incorporate design solutions. We believe the buffer on Maxwell Street should be improved and expanded as part of the design solution. In terms of the sign on Staples, the bright red background on the Staples building is part of their copywrited corporate logo and should be counted as part of the sign itself; and, pursuant to our Code the sign is not in compliance. We ask that our City Manager and City Attorney work with Staples to bring that signage into compliance with our sign ordinance. Landscaping is needed on Merrimon Avenue to achieve any semblance of compliance with pedestrian-oriented design, and the Downtown Commission might be a good group for doing this kind of negotiation. She hoped that City staff will work with the local property owners and businesses to achieve these goals within some kind of timeframe and if there are legal questions that need to be taken into consideration, she would like for Council to go into closed session for that purpose.

Councilman Davis felt the suggestions outlined by Councilwoman Cape and Councilman Newman were good. He feels that the letter from the Mayor and Vice-Mayor to Staples is good and felt they will try to mitigate some of the problems. He commended our staff in being pro-active and moving forward with amending the UDO for a better document.

Mayor Bellamy explained that it is now time to made decisions on these three issues; and staff has received direction on amendments to the UDO.

Regarding the Prudential sign, it was the consensus of Council that the second identification sign on the east side of the building should comply with the sign ordinance requirements. Mayor Bellamy said that she will write a letter on behalf of Council to the building

owner. City Attorney Oast said that our Code is fairly specific in terms of timelines for compliance with respect to notices of violation and his suggestion is that we follow that Code. This process was agreed to by Council.

Regarding the Staples sign, it was the consensus of Council that the red background behind the lettering should be calculated as part of the sign.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that the difficulty you encounter with a situation like this is there is a split of opinion on whether the sign is too big or not. Mr. Shuford shared an interpretation earlier this year where that kind of interpretation would affect a number of other signs in this community and unless Council is prepared to take similar action against all of them, it could be a problem. It was therefore his suggestion that before we go down that road, is to do what Councilwoman Cape suggested and allow him and the City Manager to work with Staples to see if we can get some resolution to it.

Councilman Newman didn't envision the City sending them a notice of violation, but writing them and say something similar to "as you are aware, your sign has been the subject of significant community interest and controversy. We have had a third-party review and Council after Council discussion, the majority of Council does believe that the red background is part of the corporate logo. Therefore, we would like to see you reduce the size of the sign to what our Code allows." City Attorney Oast said that in the cases he has reviewed where this kind of action has occurred, it has been the staff's determination, not the Council's determination, that resulted in the mistake being recognized and steps being taken. That is exactly what we are doing in the Prudential sign. In this case, Council can direct that the investigation occur, but he was not sure if Council can direct the results of it.

In response to Councilwoman Cape about the plans being received in color or black and white, Mr. Shuford believed that the plans were in black and white. She felt that Staples knew what their colors were and made a concentrated effort to have as large of recognizable identifiable logo.

Mr. Shuford gave Council examples of other signs that you can make the argument that the background is either part of the corporate logo or something that would cause the sign to stand out. They range from a number of chain businesses to other circumstances. He thinks the issue Council has is that they would like to see some resolution of the concerns regarding Staples. The easiest way is that we seek some voluntary reactions. Staples was very responsive when the community raised objections early on and spent a significant amount of money finding out what people wanted - only to be faced with an appeal which caused them to lose interest in working with the City. But, he thinks there is an opportunity for us to explore their willingness to proceed and seek their interest to be rekindled. He suggested that as a first step.

Regarding the pedestrian orientation of the building, he heard one Council member suggest landscaping as an alternative to help soften the building and one presentation made included that. That is something we can work with Staples at a fairly minimal cost and big public relations benefits. If Council would like staff to do that, they will start with that and move into another arena should we not meet with success. He said we need to see what their reaction is first and then engage Council's interest at that time.

Councilman Mumpower questioned the reality of the next step. Mayor Bellamy said the next step as a policy-making body would not only be for Staples, but a letter sent out to all other signs that Mr. Shuford has alluded to that would fall into this category. She said that Council is taking over the ownership of the process from here on out with the City Manager, City Attorney and Staples. The first step in this process will be a letter from City Council asking Staples to come to the table in a good faith effort and get to a good point on the sign, the height of the sign,

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the pedestrian oriented amenities, and the assurance that the access from the sidewalk on the Orange Street side is ADA accessible. If Staples is not willing to work with the City, then City Council will go into closed session to discuss their next option, which will include writing a letter to all non-conforming signs that fall into the category mentioned by Mr. Shuford.

Regarding Greenlife Grocery, it was the majority of Council's decision that screened fence does not meet the buffering requirements.

Upon inquiry of Councilman Mumpower, Professor Owens said that the ordinance says that if you have an access from a commercial road, use that. Do not use a residential street for access to a commercial building. That is the basis of his conclusion that it would be inappropriate to have Maxwell Street as an access route to the building. What he thought the ordinance did allow was the use of Maxwell Street (if you entered from Merrimon Avenue and you had to pull onto Maxwell Street to back into the loading dock) for maneuvering. There is another ordinance provision that says design of all loading docks, including maneuvering room, on sight. He believes those two provisions are somewhat in conflict, but it seemed to him that the intent of the ordinance is relatively clear that a commercial truck should not be using a residential street to get to the store.

Councilwoman Cape said that part of the reason Maxwell Street was used is because City staff considered the grocery store use was continuous. But it seems very clear here that Professor Owens' opinion is that, even though the building had once housed a grocery store, its non-conforming status for zoning purposes had long been abandoned. So it did go back to a new use and then all our standards came into play to not use Maxwell Street. It's clear to her that in the UDO it says that if there are several street accesses, then the residential street cannot be used, and there are several street accesses.

With regard to the buffering, Mayor Bellamy said that Council deals with buffering all the time and none of the buffering ever completely shields anything we are asking it to shield because the buffering isn't mature. She didn't think buffering is required to completely shield, but to create some distance between uses. Mr. Shuford said that even if there was a fully compliant buffer and setback, the unloading truck would still be located relatively near Maxwell Street and would certainly be above whatever buffer would be installed, certainly at the time of the installation, and only the trees spaced in that buffer would create any sort of visual blockage. He did suggest the possibility of using a landscape material not often used for buffers, but has the potential to fairly quick get to a height that would get to the issue of screening the trucks. That would be the use of some sort of bamboo that grows thickly and tall enough to shield a 12-13 foot tall truck. It's not a perfect solution, but a landscape solution that would ultimately be more effective than a fence, along with some effort to get some small shrubs in at that location.

Councilwoman Cape said that the issue is that about 8-12 feet of the truck sticks out of the buffer onto the sidewalk. The key issue is that the loading dock should have been built somewhere else.

Upon inquiry of Councilman Freeborn, Professor Owens said that it was his opinion that the buffer on Maxwell Street does not meet the intent of the ordinance in the sense that the delivery truck, during its normal operation, is sitting in the buffer area and that seems to be the basic problem. From a legal standpoint, however, the ordinance does allow alternate compliance and the question is does that alternate compliance extend so far as to allow them to regularly put a part of the operational portion of a loading dock within the buffer area. One of the difficulties is that the alternate compliance provision in or ordinance is that it be equal to or better than regular compliance and it's difficult for him to see how the current configuration is equal to or better than the regular compliance.

Mayor Bellamy asked if on the buffering issue does Council need to have a quasi-judicial review to really address this issue. Professor Owens responded that for future projects, if Council wants to retain the alternate compliance that you now have in the ordinance with comparable standards, then you need to convert it to a quasi-judicial procedure rather than a staff level approval.

Councilman Davis felt that the buffer doesn't offer the intent of the buffer, but we have an operating business that is doing a good job of infill development. He feels that we can address future issues with the quasi-judicial review. He felt we would be opening Pandora's Box if we say we are going to step beyond what experts say is a compliant situation. The courts will decide those issues. The truth of the matter is that the other grocery stores and other uses that have this same situation. He does understand the feelings of the residents on Maxwell Street but he felt that maybe a renewed effort of mediation might be worth pursuing.

Mayor Bellamy said that if we ask Mr. Swann to come to the table, it will not be with the neighborhood, but with her, if okay with Council, the City Manager and the City Attorney to talk about opportunities. Since we are accountable to the community, after we meet with Greenlife we will report back to the community.

Councilman Newman felt that Council would like to explore some possible design ideas to try to make it better, rather than simply managing making an existing situation better.

City Manager Jackson said that the direction received from Council last week was to pursue interim and long-term strategies and that is a level of discussion that hasn't occurred before.

Councilman Mumpower was concerned that we are taking risks with the future of Asheville to pursue these kinds of policy approaches and was especially concerned that we are second-guessing our staff in an area that is not clear to any of us. If we ask our staff to function perfectly in an imperfect world with an imperfect document, we risk paralyzing them. And when we paralyze them, then we affect the development and growth of the city adversely from this point forward. He fears we will be taking some steps that represent second-guessing and he doesn't want to participate in that.

Mayor Bellamy said that Council is following through with what they recommended last week about asking what Greenlife's future plans are, how can we address some concerns of the surrounding neighborhood, and if there are opportunities for a positive response to some of the concerns.

At the request of Mayor Bellamy and after a brief discussion, it was the majority of Council's decision to ask the City Manager to bring forward to Council at the next formal meeting a budget amendment for additional planning staff to address the growing demands of our community.

At 9:02 p.m., Mayor Bellamy announced a 5-minute break.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CONVENTIONAL WISDOM TO DEVELOP A COST ANALYSIS FOR REFURBISHMENT AND UPGRADING THE CURRENT CIVIC CENTER FACILITY

Councilman Jan Davis said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Conventional Wisdom to develop a cost analysis for refurbishing and upgrading the current Civic Center facility.

On May 9, 2006, the Civic Center Task Force presented its report to the Asheville City Council. The report recommended two options for consideration; the first included building a new arena, and the second called for building a new performing arts center next to City Hall. A third option, estimated at approximately $17 million, was also discussed. This third option would only cover repairs of deferred maintenance items and would not improve service to customers, nor conditions for event performers and producers. The majority of the Task Force felt that money being spent on refurbishment alone is not a satisfactory desire.

During the May 9 Council meeting, there was a request from members of Council that a "fourth option" be developed. This option consists of refurbishing and upgrading the current facilities so that the Civic Center can continue operations into the future successfully. In pursuit of this option, staff contacted Ian Vingoe, a consultant with Conventional Wisdom, who wrote much of the Heery Report. Mr. Vingoe is intimately familiar with the Civic Center and has the capability to develop realistic and detailed estimates for improvements in a short time frame.

Mr. Vingoe has indicated that the fee for the costs estimates report will be up to $10,000 plus expenses. There is additional cost if City Council would like him to attend a City Council meeting to discuss the results. Staff is confident that the total cost of these items would not exceed $20,000.

Councilman Davis said that at the May 9 meeting, Councilman Newman expressed a desire to look at incremental repairs in order to keep the building functioning and producing. It is his personal opinion that if we do that there is a white paper in existence that was done by the Civic Center Commission that gives us an outline of what we can do. He feels we know what we need to do to keep the building functioning, without entering into this agreement. At the same time, Councilman Mumpower suggested the "fourth option" of refurbishing and upgrading the current facility to allow the facility to continue and operate with improved, functional ability for a significant amount of time. We have Civic Center staff that has identified these needs. Regarding marketability of the building, we do acknowledge that there is a conflict with some of the uses in the building at the same time. To alleviate that conflict, we would probably build another entrance, as outlined in the Heery Report. That, however, is something we cannot do ourselves. But, should we want to go in that direction, we should retain experts like Conventional Wisdom. Contrary to all the studies spent on the Civic Center to this point, taxpayer dollars have been fairly minimal. His personal feeling is that we move forward and do the incremental repairs that are necessary and step forward and look at things that will carry this good operating building into a longer term future. And, at the same time we are pursuing the option of a stand-alone performing arts center.

Mr. Bill Lack, member of the Civic Center Commission, had a lot of confidence in the Civic Center staff and thought the $20,000 would be a good investment.

Mr. Fred English said that we need to get help from our state legislators for assistance with the Civic Center.

Councilman Freeborn moved to deny the resolution authorizing the City Manager to enter into a contract with Conventional Wisdom to develop a cost analysis for refurbishing and upgrading the current Civic Center facility. This motion was seconded by Councilman Newman.

Councilman Newman felt that if the majority of Council thinks that the option of building a new performing arts center on the Parkside property is the preferred choice, then he doesn't think it would make sense to spend a lot of money exploring other options. He feels that it will take several years to work that option out and the success of it will depend on the level of private sector money that will be necessary to make that happen. If we go that route, then we do need to do things to our existing Civic Center to take care of it and we already know what needs to be

done. If ultimately the new performing arts center doesn't work, then the "fourth option" is probably what we need to pursue. He is supportive of following the direction that the majority of Council wants to go in with the new performing arts center and focusing the dollars we have to take better care of the facility we have today.

Councilman Davis felt a better motion could have been what the City is going to do with the Civic Center, since we have clearly identified the steps. He moved to amend the motion to contract with Ms. Sasha Vrtunski (who the City has worked with in the past on this issue) on a short-term basis to have her work with Civic Center staff on a priority list of things that need to be done.

Upon inquiry of Councilman Freeborn, City Manager Jackson said that he feels we can benefit from the additional staff support. If Council gives him the flexibility, he didn't think Council would need to give him formal direction other than to supplement existing staff as needed through contracting to get the work done. The money would not rise to the amount of money Council would need to authorize.

Councilman Davis withdrew his motion to amend the resolution since City Manager Jackson said that he would not need formal direction to contract with Ms. Vrtunski.

Councilman Mumpower said that while he likes the idea, his hesitancy is that the only realistic thing is fixing what we have. We need to get this issue focused on by itself.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried unanimously.

Councilwoman Cape is excited about moving forward. She asked Council to direct staff to bring back opportunities for Council to look at changes to the Civic Center illustrative and reflective of our community and look at energy-efficient measures, green-building techniques (including, but not limited to, a green roof on the Civic Center) and other options as we make changes. As we direct people to move forward with these key issues, let's take the opportunity of taking the stigma of this 1950 high school auditorium and turn it into an example for something we can be proud of.

Mayor Bellamy instructed the City Manager to do a better job of promoting the Civic Center on our website and what good things are happening there.

Councilman Mumpower asked that the Civic Center issue be brought back to Council on a regular basis. Mayor Bellamy said that the City Manager will work with Ms. Vrtunski on this.

F. RESOLUTION NO. 06-156- RESOLUTION IN SUPPORT OF IMMIGRATION REFORM

Councilman Mumpower read the following reasonable, balanced resolution: "Whereas, historically, the cities and towns of the United States are a melting pot of multiple cultures and nationalities based on our nation's history of welcoming immigrants, and the City of Asheville in particular has benefited from the contributions of immigrant communities; and Whereas, Asheville reaches out to immigrant communities in a number of ways, including through the Sister Cities program, and cultural festivals such as Fiesta Latina and the Greek Festival; and Whereas, when admitted through a well-regulated system, immigrants strengthen the City by creating economic opportunities, increasing scientific and cultural resources, strengthening the City's ties with other nations and cultures, fulfilling humanitarian commitments, and supporting family ties and family values that are necessary to build strong communities; and Whereas, failure on the part of the

federal government to secure the borders, track visa recipients in the interior, or enforce worksite laws allows illegal immigration to thrive, with record numbers of persons entering the country illegally or overstaying their visas; and Whereas, the National League of Cities on July 21, 2006, adopted a "Resolution in Support of Comprehensive Immigration Reform," which called upon the federal government to strengthen and reform immigration laws, and to undertake consistent and comprehensive enforcement of them. Now, therefore, be it resolved by the City Council of the City of Asheville that the City Council does hereby recognize the substantial contributions that immigrants have made to the City of Asheville, and requests that action be taken at the federal level to enforce immigration laws, and to devote sufficient resources to enforce those laws, as set out in the above-referenced National League of Cities resolution. In addition, the City Clerk is hereby directed to transmit a copy of this Resolution to Senators Elizabeth Dole and Richard Burr, and to Congressman Charles Taylor."

The following individuals spoke in support of the resolution for various reasons:

Mr. Tim Peck
Mr. Carlos Gomez
Mr. Shawn Presnell
Mr. H. R. Carlyle
Ms. Kathie Lack, President of the Action Club
Rev. Christopher Chiaronmonte
Mr. Bill Lack
Ms. Loretta Reynolds
Mr. Walter Plaue

The following individuals spoke about the positive points of immigration:

Mr. Bill Cavallaro, west Asheville resident
Ms. Jerri Soloman
Dr. Steve Buser
Ms. Minnie Jones

Councilman Mumpower moved to adopt Resolution No. 06-156. This motion was seconded by Vice-Mayor Jones.

Councilwoman Cape wanted to include language that not only addressed the punishment aspects, but also encouraging the opportunities for legal immigration. The language she asked to add is as follows: "Be it further resolved that the federal government must provide an appropriate, legal means of immigration, as is determined to be necessary and effective for the United States, for foreign nationals that want to work here temporarily, become legal permanent residents, or gain citizenship; and that this process would include the ability for those undocumented immigrants who currently live here and who have proven themselves by their consistent work history, absence of criminal activity and integration into our communities, to attain legalized status and should also be able to apply for citizenship through additional process, as appropriate and practical in a manner that is fair to all applicants." However, she said that Councilman Newman was under the impression that the resolution Councilman Mumpower read essentially supported the comprehensive immigration reform resolution that the National League of Cities passed. If that is so and if we can change the wording in such a way to say that we support the National League of Cities resolution then she would be fine to not add the language she recommended above.

Councilman Mumpower said that he supported the resolution without the suggested change read by Councilwoman Cape. He thinks that the language staff has drafted provides

some flexibility and perspective but does not specifically endorse the National League of Cities recommendations.

Upon direction of the majority of Council, City Attorney Oast said that resolution read by Councilman Mumpower does not say that City Council does hereby endorse the National League of Cities resolution, but he didn't think there was any question that it does not disagree with it. If directed, he would be glad to amend the resolution to reflect Council's intent.

Councilman Newman moved to amend the motion made by Councilman Mumpower and seconded by Vice-Mayor Jones by asking the City Attorney to include language clarifying that we are supporting the National League of Cities resolution. This motion was seconded by Councilwoman Cape.

City Attorney Oast said that he can amend the resolution as follows: " ... and requests that action be taken at the federal level to enforce immigration laws, and to devote sufficient resources to enforce those laws, as set out in the above-referenced National League of Cities resolution, which the City Council does hereby endorse." (underlining denotes amendment)

When Mayor Bellamy called for a vote on the motion to amend the main motion, said motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

After a brief discussion, Councilman Mumpower moved to withdraw his main motion.

Councilman Freeborn moved to approve the language in the resolution as presented with the additional language suggested by City Attorney Oast. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VI. OTHER BUSINESS:

Councilman Mumpower thanked the Breakfast Rotary Club for their efforts in building two Top A Stop bus stops.

Mayor Bellamy encouraged residents to drive safely, especially since the school year has started.

Mayor Bellamy said that the Asheville-Buncombe Coalition System is in need of volunteer mentors and tutors to assist our young people in both school systems.

The following claims were received by the City of Asheville during the period of Steve Slagle (Water), Suzanna Baum (Sanitation), Margaret Carol Godefroi (Fire), Sheila Shearon (Streets), Jacqueline Brown (Water), Stephen P. Thompson (Sanitation) and Angela Fisher (Transit Services.) In addition, the following claims were received by the City of Asheville during the period of August 4-17, 2006: Oalma Hazel Norton (Sanitation), Kendra Edgerton (Streets), BellSouth (Fire), Janice Redfern (Water), BellSouth (Water) and Colis J. Muchemu (Transit Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte was disappointed that food vendors after Bele Chere were told not to give the left-over food to the homeless. He urged Council to move quickly on providing public restrooms in the downtown area.

Mr. Gene Hampton, founder of Asheville-Buncombe Citizens for Quality Government, spoke to Council about the quality of life in Asheville and the need for quality education.

Mr. Adam Ripley asked that his ministry be allowed to serve grilled cheese sandwiches at Pritchard Park on Friday nights when The Drum circle is present.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:55 p.m.

Kisha Lipe
CITY CLERK

MAYOR

Tuesday – September 12, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Kelsha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Fire Captain Mike Quinones led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE FIRE DEPARTMENT CAPTAIN MIKE QUINONES AS FIREFIGHTER OF THE YEAR FOR THE STATE OF NORTH CAROLINA

Mayor Bellamy proudly recognized Asheville Fire Department Captain Mike Quinones as Firefighter of the Year for the State of North Carolina.

Fire Chief Greg Grayson was also pleased to announce that Gary Cornett and Scott Burnette have been promoted as Assistant Fire Chiefs.

B. PROCLAMATION PROCLAIMING SEPTEMBER 18-22, 2006, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Bellamy read the proclamation proclaiming September 18-22, 2006, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Ms. Brenda Mills, Minority Business Coordinator, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING THE FOURTH MONDAY IN SEPTEMBER 2006 AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN"

Mayor Bellamy read the proclamation proclaiming the fourth Monday in September of 2006, as "Family Day – A Day to Eat Dinner with Your Children" in the City of Asheville. She presented the proclamation to Ms. Allison Jordan with Children First, who briefed City Council on some activities which will take place on that date.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C," "D," and "E", were removed from the Consent Agenda for separate votes.

At the request of Councilman Newman, Consent Agenda "G" was removed from the Consent Agenda for a separate vote.

At the request of Mayor Bellamy, Consent Agenda "H" was removed from the Consent Agenda for a separate vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 22, 2006

B. RESOLUTION NO. 06-160 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AN OFFER TO PURCHASE PROPERTY LOCATED OFF OF CLEMMONS STREET FROM RUSSELL KEITH

Summary: The consideration of a resolution authorizing the Mayor to convey land off of Clemmons Street to Russell Keith, in the amount of $2,600.

On August 22, 2006, City Council authorized advertising for upset bids pursuant to a bid from Russell Keith for land off Clemmons Street in the amount of $2,600. The advertisement was published on August 25, 2006, and no upset bids were received.

The land off Clemmons Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped fragment lot comprising 0.03 acre±. It has no access and was intended to be sold to an adjoining property owner. It is zoned RS-8, and it is not suitable to build on. The bid from Russell Keith is in the amount of $2,600. We have in file an appraisal letter prepared by Gordon F. Lucks dated March 30, 2006, estimating the market value of the property at $2,600. Mr. Keith proposes to acquire the subject parcel for assemblage with the property he owns next door.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Cons:

- There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program Income.

City staff recommends adoption of the resolution which will authorize conveyance of the property off Clemmons Street to Russell Keith, in the amount of $2,600.

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C. RESOLUTION ACCEPTING THE U.S. DEPT. OF HOMELAND SECURITY'S SAFER GRANT FOR THE PURPOSE OF HIRING THREE FIREFIGHTERS

This matter was removed from the Consent Agenda for a separate vote.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY GRANT FOR MOBILE EMERGENCY RADIOS FOR THE FIRE AND RESCUE DEPARTMENT

This matter was removed from the Consent Agenda for a separate vote.

E. BUDGET AMENDMENT ACCEPTING A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE PURCHASE OF MOBILE EMERGENCY RADIOS

This matter relates to Consent Agenda "D" above and was removed from the Consent Agenda for a separate vote.

F. RESOLUTION NO. 06-163 - RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) IMPLEMENTATION PLAN AS THE CITY OF ASHEVILLE'S INCIDENT COMMAND SYSTEM

Summary: The consideration of a resolution adopting the National Incident Management System (NIMS) as the City of Asheville's Incident Command System.

On February 28, 2003, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

The Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Asheville, including current Public Safety training programs. The NIMS provides a consistent, flexible, and adjustable national framework within which government and private entities at all levels can work together to manage domestic incidents. This flexibility applies across all phases of incident management: prevention, preparedness, response, recovery, and mitigation.

This Incident Command System will assist the City of Asheville in effectively and efficiently preventing, preparing for, responding to and recovering from domestic incidents, regardless of cause, size or complexity.

The NIMS provides a set of standardized organizational structures—such as the Incident Command System (ICS), multi-agency coordination systems, and public information systems—as well as requirements for processes, procedures, and systems designed to improve interoperability among jurisdictions and disciplines in various areas, including: training; resource management; personnel qualification and certification; equipment certification; communications and information management; technology support; and continuous system improvement.

Pros:

- NIMS is required under HSPD-5 and a Proclamation dated May 11, 2005, by Governor Easley.
- Use of NIMS is tied to eligibility of a host of US Dept. of Homeland Security grant programs.
- Increases efficiency and effectiveness of operations during daily and emergency events.
- Increases ability to work with other local, state and federal agencies during times of disaster, using the same operational management platform.

Cons:

- None identified at this time.

City staff recommends approval of a resolution adopting the National Incident Management System as the City of Asheville's Incident Command System.

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Fire Chief Grayson explained how the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Asheville, including current Public Safety training programs. He explained that local governments are required to adopt the NIMS on or before September 31, 2006.

RESOLUTION BOOK NO. 30 – PAGE 101

G. RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNOPENED ALLEY OFF OF MONTFORD AVENUE AND SCHEDULING A PUBLIC HEARING ON OCTOBER 10, 2006

This item was removed from the Consent Agenda for a separate vote.

H. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PIERZ FAMILY REUNION ON OCTOBER 14, 2006, AT CARRIER PARK CORPORATE PAVILION

This item was removed from the Consent Agenda for a separate vote.

I. ORDINANCE NO. 3386 - BUDGET AMENDMENT TO ASSIST WITH THE DOG PARK AT AZALEA PARK

Summary: The consideration of a budget amendment in the amount of $5,000 contributed by Mr. Chuck Cloninger to assist with the construction of a Dog Park at Azalea Park.

The City of Asheville is in the process of building its second "Dog Park" at the Azalea Park property in East Asheville. This contribution is to help cover the expense of this project.

Pro

- This will allow the City to construct another enclosed "off-leash" area for dogs to use while their owners socialize. The first such area was built with private donation at the French Broad River Park in West Asheville and is extremely successful, to the point that it is overused. The dog park at Azalea will help with this overcrowding and provide an area across town for additional convenience. Currently, the Dog Park at Azalea is nearing completion with the fencing installed and the gravel parking area completed. Once the mulch ground cover is spread for the "off-leash" area, the park will be ready for use.

Con: None noted

City staff recommends City Council approve the budget amendment in the amount of $5,000 to increase the budget for development of the Azalea Park Dog Park.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE ACTIONS

RESOLUTION NO. 06-161 - RESOLUTION ACCEPTING THE U.S. DEPT. OF HOMELAND SECURITY'S SAFER GRANT FOR THE PURPOSE OF HIRING THREE FIREFIGHTERS

Summary: The consideration of accepting the U.S. Dept. of Homeland Security's (DHS) SAFER Grant, in the amount of $558,143, for the purpose of hiring three firefighters for the Asheville Fire and Rescue Department.

After gaining approval from City Council, the City of Asheville Fire and Rescue Department (AFR) requested $558,143.00 from the U.S. Dept. of Homeland Security for the purpose of hiring additional personnel. The AFR was successful in obtaining those funds. The funds will be utilized to pay the salaries, wages and benefits of 3 additional full time firefighters. The grant total is $558,143. This is a matching grant. In the first year of the five year performance period, DHS will fund $94,616 (90%) of the cost of compensation and benefits for three firefighters. The City's match is $10,513 (10%) for the first year. The first year's grant revenue, matching funds and additional FTE allocation are already included in AFR's adopted Fiscal Year 2006-07 budget; therefore no budget amendment is needed. The federal match decreases and the City's match increases over the span of the performance period. The funding ratios for subsequent years are:

Year	Federal Share	City Share	Total
2	$86,626 (80%)	$21,657 (20%)	$108,283
3	$55,766 (50%)	$55,765 (50%)	$111,532
4	$34,463 (30%)	$80,414 (70%)	$114,877
5	$0 (0%)	$118,323 (100%)	$118,323

PROS:

- The U.S. Dept. of Homeland Security is funding a total of 49% ($286,672) of the costs of salaries, wages and benefits for three additional firefighters over a five year period.
- The additional firefighters are needed in order to maintain the City's emergency services overall standard of cover.
- The percentage of time companies are taken out of service due to staffing shortages will be reduced.
- Firefighting capabilities will be enhanced with the additional personnel.
- Emergency medical response, rescue services and fire prevention and education capabilities will benefit from additional personnel.
- Firefighter safety will improve.

CON:

- The City's matching funds are 51% ($286,672) of the total grant.

City staff recommends City Council accept the U.S. Dept. of Homeland Security's (DHS) SAFER Grant, in the amount of $558,143, for the purpose of hiring three firefighters for the Asheville Fire and Rescue Department.

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Fire Chief Greg Grayson said that this program is intended to strengthen our firefighter fighting force in our community. We seek to maintain and improve our standard of cover within the City of Asheville and the two new fire stations are intended to do just that. It is his recommendation that we continue to staff all our units with two personnel and this grant will allow us to hire firefighters to do that.

Councilman Mumpower felt that this is a stretch of the Homeland Security dollars at a time of unprecedented federal deficits. Even though we need firefighters, he could not support the resolution on the basis of the Homeland Security source for those revenues.

Councilman Newman moved for the adoption of Resolution No. 06-161. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 99

RESOLUTION NO. 06-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY GRANT FOR MOBILE EMERGENCY RADIOS FOR THE FIRE AND RESCUE DEPARTMENT

ORDINANCE NO. 3385 - BUDGET AMENDMENT ACCEPTING A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE PURCHASE OF MOBILE EMERGENCY RADIOS

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant from the U.S. Department of Homeland Security for the purchase of mobile radios for Asheville Fire and Rescue; and (2) a budget amendment, in the amount of $120,000 to accept these funds.

After gaining approval from City Council, the City of Asheville Fire and Rescue Department (AFR) requested $120,000 from the U.S. Department of Homeland Security for funding the purchase of mobile radios for apparatus and staff vehicles. The AFR was successful in obtaining those funds. The funds will be utilized for the purchase of 30 mobile radios which will be permanently mounted in fire apparatus. The grant total is $120,000 with the US Dept. of Homeland Security providing $96,000 (80%) of the total amount and the City providing $24,000 (20%) in matching funds. The $24,000 city match will be drawn from the $184,500 that was budgeted in the manager's contingency account for Fiscal Year 2006-07.

PROS:

- The US Dept. of Homeland Security is funding 80% ($96,000) of the costs of the radios.
- The radios will replace our existing, soon to be obsolete radios.
- If not for obtaining this grant, the City would be required to fund 100% of the mobile radio replacement.
- The radios will be used on a daily basis for emergencies in the City of Asheville.
- The radios are a required component of the City's new mixed mode (analog/digital) Smart Zone 4.1 communications system.
- The radios in conjunction with the new digital platform will provide overall better coverage of the City.

- The mobile radios will provide an additional margin of safety during fires and emergency operations.
- The radios are compatible with the state-wide communications system known as Voice Interoperability Program for Emergency Responders (VIPER).
- The radios will allow personnel to communicate directly with mutual and automatic aid departments and with fire and other public safety agencies across the state if needed.
- Asheville Fire and Rescue will be able to work more effectively with a variety of public safety agencies from across the state (in addition to other fire departments).

CONS:

- The City's matching funds are 20% ($24,000) of the total grant.
- The City will incur full maintenance and replacement cost of the radios. However, we will not maintain more radios than we already are maintaining.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from the U.S. Department of Homeland Security for the purchase of mobile radios for Asheville Fire and Rescue; and (2) a budget amendment, in the amount of $120,000 to accept these funds.

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Councilman Mumpower felt that even though the grant is from the Department of Homeland Security he did think that an argument could be made that communication in terms of local security is a Homeland Security effort.

Councilman Freeborn moved to adopt Resolution No. 06-162 and Ordinance No. 3385. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 100

ORDINANCE BOOK NO. 23 – PAGE 76

RESOLUTION NO. 06-164 - RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNOPENED ALLEY OFF OF MONTFORD AVENUE AND SCHEDULING A PUBLIC HEARING ON OCTOBER 10, 2006

Councilman Freeborn moved to recuse Councilman Newman from participating in this matter. This motion was seconded by Councilwoman Cape and carried unanimously.

Summary: The consideration of a resolution of intent to close a portion of an unopened alley off of Montford Avenue and set a public hearing for October 10, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Brownie Newman has requested the City of Asheville permanently close to the public a portion of an unopened alley way off of Montford Avenue as shown as "alley (unopened)" on the plat recorded in Plat Book 79, Page 87 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened alley is not a City maintained street. Closure of this unopened alley will not deny any of the abutting

properties a reasonable means of ingress or egress. The two parcels that abut this section of alley are identified as PIN Nos. 9649-13-03-2964 and 9649-13-04-2004. Both abutting property owners have joined in signing the petition for the closure.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for October 10, 2006, to close a portion of the unopened alley off Montford Avenue.

Councilman Mumpower moved for the adoption of Resolution No. 06-164. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 102

RESOLUTION NO. 06-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PIERZ FAMILY REUNION ON OCTOBER 14, 2006, AT THE CARRIER PARK CORPORATE PAVILION

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Pierz Family Reunion at Carrier Park Corporate Pavilion on October 14, 2006.

The Pierz Family has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their Pierz Family Reunion on October 14, 2006, at the Carrier Park Corporate Pavilion.

City staff recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Pierz Family Reunion at the Carrier Park Corporate Pavilion on October 14, 2006.

Councilman Newman moved for the adoption of Resolution No. 06-165. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 103

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE PROPERTY LOCATED AT CARIBOU ROAD AND ARDMORE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:32 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium

Density District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on September 1 and 8, 2006.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Ms. Cogburn said that Harry and Linda Giezentanner, property owners, have requested 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District. The subject properties are located off of Forest and Ardmore Streets which run parallel to each other off of Caribou Road in the Shiloh community. The property is vacant and abuts railroad tracks to the east.

The property is bordered by properties all used residentially but at varying densities. The property to the east (past the railroad tracks) contains manufactured housing (parks and single-family homes), the property to the south contains an elderly housing facility, and the properties to the north and west contain single-family homes. The zoning is also varied: to the east, Commercial Industrial; to the south, RM-8; to the north, RS-4 and RS-8; to the west, RS-4. The single-family lots in the area are mostly larger than would be allowed in RS-8 (allows minimum 5,000 square foot lots); however many have very narrow lot widths which are more in keeping with RS-8.

The development of this property for a single-family subdivision would be subject to review by the City's Technical Review Committee (TRC). Infrastructure extensions/upgrades and road connections would be examined depending on the number of lots proposed.

At a meeting on August 2, 2006, the Planning and Zoning Commission reviewed this rezoning application and recommended approval (6-1). Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The property is bordered by a variety of residential densities and a railroad corridor.
- The access to the property may need to be improved to handle increased density.
- The rezoning supports the interests set forth in the City's comprehensive plan of promoting higher density infill development in existing areas while maintaining the single-family development pattern of much of the Shiloh community.

Ms. Cogburn said that here have been some questions about slope in the area as well as wetlands. Using a map, she showed how the property is sloping on some portions and more gently sloping on the edges. With respect to the wetlands, there is a drainage area and it is mucky. She spoke with the Buncombe County Office of the Corp of Engineers and they said to be a 100% certain that something is or is not a wetlands would require a consultant or someone from their office to confirm it. However, they did indicate that it was highly unlikely that this particular area would be a wetlands that they would regulate because it is not tied to any specific steam or any other water course.

Mr. Harry Giezentanner, property owner, said that his family has owned this property for 40 years and is now requesting a rezoning. The development of the property will require Ardmore Street to be widened to 18 feet and paved at his expense. He will be upgrading a street that is zoned RM-8 on the south side. He will be putting in infrastructure as required by the Unified Development Ordinance. His plan is to bring affordable housing to this community and based on past development experiences he cannot do that with the present zoning. He has built 15 affordable homes in the Shiloh community in the past 3.5 years and presently he is building 6 homes on Iris Street. Regarding the wetlands concern, he said that on the east side of the

property there is a drain basin for all of the property above it. This basin runs into a drainage system underneath the railroad tracks. There is not a water stream on the property. He has had two meetings with members from the Shiloh community and had made every effort to meet with the community to respond to questions. He does not have a development plan available at this time. The cost for the plan is approximately $50,000. If Council approves the rezoning, any project on this property will have to be approved for major subdivision approval.

Ms. Norma Baynes, liaison for the Shiloh Community Association, said that they have been continuing to strive for their historical status and keeping the neighborhood in tact. They presently struggle with issues of all kinds, including commercial development, all types of development, traffic calming, safety, and infrastructure. To rezone the property to RS-8, it means more houses on the land. They feel that the developer can develop affordable housing in the present RS-4 district. With all the other developments in their neighborhood, there is now an over-population in Shiloh. It is hard on our infrastructure and safety of the neighborhood, with not much recreation in the area. They would like to see specific plans for the neighborhood and how the houses will fit in. She presented Council with pictures of homes in the area.

Mr. Scott Duncan, resident on Forest Street, felt like the Planning & Zoning Commission was given inaccurate and incomplete information in that the planner did not walk on the property and did not have first-hand knowledge of the site's topography. He believes in affordable and housing and infill development, but not in this case because of the topography of the property and the nature of the neighborhood.

Ms. Freda Nash, resident of the Shiloh community, spoke against the rezoning in that their concern is density and safety of the existing residents. She echoed some of the comments from Ms. Baynes and preferred to see a development plan for the property.

Mayor Bellamy moved to close the public hearing at 5:53.

Councilwoman Cape moved to deny the rezoning of 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District. This motion was seconded by Councilman Freeborn.

Ms. Cogburn said that the developer has requested that his rezoning petition be withdrawn so that he wouldn't have to wait a year to come back with something a little more detailed.

When City Attorney Oast said that it would be appropriate for the motion to be withdrawn since the developer has asked that his rezoning petition be withdrawn, Councilwoman Cape withdrew her motion.

Upon inquiry of Councilman Mumpower, Planning & Development Director said that we are projecting a need for about 10,000 additional dwelling units over the next 15-20 years and the City has approximately 37,000 now.

Councilman Mumpower felt that we have ordinances covering stormwater run-off. In addition, he could not recall a time when a neighborhood authentically, without qualification, embraced any project and if we echo that "not in my backyard" he doesn't think we serve our city well. He felt we need to look for positive, constructive ways to create more housing. This developer has had the property in his family for 40 years and is trying to do something positive with it. It concerns him that we ask the developer to spend $50,000 for a plan where the

neighbors can trump him with a protest petition. In addition, our filtration system of the Planning & Zoning Commission voted in support of this project on a 6-1 vote.

Councilwoman Cape felt that we have seen where our stormwater ordinances don't always work and we have a situation here where the property has been RS-4 for a long time. In addition, we should support the Army Corp of Engineers when they say they would have to do a study to understand the condition of the land.

Councilman Newman felt that there have been good developments in this community that have been actively supported by neighborhoods.

Councilman Davis felt that protest petitions are difficult to work with regardless of which side you support.

B. PUBLIC HEARING TO AMEND THE APPROVED CONDITIONAL USE PERMIT TO REVIEW CHANGES TO THE BUILDING DESIGN AND ORIENTATION AT 27 CATAWBA STREET

ORDINANCE NO. 3387 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR 27 CATAWBA STREET

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:03 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. In addition, Mayor Bellamy and Councilman Newman disclosed that they are Metropolitan Sewerage District (MSD) Board members.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of an amendment to the conditional use permit and associated Master Plan to review changes to the building design and orientation for 27 Catawba Street.

He said that on June 13, 2004, the City Council approved a Conditional Use Permit for a quadraplex in an RS-8 district, located off of Catawba Street (City Exhibit 4 - Location Map). The project was approved by Council subject to the Technical Review Committee (TRC) conditions, and required a detailed site plan review to ensure compliance with the approved site plan and building elevations submitted with the application (City Exhibit 5 - Approved Site Plan).

On March 29, 2005, the applicant, Mr. Rusty Hunter, submitted final detailed site plans for review that received Level One site plan approval and issuance of the zoning permit on July 14, 2005. On June 19, 2006, the Planning Department received a request for a zoning final inspection of the project in order to gain a Certificate of Occupancy. Upon that inspection, it was noted that the structure had changed in orientation from what was approved by Council (the more narrow part of the building was approved facing the street in order to appear more like a single-family structure; the structure that was now built had been reversed so that the longer, more visible part of the building now faced the street). (City Exhibit 6 - As Built Survey with Proposed Change; and City Exhibit 7 - Conceptual Elevation Approved by City Council). Staff, upon this discovery, contacted the applicant and informed them that the built structure did not comply with the approved conditional use master plan, and that the project would have to return to Council for review and approval.

The owner and building contractor met with staff and explained that the orientation of the building was changed due to a relocation of a sewer line by the MSD. During the initial planning stages of the project, the owners worked with MSD to establish where the sewer line would be installed, thus the building's original location. When the line was ultimately replaced, MSD had shifted the sewer line to run diagonally across the lot making it virtually impossible to orient the building the way it was approved without encroaching into the sewer easement.

The applicant, in an effort to make the built structure appear more in character and in line with the original approval, has submitted an elevation for adding a porch to the new "front" of the building (City Exhibits 8, 9, 10 and 11 - Pictures of Quadaplex; and City Exhibit 12 - Proposed Elevation). The porch is proposed on the east side of the façade in order to stay clear of the MSD sewer easement which crosses just outside of the handicap ramp. In addition to the porch extension additional foundation plantings and preservation of the vegetation on site is proposed. He noted that there is an existing tree that will need to be removed for the handicapped parking area so that the parking does not encroach into the front setback and landscape buffer areas.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety. The project is still being inspected for compliance with the State Building Code. A certificate of occupancy will not be permitted until full compliance with all City regulations and standards are achieved.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant. The property is already developed and is in compliance with the grading and erosion control permits. The applicant, as part of the original approval, has preserved much of the existing perimeter vegetation and will complete the installation of the required landscaping around the parking area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property. The porch addition and foundation planting proposed on the front of the new façade appears to soften and balance the scale of the structure. This, along with the existing vegetation on site reduces the visible impact of the structure from Catawba Street assuring that the building fits within the single-family neighborhood that surrounds it.

   The project is still expected to be an asset on this street and not expected to injure the value of adjoining or abutting properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. As was noted in the original staff report for the approval of the quadraplex, the surrounding neighborhood provides a range of different building footprint sizes. The footprint of the proposed building falls within this range. The proposed building is two stories in height as are some of the homes in the area. Because the long side of the building has been shifted and is now the front of the structure, the project is being reviewed for a conditional use permit amendment. The proposed porch will improve the residential character of the building and existing vegetation will reduce the perceived scale.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City. The Asheville City Development Plan 2025 encourages infill development in areas where the infrastructure is in place to support the use. Projects with greater density along corridors and near bus lines have also been noted as a positive approach to infill development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. The project has already been built and complies with the majority of TRC conditions including detailed reviews of the plans by representatives of the Water Resources Department, Engineering, the Fire Department and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The project scope has not increased from its original application in which it was determined that the existing roadway and capacity were sufficient to handle any increase generated by the proposed use.

In consideration of the above findings, the adjoining zoning and land uses, and the City adopted planning documents, the proposed conditional use permit can be conditioned to be reasonable and consistent with the intent and purpose of the Unified Development Ordinance (UDO).

Staff feels that the proposed porch extension and additional foundation plantings will soften and balance the appearance of the structure from the street making it more compatible and in character with the neighboring area. Staff recommends approval of this amendment subject to the following conditions: (1) The porch is added to the façade as shown on the drawings provided (City Exhibit 6 and City Exhibit 12); (2) Foundation plantings shall be installed behind the handicap ramp to soften the height of the wall; (3) Parking area shall be revised so that parking does not encroach into the front setback and landscape buffer areas; (4) Existing vegetation shall be maintained and supplemented as needed to meet all landscape requirements; (5) The building shall comply with all State Building and Fire Code requirements; and (6) The subject properties shall be recombined into a single parcel prior to the issuance of the Certificate of Occupancy.

Mr. Bob Spears, builder, explained that they started the project with the understanding that the building would fit on the lot. When they discovered where MSD installed the line, they found that they could not put the building on the lot as proposed. They thought they informed the right people about turning the building and the change in location was not done maliciously in anyway. At the end of the project, they found they were in violation. Their mistake was not coming back to City Council requesting an amendment once they knew MSD was causing the building location to be changed. We have spent quite a bit of money to rectify the error and make the building more pleasing. We did try to save as many trees as possible but there is an old 100-

year old tree that might have to be cut to meet the UDO. We are happy to make the necessary change to move the project forward.

Mr. Charles R. Worley, attorney for the developer, acknowledged that an error was made and they have worked on a remedy for that error. Not only is this an embarrassment of having to come back to City Council, but there is a financial penalty as well - the estimated $30,000 cost for the façade to fit into the neighborhood.

After rebuttal, Mayor Bellamy closed the public hearing at 6:17p.m.

Councilman Davis moved for the adoption of Ordinance No. 3317, amending the conditional use permit for 27 Catawba Street by adopting the amended Master Plan and the building elevations illustrating a porch addition and foundation plantings along the front of the structure, subject to the following conditions: (1) The porch is added to the façade as shown on the drawings provided (City Exhibit 6 and City Exhibit 12); (2) Foundation plantings shall be installed behind the handicap ramp to soften the height of the wall; (3) Parking area shall be revised so that parking does not encroach into the front setback and landscape buffer areas; (4) Existing vegetation shall be maintained and supplemented as needed to meet all landscape requirements; (5) The building shall comply with all State Building and Fire Code requirements; and (6) The subject properties shall be recombined into a single parcel prior to the issuance of the Certificate of Occupancy. This motion was seconded by Councilman Mumpower.

In response to Councilwoman Cape, Planning & Development Director Scott Shuford explained what was missed in the process and how that will be remedied in the future.

When Councilwoman Cape inquired about the probability of removing the 100-year old tree for parking, Mr. Glines explained that they are required by the State Code to have one handicapped space and there is a provision in the UDO that states that parking cannot encroach into the front setback.

Vice-Mayor Jones wanted to let people know that it okay to make a mistake and was pleased in the way they tried to remedy that mistake. City Council is very serious about the conditions imposed on conditional use permits and feels like this was a very constructive process.

Councilman Mumpower questioned the $30,000 mitigation cost and whether those mitigation measures are necessary.

Councilwoman Cape said that the conditions imposed by Council on conditional use permits are important. It's also important that the process has honor and consistency. It's unfortunate that the developer had to go through more hoops and financial expense, but this Council spends a lot of time on conditional use processes and it's only right that this kind of mitigation (which he has accepted) offers some respect to the process.

Councilman Davis wondered if we could amend the motion that the developer make efforts to save the 100-year old tree if City Council can waive the Code provision about parking in the front.

City Attorney Oast said that there is a provision in our Code with regard to quadraplexes, that parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses. It goes on to say that on-street parking or parking in front or on the side of the lot may be approved by the City Council provided that any off-street parking can be adequately screened from adjacent residential uses. It appears that the parking in the front is the issue and

not in the setback so it appears that Council may permit this, although we do not have a specific site plan showing where that parking space is going to be.

Mr. Shuford said that it appears we have a zoning requirement that Council does have some authority to adjust and it sounds like the motion would give staff the ability to make those adjustments. He did indicate that it may be the parking space is a handicapped parking space and there are some specific requirements about the grade to which the site has to conform to in order to allow adequate handicapped access under the State Building Code, and that would not be something that we can seek a variance on. We will do what we can to save the tree based upon what appears to be the direction from Council, but it may turn out that it will have to be cut to meet the State Building Code requirement. If that is the case, we will let you know whether it has to go or not.

Upon inquiry of Councilman Mumpower, Dr. Jim Wells, principal in the company that owns the property, said that the $30,000 will be reflected in the cost of the rent. He does want the site to look attractive and is willing to make the modification.

At 6:37 p.m., Councilman Freeborn called the question.

Councilman Mumpower withdrew his second to the motion.

Councilwoman Cape then seconded the motion made by Councilman Davis with said motion be carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower continued to be concerned that this Council is at risk for indulging neighborhoods and indulging ourselves in exercises of control and that if we aren't more careful with our polices and our efforts to control almost everything that comes before us, we risk choking the city and the people who live here.

Mayor Bellamy felt that the developer acknowledged he made a mistake and we accepted the change allowing the project to be better. To say we are sending the wrong message is inappropriate. For us to work for a better community there has to be give and take on both sides.

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C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT

City Attorney Oast said that he received a letter on September 12, 2006, from Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, requesting that the public hearing be continued since they would not be able to complete the required Letter of Credit in the form appropriate for submission to City Council. Therefore, Councilman Davis moved to continue this public hearing until September 26, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

D. PUBLIC HEARING DIRECTING THE HOUSING CODE COORDINATOR OF THE BUILDING SAFETY DEPARTMENT TO VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE

City Attorney Oast said that after speaking with Robert Griffin, Director of Building Inspections, Mr. Griffin advised him that all issues have been resolved and City Council will not need to hold a public hearing on this matter.

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 301 E. CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR RE-ESTABLISHMENT OF A HOTEL

ORDINANCE NO. 3388 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 301 E. CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR RE-ESTABLISHMENT OF A HOTEL

Mayor Bellamy opened the public hearing at 6:40 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 301 E. Chestnut Street from RM-16 Residential Multi-Family High Density District to Institutional District/ Conditional Zoning for re-establishment of a hotel. This public hearing was advertised on September 1 and 8, 2006.

The subject property is located within the city limits, at the corner of Furman Avenue and E. Chestnut Street. The Princess Anne Hotel was originally built as a hotel and is on the National Register of Historic Places (as a contributing building in a National Register District – the Chestnut-Liberty District). In the 1970s this building was converted to a residential apartment building and has been used as a boarding house, retreat center, and apartments since that time. It is unclear if every use conversion of this building in the past was done in accordance with local regulations. The current owners, Howard and Janet Stafford, have completed the restoration of this building to its original use as a small hotel. In order to make certain that all aspects of their operation are legal, the owners are seeking conditional zoning to Institutional for the purpose of operating their hotel as renovated.

Surrounding properties are largely residential in use. To the north there is an apartment complex (zoned RM-16) and to the west and south there are individual apartment buildings. East of this site the land use is predominately single-family in nature (zoned RS-8). A variety of uses are found in the broader area including offices along Furman and commercial uses along Charlotte Street.

The property owners propose that the conditional zoning allow the operation of a 16 room hotel on this property. Additionally, there are 3 staff apartments and a small (32 seats) dining area. The owners do request that the use permit small functions (receptions, fundraising events, etc.) to be held at the hotel.

At a meeting on July 17, 2006, the Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. In addition to the conditions stated in the staff report, the TRC added the following conditions:

- That a more detailed description of all proposed uses is provided for the Planning and Zoning Commission and City Council review.
- That more detail be provided on the parking – numbers; location; dimensions; handicapped parking.
- That access is clarified.

At a meeting on August 2, 2006, the Planning and Zoning Commission recommended unanimously (7-0) the conditional zoning request subject to the TRC conditions and with the following description of permitted uses:

- Sixteen (16) room hotel.
- Three (3) apartments for hotel staff.
- 32 seat dining room to be used for hotel guests (breakfast; afternoon refreshments) and for restricted dining open to the public only on Friday and Saturday evening and for Sunday brunch.
- Special functions allowed, being restricted when the expected attendance is over 75 persons. There shall be no more than 4 such large functions per month and in those circumstances, special off-street remote parking arrangements would be required. There would be no limit on the number of special events involving fewer persons.

Prior to this Council meeting, the applicant had provided a more detailed drawing of the site plans and presented an opinion letter addressing the right to use the existing access route for access to the parking on site. Accompanying the detailed site plans was a request for alternative compliance for landscaping. It details the tree credits requested for existing vegetation and details additional plantings to be made. Council will need to approve, deny or modify the alternative compliance request if choosing to approve this rezoning request. Staff feels this request to be reasonable and in keeping with the intent of the ordinance and in the interest of preserving the considerable existing vegetation on site.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's UDO. The existing site plan shows compliance with most all of the City's development standards and the applicant is working with staff on full compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** There are no real topographic or natural issues on this site. The applicant has done considerable landscaping on the site to date, in addition to leaving all existing tree cover, and is working with the City to further enhance the landscaping.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property immediately surrounding the site is residential (multi- and single-family). The small hotel (16 rooms) is compatible with the higher density residential and with the office and commercial uses found in the surrounding area. The renovation of this hotel to its original use from an apartment building/boarding house should enhance the values of abutting properties

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This use is a use that was developed as part of a historic community in the 1920s and thus is in harmony with the character of the Chestnut-Liberty District. Though larger than many structures in the area, there are considerable large single-family and multi-family structures found throughout the neighborhood.

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5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed use supports the 2025 Plan in that it promotes the traditional diversity of uses found in historic neighborhoods, and that it assures that redevelopment of structures is of high quality, adding to the character of the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The Princess Anne is within close proximity to transportation facilities and other utilities appear adequate. The parcel on which the hotel is located is near major road facilities and other service centers.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The hotel is a very small property (16 rooms) and should not cause significantly greater traffic issues than the previous use as an apartment/boarding house. The traffic engineer did not express traffic concerns for the operation at the TRC review.

Considerations:

- The rezoning makes certain that all aspects of the renovation of the Princess Anne Hotel are in conformance with City regulations.
- The renovation returns a historic property in an historic neighborhood to its original use.
- Parking on the street may be necessitated for some functions held at the hotel.

Mr. W. Louis Bissette Jr., attorney representing the petitioners, briefed Council on one of Asheville treasurers - The Princess Anne Hotel, which opened in 1924. He said the Hotel is on the National Historic Registry and is a real asset for the City of Asheville. He spoke in support of the conditional zoning and presented City Council with a petition containing 45 signatures and 14 letters of support. He said the application meets all the criteria necessary and the petitioners are willing to work with any conditions imposed by City Council.

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods, said that they support the conditional zoning; however, they raised a question regarding parking for the special functions. When there is parking on the side streets in a neighborhood, safety is an issue. She suggested perhaps a method of parking permits be utilized between Mr. Stafford and the neighbors.

A resident who resides on Chestnut Street said that she does support the conditional zoning and loves that the building was restored. She does fear, however, that there will be problems with parking on the special events. She feels that the existing apartments on Chestnut Street will be moving toward the direction of non-residential property.

The following individuals spoke in support of the conditional zoning for the Princess Anne Hotel for several reasons:

Mr. Jody Whitehurst
A resident on Furman Avenue
Ms. Julie Brandt, member of the Board of Directors of Asheville Preservation Society of Asheville and Buncombe County (not speaking on behalf of the Board)
Mr. Mark Allison, resident on Furman Avenue
Ms. Erin McLoughlin, resident on Oak Park Road
Mr. Shannon Fields
Mr. Craig Tiller, resident on Oak Pak Road

Mayor Bellamy closed the public hearing at 7:06 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3388, to conditionally zone property located at 301 E. Chestnut Street from RM-16 Residential Multi-Family High Density District to Institutional District/ Conditional Zoning for the purposes of operating a small hotel subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The permitted uses on the property shall be limited to the following: (a) Sixteen room hotel; (b) Three apartments for hotel staff; (c) 32 seat dining room to be used for hotel guests (breakfast; afternoon refreshments) and for restricted dining open to the public only on Friday and Saturday evening and for Sunday brunch; and (d) Special functions allowed, being restricted when the expected attendance is over seventy-five (75) persons. There shall be no more than four (4) such large functions per month and in those circumstances, special off-street remote parking arrangements would be required. There would be no limit on the number of special events involving fewer persons; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (5) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any permits. In addition, his approval includes acceptance of the request for alternative compliance as stated in the letter provided by the applicant. This motion was seconded by Councilwoman Cape.

When Councilman Mumpower asked if the last condition was necessary, Ms. Cogburn said that the condition is worded that it is at the direction of the Planning Director that the project will be reviewed by the TRC prior to issuance of any permits.

Councilman Mumpower asked if Councilman Freeborn would be willing to amend his motion to delete that last condition. Councilman Freeborn felt that if staff felt it was a necessary condition, he would not change his motion. Councilman Mumpower responded that this is an example of that unnecessary level of control.

The motion made by Councilman Freeborn and seconded by Councilwoman Cape carried unanimously.

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At 7:09, Mayor Bellamy announced a short recess.

F. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD (COMMERCIAL INDUSTRIAL CONDITIONAL ZONING) FOR A TEMPORARY CLASSROOM STRUCTURE**

ORDINANCE NO. 3389- ORDINANCE AMENDING THE CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD (COMMERCIAL INDUSTRIAL ZONING) FOR A TEMPORARY CLASSROOM STRUCTURE

Mayor Bellamy opened the public hearing at 7:18 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditionally zone property located at 103 N. Bear Creek Road (Commercial Industrial Conditional Zoning) for a temporary classroom structure. This public hearing was advertised on September 1 and 8, 2006.

Ms. Cogburn said that the subject property is located within the City Limits on North Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Two parcels totaling 2.28 acres were included in the original conditional zoning application and are also the subject of this modification. Access to the property is off of N. Bear Creek. Surrounding properties to the north and west are zoned residentially (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes construction/contracting/electronics operation is located to the east.

The applicants, Amica Venturi and Ken Huck, recently received rezoning approval and final Technical Review Committee (TRC) approval for their plans to rezone the property from RM-8 to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home. It is proposed that the single-family home be preserved and used as a residence for staff until the building is removed. (This is a clarification from the initial approved plans and needs to be approved along with the modification concerning the temporary modular classroom). The original development plan showed, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

The applicants are now seeking modification of their original plans to show phased development of this property. They propose the use of a temporary modular classroom on the southern end of the property (where parking will be located upon project completion) during the construction of the first classroom on the site. The proposed classroom would be licensed for up to twenty-five children and two staff members. The proposal is that the building would remain on site no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and Development.

At their meeting on August 21, 2006, the TRC reviewed the modification to the conditional zoning and made a positive recommendation (with conditions) that the request be forwarded to the Planning and Zoning Commission. The TRC required that all improvements still be in place prior to the receipt of a Certificate of Occupancy for the modular classroom.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The temporary placement of a modular classroom on the site, if approved, must meet the technical standards set forth in the City's UDO. The proposed site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate childcare-licensing professionals on the development of this site.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or**

measures proposed by the applicant. The applicant is proposing little grading for either of the two phases of the development of the child care facility. They are utilizing a portion of the eventual parking area for the temporary classroom. The majority of the existing trees on site are proposed to be maintained.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations. Self-service storage facilities are immediately adjacent to the portion of the property on which the temporary classroom will be placed.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed modular building (approximately 800 square feet) to be utilized for the preschool is not out of character with the residential area. The area has a fairly dense residential population for which the preschool would be a convenience.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development (and phasing) supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility. The provisions will be reviewed for both phases of the development.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposes appropriate phasing for a nonresidential use in a transition area between residential and commercial/industrial uses.
- Landscape plan indicates the preservation of considerable existing vegetation.

Staff recommends approval subject to the original conditions placed on the development by the TRC and with the following provisions: (1) That the first phase (placement of the modular classroom) is approved for no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and

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Development; and (2) That the existing home will be used for a residence for staff until it is removed from the site.

Mr. Gerald Green, representing the applicants, said that due to the demand for the facility, the applicants wish to provide the services for the members of the community and for those who work in the area.

Mayor Bellamy closed the public hearing at 7:23 p.m.

Upon inquiry of Councilwoman Cape, Ms. Cogburn said that one of the requirements of the TRC is that all of the requirements of the entire project, including the landscaping, driveway and sidewalks, be put into place so they will have to have the appropriate safe ingress and egress.

Mayor Bellamy suggested the applicants look at the MacAbee School that is over by the Beth Israel Synagogue as it is an excellent model of a temporary structure.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3389, to amend the conditionally zone property located at 103 N. Bear Creek Road (Commercial Industrial Conditional Zoning) for a temporary classroom structure, subject to the original conditions placed on the development by the TRC and with the following provisions: (1) That the first phase (placement of the modular classroom) is approved for no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and Development; and (2) That the existing home will be used for a residence for staff until it is removed from the site, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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G. **PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT**

ORDINANCE NO. 3390 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

Mayor Bellamy opened the public hearing at 7:25 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow tattoo parlors as a permitted use in the Community Business I District, Community Business II District, Commercial Industrial District, the Highway

Business District, the Regional Business District, the Central Business District and the River District. This public hearing was advertised on September 1 and 8, 2006.

The City of Asheville's Unified Development Ordinance does not currently address "tattoo parlors" as a use within the City's jurisdiction. In the past, interpretations have allowed tattoo parlors to be permitted in various districts within the City.

The amendment clarifies this issue and provides for tattoo parlors as a permitted use in the Community Business I, Community Business II, Highway Business, Regional Business, Commercial Industrial, Central Business, and River Districts. It provides a definition for "tattoo parlors" as well.

The amendment has been routed to the Coalition for Asheville Neighborhoods, CREIA and CIBO for review and comment.

Considerations:

- The amendment provides for a use not currently provided for in the Unified Development Ordinance.
- The amendment clarifies the ordinance with regards to permitted uses.
- Tattoo parlors may be seen as inappropriate uses in certain districts enumerated.

At its meeting on June 7, 2006, and August 2, 2006, the Planning and Zoning Commission unanimously (6-0; 7-0) recommended approval of this wording amendment. Staff recommends approval as well.

City staff recommends City Council amend the Unified Development Ordinance to allow tattoo parlors as a permitted use in various zoning districts.

Mayor Bellamy closed the public hearing at 7:26 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3390. This motion was seconded by Councilman Newman:

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H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES ON HENDERSONVILLE ROAD FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION

Urban Planner Alan Glines requested a continuance in this matter since City staff is waiting on a revised Master Plan for the project that will illustrate compliance with site issues required in the Unified Development Ordinance. Therefore, Councilman Mumpower moved to continue this public hearing until September 26, 2006. This motion was seconded by Councilwoman Cape and carried unanimously.

I. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

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Mayor Bellamy said that the petitioners have again requested the public hearing be continued to November 28, 2006, in order to address the cost of highway signs in their budget. Therefore, Councilman Mumpower moved to continue the public hearing until November 28, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. UPDATE FOR RICHMOND HILL PARK PROJECT

ORDINANCE NO. 3391- BUDGET AMENDMENT FOR RICHMOND HILL PARK PROJECT

Parks & Recreation Director Irby Brinson updated City Council on the recent occurrence of erosion control issues at Richmond Hill Park and apologized for any embarrassment this was caused the City of Asheville.

The City of Asheville received notification from the N.C. Dept. of Environment and Natural Resources (NCDENR) on August 23, 2006, of erosion control violations related to the clearing and grading work at Richmond Hill Park to prepare the site for an entrance road, parking lot, disc golf course and future restroom facility. The clearing and grading work is being performed by the National Guard as part of its agreement with the City of Asheville.

Immediately following notification, Parks and Recreation staff met with consulting engineer McGill and Associates to begin taking steps to clean up and stabilize the site. Parks and Recreation staff also began an internal review of the work on the project.

As the managing department, the Parks and Recreation Department takes full responsibility for the erosion issues that have occurred at Richmond Hill Park. The clearing and grading portion of the project proved to be too large and complex, and required more significant resources, expertise and quality control than had been allocated to complete the work in a timely manner.

Below is a summary of the immediate actions that began on August 25, 2006, to rectify the current situation at Richmond Hill Park.

Priority 1: Create new barrel riser sediment basin below existing sediment trap #2. Re-direct diversion ditch to front of existing sediment trap. Correct weir on existing sediment trap. Remove debris from draw, smooth out and install erosion control matting down length of draw. Seed matting and secure with rip rap. Install straw bale checks over matting down length of draw.

Priority 2: Cut in new sediment trap on south side of site to replace existing trap #1, which was installed in the wrong location.

Priority 3: Cut in a second sediment trap on south side of the site behind the debris pile. Relocate the debris pile after trap constructed to allow water flow to basin. Remove debris from disturbed area in front of trap and smooth down. Install erosion control matting. Seed matting and secure with rip rap. Install straw bale checks over matting down length of disturbed area.

Priority 4: Create two permanent barrel riser sediment basins on either side of future restroom area.

Priority 5: Clean debris out of toe of south slope. Re-grade slope to gradually taper into edge of clearing limits. Stabilize with seed.

Priority 6: Remove debris from valley on north side of site where silting has occurred near the new disc golf course. Smooth out area and seed.

Priority 7: Clean-up silt from the south side of site near Smith's Creek tributary. NCDENR will prescribe a clean-up plan.

Ongoing Priorities:

- Clean out all silt fencing and replace section(s) where necessary.
- Chip debris piles. Use mulch for soil stabilization in place of seed where feasible.
- Hydro-seed the entire area when notified by the consulting engineer.

Additional equipment was secured from the Public Works Department to assist with the work. The top priorities were accomplished by September 1, 2006. A contract for hydro-seeding is expected to be in place by the first of September; the most effective way to eliminate erosion and runoff from a project site is by re-establishing ground cover.

City staff also requests that City Council approve a budget amendment that will appropriate the funds from the timber sales totaling, $29,300 and $50,000 from the City Manager's contingency fund to address the issues from the notice of violation. It should be noted that $23,300 of the funds collected from the timber sales will go to the National Guard for trees removed from their site, minus costs associated for security on site.

Pros
- Sedimentation damage was discovered early and staff took immediate action to minimize impact on the site. The NCDENR report classified the damage as "slight."
- Site grading as part of the agreement with the National Guard has saved the City between $750,000 and $1 million.

Cons
- There was minor damage due to sediment runoff.
- Grading by National Guard is not the most effective and efficient resource to complete work due to time constraints they have available to support the project.
- Parks and Recreation staff failed to adequately stabilize the site in the absence of the National Guard crew.

Future Considerations:

National Guard:
- As part of the agreement, the National Guard will be responsible for armory construction and the surrounding site which has been approved by the Technical Review Committee
- There will be no formal interaction between the City and the National Guard as it relates to the construction of both sites once the grading in Richmond Hill Park is complete.
- The National Guard is responsible for armory site compliance and will be monitored by NCDENR regarding erosion and sedimentation control measures.

Proposed Ball Fields:

- Construction of the ball fields has been on hold since May 2006. No clearing and grading work has been performed for the ball fields.
- We have learned from the current erosion situation that construction of the ball fields will require more time and resources than originally anticipated. Because of the site sensitivity, a consulting engineer might be required to oversee that construction.

Based on current issues surrounding development Richmond Hill Park, staff recommends securing the services of a professional engineering firm for the duration of the project to oversee the administration and compliance as required by NCDENR. Also, staff recommends that Council consider proceeding with the park development as planned, with the exception of the ball fields, and evaluating alternative locations for ball field development which would include land cost, accessibility, traffic impact and environmental impact. This analysis will be completed by January, 2007. Staff also recommends approval of the budget ordinance revision.

Mr. Brinson then reviewed with Council the project history, project construction, project sediment issues, examples of the violations, project compliance, examples of compliance, next step and asked for policy direction and considerations: (1) pursue park plan with ball fields at Richmond Hill Park (community concerns: cost of additional project management resources); (2) continue existing Richmond Hill Park Plan - with ball fields on hold (funding to pursue alternative location - land, grading, etc. and/or partnerships); or (3) remove ball field from the Richmond Hill Park Plan (need in North Asheville for ball fields).

The following individuals were opposed to City Council proceeding with ball fields at Richmond Hill Park for various reasons and supported alternative designs that work with the landscape and scenery. They felt the Park should be used for a wildlife refuge, an environmental education center, plant refuge, protection for streams, reduction of noise, reduction of flood damage, filtering urban water sources, urban greenspace recreation, air pollution reduction and urban climate modifier, mountain biking, hiking, jogging, dog walking, bird watching, and just seeking serenity:

Mr. Craig Young, Asheville resident

Mr. James Wood (used a PowerPoint presentation and presented 10 letters and petition containing over 700 names). Recommendations: (1) cease all disc golf construction activities immediately; (2) conduct environmental assessment of the disc golf course by a local conservation group; and (3) fairways be relocated into other areas. Ultimately requested City to adopt a vision for Richmond Hill Park for education, recreation and conservation.

Ms. Julie Brandt, Weaverville resident and City of Asheville property owner

Dr. Dee Eggers, Professor in the Environmental Studies Department at UNC-Asheville

Ms. Elaine Lite, Beaverdam resident

Mr. Jim Drummond, member of the Recreation Board, said that the ball fields at Richmond Hill Park would serve a large group, not just North Asheville. He hoped City Council would continue with the ball fields, noting that mistakes were made and history can teach us how to move forward.

Mr. John Gillam, member of the Board of WNC Disc Golf Club, felt that there are three issues involved: the ball fields; the disc golf course and the Armory. He felt the City has done a good job in working on the disc golf course in a responsible manner. There are some issues in erosion from the equipment that was used to put the infrastructure in. That infrastructure is now in and the equipment is not needed anymore. He believes that with some simple measures we can address any kind of erosion that will happen on the site with seeding, stormwater collection devices, etc. He also felt that the golf course should not be grouped in with the other two issues.

Rev. Christopher Chiaronmonte felt that the City should determine who is liable for the damages - the City or the National Guard Armory.

Upon inquiry of Vice-Mayor Jones, Mr. Brinson said that of the $50,000 requested, the piece for the engineering services (approximately $5,000) is above and beyond what we would have to do anyway. The hydro-seeding would have to have occurred; the rock and materials that are necessary for sediment basins would have had to occur; and the contingency is for planning ahead if we needed additional funds (additional grading that may be necessary).

Mr. Brinson said that this was actually in our Capital Improvement Plan (CIP) request, but was not funded. The reason we need the budget amendment now is because there was a 30-day Notice of Violation and we have to make these improvements within that 30-day period.

Upon inquiry of Councilman Freeborn, Mr. Brinson said that the commitment in the contract with the Armory was only the rough grading.

Councilman Newman questioned if we don't proceed with the ball fields at the Richmond Hill Park site and find an alternative site that will require some grading, could the City ask the National Guard to partner with us in doing that, since we will be saving them grading at the Richmond Hill site. Mr. Brinson responded that he does think they would be open to that, but doesn't know what their schedule would be. From the legal standpoint, we would need to look closely at the agreement to make sure that in some way we are receiving that benefit, whether that is through them or through another contractor.

Councilwoman Cape was under the impression that $50,000 was remediation work from the memorandums we received. Now she is hearing this money is what we needed to spend anyway. She feels we are being forced into spending money that we didn't want to approve in the budget process because we went ahead with a project and now have to come back and fund. It doesn't feel like it honors our ability to be involved in the budget. She said she owes the community an apology because when she was elected to City Council, she accepted what she was told by staff about the way we were going to move on this project. One of the first times she met with the City Manager and Mr. Brinson, we walked down at Azalea Park and she mentioned her concern with our sedimentation control out there. It was nominal compared to the Richmond Hill Park. Then on June 1 she had some concerns about what was going on with sedimentation control at the Richmond Hill site and was told that she was over-reacting and we were talking care of it, and this was the highest environmental concern. She has some concerns about how the whole process works. She didn't doubt that we have to do this at this point, but was definitely disturbed about how it is being presented to Council.

City Manager Jackson said that he would like to have an opportunity to meet with the Chief Financial Officer to go through the CIP request and visit with Mr. Brinson before giving City Council a detailed answer.

Mr. Brinson explained that the 30-day Notice of Violation is driving this budget request at this point. We were anticipating the deployment of the Armory to be on site for the two weeks for their period of work and not to be back every other weekend to address this particular issue. We got into the position of where we were beyond the budget and we knew we were going to have to address the issue at some particular point and then when the violation occurred, the 30-day time period started.

Upon inquiry of Mayor Bellamy, Mr. Brinson explained that there was $40,000 in our budget to deal with this particular issue. We knew it was not going to be enough to get us to where we needed to be to have the whole park completed. We had requested in the 2006-07

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budget process $100,000 for us to go to the next phase. That was not approved in the budget process. Knowing we had $40,000 to spend, we felt like we could get beyond this particular point and we wouldn't have to do some of the things we are having to do now (because of the violations), but the additional funds for the hydro-seeding we felt like we could pay that out of existing funds. Because we did two environmental assessments for $8,000 and had to hire additional security on site because of vandalism issues, that depleted the $40,000 down to the point where we didn't have the money to address these issues.

Councilwoman Cape wondered why we went ahead with the project if Council didn't appropriate the money. City Council's role in this process is to determine what to fund and what not to fund. She feels like we have switched how that works and has a concern as that being a staff decision.

Mayor Bellamy said that when staff comes to Council, traditionally, and requests money for a park or police cars and Council doesn't fund it, staff doesn't stop because Council didn't fund it. They continue to look for alternative ways to fund whatever their initiative is. But if Council stated a policy direction that they don't want staff to move forward, then staff stops. An example is the Civic Center - staff still paints the walls and continues to operate with what they have.

Councilwoman Cape said that Council didn't fund the $100,000 and there were heads up. She has been informed that on June 28 there was a breach discovered. She didn't hear until September that the contract with the Armory was that they got the privilege of learning on the site. She was told that it would be handled with the utmost environmental care and that this would be a park that would show the environmental sensitivity used. To her frustration, she then finds out that we used it as a training ground for people in a very sensitive area. She thinks that there is some disconnect on how we inform Council about process and how we listen to concerns. She did not know what she needed to do at the time was to get the majority of Council to tell City staff stop. She was trying to work with the public process and knew that this has been worked on for a long time. She had expressed concerns of environmental care and was being given assurance. We can't continue to say we don't have the money to do the job well, so let's do the job and then make up for it later. If we have a project that we can't afford to do well without money, let's as an organization not do it and let's have that discussion. It is not okay to not have oversight. A two-week project turned into a four-month project which happens to every developer in our community. We are the ones that set the example and the standard. She was very upset by the process and wants to move forward. She questioned if there is any ability for the Armory to accept any responsibility in this budget amendment since they were the ones in their learning process who drove over the silt fences. There seems like there could be some participation we could explore.

Councilman Mumpower believed the impact has been dramatically exaggerated. In a complicated world, everyone makes errors and Mr. Brinson has demonstrated ownership and a willingness to learn. He felt Council's job is to assist Mr. Brinson with that and help him move on. Every concern that he heard raised about environmental concerns were raised by people trying to kill this project. From his exposure, the body of the people that he has encountered were not people who came forward and said they know some things and who offered to help, but people who didn't want this park to happen and who wanted control over the land they didn't own and were not concerned about the City as a whole. If you look at the average person who has by-pass surgery and you take pictures of them in the middle of that surgery, you won't have a sense of success or what the potentially good can come of that. You will be scared and feels the pictures shown represent the middle of the surgery on that property when it's at its worst. This is a complex project. He believed this is an operational issue and we gave you policy guidance. He was glad that we have the staff that has the courage and professionalism to try to take policy guidance and be creative and forward-thinking and dynamic and try to bring things to life.

In response to Councilman Mumpower's question about detailed information on how much actual damage was done by some of these mistakes that were made, Mr. Brinson said that he didn't want to minimize the issue, because it is an issue that deserves the attention it is getting. The inspection report that is done by DENR classified this as "slight" damage. DENR's classifications are "slight," "moderate," and "severe." On the cleaning of the sediment areas towards the creek were about 12 wheelbarrow loads of dirt, debris and silt that was removed. Water Quality was back on site today and basically has given us a clean slate. Therefore, the water quality issue, according to their terms, has been taken care of. He is not here to say that is acceptable, because it's not. One bit of sediment off that site is not acceptable. If there is any good thing out of this, we did not impede on anyone else's property - it was all contained on site. The standard grass is coming in exceptionally well and we feel confident that the site will totally be re-seeded by 2 weeks.

Councilman Newman said that Richmond Hill is a public park and many people were warning Council about the wisdom of taking very rough topography and turning it into a large flat area for ball fields. He recommended we give direction to staff to aggressively look for alternative sites for the ball fields.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3391. This motion was seconded by Councilman Davis.

Vice-Mayor Jones echoed Councilwoman Cape's comments. She does have concerns about incurring a lot of debt before we identify the source of the revenue. She would be supportive of the budget amendment, but would not be supportive of this process until we have a Council discussion about how we can do it better and be better stewards of taxpayer money. She is mainly concerned about new projects opposed to maintaining what we have.

City Manager Jackson said that all points are well taken. We have worked with Council very closely in reengineering the operating budget and we will begin with the retreat discussing how we can improve the CIP budget process. He is confident that the same success we had with the operating budget can be translated into success in the CIP budget process.

Councilman Davis is supportive of moving along with the budget amendment. He questioned if we have pursued asking the National Guard for some help in the problem they have exacerbated. He also senses that we spent a great deal of money because of some obstruction efforts on the part of the community to stop the project earlier and that's some of the reason why we are here.

Mr. Brinson said that he will be exploring the liability option with the City Attorney. He felt sure that the National Guard would be seeking advice from their legal counsel as well.

Councilman Davis also noted that we did two surveys of the wetlands for $6,000 and the results of those studies were that it is not a jurisdictional wetland and we have not found anything to change our course because of what has been found there. This still continues to be an issue here. Mr. Brinson noted that we were not required to do an environmental assessment study on the property. The federal government was required to do one (total of three studies on this property) and they found no significant impact.

Councilman Davis felt we should correct the mistake and it's notable that DENR said our difficulties were "slight." He does feel that there are a lot more layers that we are dealing with here today but was pleased to move forward and fix what we have.

In response to Councilwoman Cape, Mr. Brinson said that if Council doesn't approve the budget amendment, we could not meet the requirements of the violation.

Councilman Mumpower pointed out that there were 12 wheelbarrows of dirt in a place they shouldn't have reached over 16 acres disturbed.

When Councilman Mumpower asked if there is a pattern of mistakes for the Parks & Recreation Department, Mr. Brinson said there was a violation of Azalea Park and it dealt with a decision that we had to make it quickly in regard to saving the wetland area.

City Manager Jackson said that our Parks & Recreation Department is a nationally recognized department and has a track record of competence in delivering programs as well as facilities. This is the exception to the rule and we want to deal with this forthright and aggressively to get this on the right track the Department has been on for years under Mr. Brinson's leadership and direction.

Councilman Newman said that there may have been 12 wheelbarrows of mud taken out of the creek, but it's obvious that there were a lot more wheelbarrows of mud taken off that site.

Councilwoman Cape said that Mr. Brinson's history with the Parks & Recreation Department is not under review. We are collecting money from the citizens of Asheville for stormwater control and we need to be the stewards and example of this. She feels this is different than looking at heart surgery because the problem with siltation in rivers is one of the major causes of much environmental degradation and is nothing to take lightly.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried unanimously.

Councilman Freeborn felt there was ample property along the riverway for ball fields and would support staff looking in those areas. He does feel that grant dollars would be available. He did not want to continue with ball fields at Richmond Hill Park.

Councilwoman Cape moved to remove ball fields from Richmond Hill Park Plan. This motion was seconded by Councilman Freeborn.

Councilman Mumpower said that we are a city of hills with the little flat lands being taken up by other things. The City maximized what they had using existing resources. This is about our children needing a place to play ball. A tremendous amount of thought, money, energy, staff time and Council deliberations went into this plan and to walk away from it, he felt would be a mistake.

Upon inquiry of Councilman Davis, Mr. Brinson said that he will explore partnerships with other municipalities, other governmental agencies and other providers to see if there is a possibility to maybe collaborate on these issues.

Councilman Davis felt North Asheville deserved ball fields like other parts of town. He felt that removing salvage yards on the riverway is an expensive proposition and not a reality at this point. He asked that we continue to explore other partnerships. We have had some setbacks but also we have invested a lot of time and energy in great plans to bring this forward. He doesn't want to see us abandon ball fields at Richmond Hill Park before we explore the other alternatives.

Councilwoman Cape supported ball fields in North Asheville, but looking at a flat piece of paper is different than being on the site. Now we have recognized how difficult the transfer of these plans will be and she thinks there are other areas for ball fields other than at Richmond Hill Park.

Councilman Newman asked if we could amend the motion to make sure that we have looked at every other possible places for ball fields in North Asheville.

Upon inquiry of Councilman Freeborn, Mr. Brinson said that it would cost approximately another $700,000 to complete the ball fields. Originally the plan called for 5 fields and was toned down to 2 fields to address many of the issues brought forth in discussions.

In response to Councilman Freeborn about appropriating the $700,000, Mr. Brinson said that staff will have to come back to Council many times for requests to continue development of ball fields; whether they are at Richmond Hill or somewhere else. It may be a land acquisition cost, grading costs, infrastructure costs, etc. That will be a multiple-year request process, if the decision is made to build ball fields anywhere.

City Attorney Oast said that we do have a contractual arrangement with the National Guard. He has not reviewed the contract in advance of this meeting and whichever policy direction Council gives staff, we need to explore the contractual implications of that contract. If there are further specific actions that need to be taken, like amending the contract, we might need to come back to Council.

Councilwoman Cape moved to amend her motion to remove ball fields from Richard Hill Park Plan forever and pursue alternative locations and partnerships. The amended motion carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

After walking the site in June, Vice-Mayor Jones didn't realize the huge amount of grading required for disc golf. She felt we should look for alternative ways to make the fairways less intense, which might be cheaper to build and maintain. She felt we need to discuss this with the disc golf group first and ask them to look for some alternative ways to accomplish this.

Mr. Brinson clarified that there was no grading for the disc golf course, only clearing. He said that the disc golf course has been moved on two occasions, really at the request of Mr. James Wood, to stay out of the wetland area. Mr. Nichols, who is doing the design for the City, has done a great job of trying to appease that issue. He has moved a number of holes away from the wetland area to keep them from being disturbed. The course is about 90% complete. If we go back and look at re-locating, we might be doing more disturbance in other areas. However, he said that he would be happy to work with Mr. Nichols on Vice-Mayor Jones' request.

Councilman Freeborn said that the National Guard did the work for the City that led us to this point and he felt they should have to pay for the cost of the clean-up regarding the violation. If they are unable to do this, he would not feel comfortable in seeing the Armory portion of the project moving forward. This was a well-intended project and he does support more ball fields in North Asheville. He admires our staff and former Councils for looking at avenues to build park

facilities. He then moved ask the City Attorney's Office to review the contract to see if the National Guard's inability to provide adequate grading work (or their unwillingness to pay for the cost of clean-up) on the site is a breach of contact. This motion died for a lack of a second.

Councilman Davis said that it is not the National Guard's fault that we are not going to build ball fields at Richmond Hill Park. They may not have timely provided the grading as we would like and it created a problem for us. But, in good faith, they were performing grading. Now we are not going to be needing them to complete what we expected them to do in this contract, so we need to have staff talk to the National Guard about what opportunity we have with perhaps transferring this grading to another site at a later date.

City Attorney Oast said that he was going to review the contract in terms of what level of responsibility the National Guard has regardless of whether Council gave him direction or not.

Councilwoman Cape asked staff to clarify whether the National Guard would be willing to grade in another location.

Councilman Mumpower said that even though he spoke against the disc golf course from the beginning, we have made a commitment to them and we should proceed, especially since 90% of it is complete.

In response to Councilman Newman, Mr. Brinson said that the previous disc golf course was pretty rough due to the amount of play. We have learned a lesson and have worked with Mr. Nichols on the design. We have looked for ways of putting in steps in places where we know there is going to be traffic, we have put mulch in places where the area won't be degraded, and we have seeded areas where we know we may have erosion problems. In addition, we have formed the t-boxes and put gravel in the bottom of them and then put synthetic turf on the top so they won't erode the particular area. There are things we are trying to do. Asheville is the envy of a lot of people because of that disc golf course. Most disc golf courses are in open areas and they are not very challenging. There is a benefit for having a unique course there, but there is also an issue of dealing with the sensitivity of the site.

Councilman Mumpower moved to support the disc golf course moving forward. This motion was seconded by Councilman Davis.

Councilman Newman moved to amend the motion, noting that he did support the disc golf course at Richmond Hill, that we ask the disc golf course people to pause and review the plans to see if there may some adjustments before final build-out. If we are not going to proceed with the plans to immediately build out the ball fields, there may be some really positive changes that could be made to the golf course to the benefit of disc golf and to the benefit of the park. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt the amendment to the motion is more of an effort to micro-manage the process that is already 90% complete. He would not support the amendment.

The amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

In response to Mayor Bellamy, Mr. Brinson said that his staff works with the disc golf course people all the time and they do not need to get formal direction from Council to do that.

Councilman Mumpower felt Council is micro-managing and he withdrew his original motion, which was amended.

Councilman Davis moved to have staff collaborate with the disc golf course people and come back with a final plan giving City Council an opportunity to have a final look at it. This motion was seconded by Councilman Mumpower.

Mr. James Nichols, representing the WNC Disc Golf Club, said that they are committed to working with the Parks & Recreation Department staff.

Councilwoman Cape would like to include some other people, other than City staff and the disc golf club. She felt it was only fair that people who are sharing concerns with this location be included in that conversation as well. Mayor Bellamy instructed City staff to advertise this meeting, specifically placing a notice on our website and in our eNews.

The motion made by Councilman Davis and seconded by Councilman Mumpower carried unanimously.

Mr. Brinson shared with Council that they have learned many lessons from this and staff will be more diligent in addressing the projects in the future. He thanked former Councils and the seated Council for the following projects that you have assisted us with: (1) approving the development of the French Broad River (FBR) Park system, especially Carrier Park, which is a showcase for water quality improvements by retaining and filtering the runoff from West Asheville prior to reaching the FBR and which will also become part of the curriculum for the city schools; (2) partially funding the Reed Creek greenway project which will again serve as a learning lab for our community on collecting runoff from over 1/3 of the stormwater in Asheville; (3) support of Azalea Park, which has become the showcase for a soccer complex in the southeast, the envoy of communities who use to laugh at Asheville because of our poor collection of soccer fields; (4) allowing us to build Food Lion Skatepark for an underserved group of children and which also allowed us to successfully solve a major problem downtown with destruction of property; (5) allowing us to feed over 100 seniors in our community Monday-Friday with the only hot meal they sometimes receive; (6) allowing us to bring in the wonderful staff who were transferred from Buncombe County. Through their efforts we: (a) Reduced the deficit in the first year of operation at the golf course from 135,000 to less than 25,000; (b) Completed over 750,000 worth of improvements at McCormick Field for a cost of less that 80,000 for the city taxpayer; (c) Completed the Covington clubhouse at Aston Park at no cost to the city taxpayers; (d) Exposed over 20,000 school children to the wonderful world of nature and living things at the accredited Nature Center; and (e) For allowing Recreation Park pool to have its most successful year financially that it has ever had; (7) allowing us to provide supervised Afterschool care to over 250 children each day at little or no cost to those who need it the most; (8) allowing me to work with a dedicated maintenance staff who have inherited over 350 acres of additional park land and 14 new parks and facilities with fewer people that we had ten years ago; (9) allowing us to provide an outdoor recreation program that has allowed inter city children their first real experience in being in the outdoors through caving, canoeing, camping, hiking and mountain biking; (10) the opportunity to work with the Junior League of Asheville at the Reid Center for providing our youth a way to express their feelings on social problems through drama, dance and creative music; (11) allowing us to renovate Stephens-Lee Center when there were so many saying it would never happen; (12) allowing us to participate in the "top of stop" program that provides shelter for those needing a place to get out of the sun or rain at our bus stops; (13) allowing our staff "on our own time" to work on habitat for humanity projects, adopt a street, support two families through Eblen each year at the holiday season and the other hundreds of hours they spend giving back to the community they so love; (14) allowing us the flexibility and resources to secure over 15 million in out side funding, non-city taxpayer dollars, for projects and programs over the last ten years; (15)

for your support of the many festivals, special events, and activities, that brings in over 25 million dollars in economic impact for this community; (16) allowing us to provide an award winning wellness program that has reduced the sick leave by city employees dramatically; (17) supporting the youth and adult athletic programs for this community which provide positive outlets for many who would be doing other negative activities; (18) assisting in the funding of renovations to 15 playgrounds and parks over the last ten years that allow for equal access by all; (19) allowing us to support the over 100 building, several which are historic that the city owns as part of our on-going maintenance operations with 3 dedicated staff members; (20) support of public art, which can be sometimes controversial, but adds so much to the culture, historic fiber of our community and celebrates our diversity; (21) the opportunity to nurture relationships with such great people like Jake Rusher who, through his will gave the City almost 1,000,000; (22) supporting our therapeutic recreation program which serves over 2800 youth and adult who frankly would go un-served if not by our wonderful staff; (23) allowing us to teach on an average 350 people to learn to swim each year at no cost, increasing the likelihood that they could save someone else's life or their own; (24) allowing us to provide logistic support to those returning home and recreation opportunities to the families of those serving in our armed forces through the Citizen Soldier Program; (25) allowing us to provide hundreds of unique programs and activities at our 10 recreation centers, many at little or no costs; (26) allowing us to continue to provide a summer playground program that gives so many youth and teens a place to socialize, learn and play while out of school; and (27) the 135,000 hours over 2,500 volunteers give to our programs each year. This alone saves well over $500,000 each year thanks to their commitment.

VI. OTHER BUSINESS:

Vice-Mayor Jones thanked UNC-Asheville and their freshmen for volunteering at Azalea Park. She spoke about how the relationship with the student body and the City of Asheville is mutually beneficial.

The following claims were received by the City of Asheville during the period of August 18 - 31, 2006: David Meek (Sanitation), Wit Jakutowicz (Streets), Dorothy Countryman (Sanitation), Kelvin Benjamin (Water), Everette Hardy (Water), Nichole Compton (Transit Services), Angela Smith (Transit Services), Bjorn Larson (Police) and Stephene Dury (Transit Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte performed a survey which revealed that 99% of the people don't mind being asked for money. He understands that the banning ordinance from parks is for those drinking in the parks, noting it says nothing about smoking pot or having it in your possession.

Mr. Chris Weeks said that appearances are deceiving.

CLOSED SESSION

At 9:36 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe. The statutory authorization is contained in G.S. 143-318.11 (a) (3); (2) to discuss matters relating to the location or expansion of industries or other businesses in the area served

by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorized the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); (3) to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to GS. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (2); and (4) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property on Brevard Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 11:25 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:25 p.m.

Kristin Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – September 19, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Councilman Brownie W. Newman

VISITORS FROM SISTER CITY VLADIKAVKAZ RUSSIA

Mayor Bellamy said that the City of Asheville and Asheville Sister Cities are proud to welcome our friends from our first Sister City of Vladikavkaz, Russia, to Asheville. The visit was sponsored by the Open World Leadership Program of the Library of Congress as an Arts and Culture tour. She hoped that their visit is both profitable and memorable. She was particularly happy to see our long-dormant relationship with Vladikavkaz being revived. The citizens of Asheville look forward to continued exchanges between our two cities. She asked that our visitors extend our best wishes to their fellow citizens of Vladikavkaz upon their return home. She presented them each with a small gift. In turn, Akhsar Yesenov, senior instructor/art professor from the North Ossetia State University, presented Mayor Bellamy with a medallion and a painting, which he painted, showing a view of Vladikavkaz.

Mayor Bellamy was then pleased to introduce Ms. Valeria Watson-Doost who has just returned from Osogbo, Osun State, Nigeria. Ms. Watson-Doost briefly spoke about the trip to Osogbo and how she hoped that Osogbo, Osun State, Nigeria, will be able to establish a relationship with the Asheville Sister Cities Program. She presented Mayor Bellamy with a letter from the Honorable Chairmen of Olorunda Local Government and Osogbo Local Government and a beautiful piece of fabric.

BUNCOMBE COUNTY MENTAL HEALTH CRISIS CLINIC

Ms. Mandi Stone, representing Buncombe County, outlined Buncombe County's current plans a Crisis Stabilization Facility in Buncombe County. She said that the purpose is to provide medical, non-hospital detoxification and facility based crisis services to individuals. It is located at 277 Biltmore Avenue, Asheville, NC. This is a county owned building that currently houses the Neil Dobbins Detoxification Center. The facility will be operated by ARP-Phoenix. They currently manage the detox program and have managed other crisis facilities in North Carolina. It is a locked facility providing mental health crisis stabilization services from 23 hours to 15 days. The individual will meet criteria for involuntary commitment. There is a reasonable expectation of stability and step-down to a lower level of care in less than 24 hours. There will be clinical programs for rapid stabilization; aggressive medication or crisis counseling. The facility will have on-site capacity for "first responder team" to begin developing step down plan: Crisis plan including safety plan; Immediate community support (ACT Team, CBS Services); Discharge medication, refill arrangements, and MD follow-up appointment; Residential plan; and Transportation. There will be 24/7 law enforcement presence on site. This facility will have 16 beds as defined by licensure regulations Division of Facility Services.

- County Investment Crisis Facility:

  $1.2 M Building Renovations
  $ 71,640 Annual Rent Subsidy
  $500,000 Projected Operating Shortfall
  $250,000 24/7 Law Enforcement Presence (4 FTE) + 1 Vehicle

- Additional County Investment In Crisis Services

Integrated Care
- Western North Carolina Community Health Services ($130,000)
- ARP-Phoenix ($150,000)

Detention Center
- Behavioral Health Staff: $110,000 (therapist, psychiatric consultation, pharmacy)
- Community Based Services (total is $84,000 combined with Substance Abuse Services)
- Substance Abuse Services

Ms. Stone responded to various questions/comments from Council, some being, but are not limited to: how will this facility help the pressures in the jail; is the facility only for those intoxicated or does it include other mental heath crises; are the hospitals supportive of this facility;

Councilman Mumpower thanked the County for their leadership and tax dollars to make this facility happen. He said that typically cities don't get involved in direct services, but questioned how the City help. Ms. Stone responded that the City is helping via this forum as they are still working to get the word out that this is one area we are trying to develop. Also, she said that they will be challenged around the 24/7 law enforcement presence and the City may want to look at the amount of time they are currently spending related to transporting people to out of town hospitals and whether this, at some point, might allow the City to reallocate some resources to help with that piece. Clearly understanding though, that the delivery of mental health services is the County's responsibility.

Mayor Bellamy also thanked Ms. Stone who is also supporting families in crises.

There was a majority of Council's support to direct the City Manager to see if there are any opportunities for cost-sharing to assist with the 24/7 police presence.

PROGRESS REPORT ON THE HOMELESS (10-YEAR PLAN)

Ms. Amy Sawyer, Affordable Housing Coalition, said that the he Homeless Initiative coordinates community planning and action to implement the 10-Year Plan to End Homelessness, adopted by the City of Asheville and Buncombe County in January 2004. The overall goals of the plan are: reduce the number of people who become homeless; increase the number of homeless people placed into permanent housing; decrease the length and disruption of homeless episodes, and provide community-based services and supports that prevent homelessness before it happens and/or limit opportunities for homelessness to reoccur. Regular updates are provided through the website (www.abchomeless.org), a newsletter, and quarterly stakeholder meetings. Six workgroups meet monthly to plan and coordinate actions in the areas of: Oversight, Feedback, Prevention, Housing, Services, and Discharge. Membership in the workgroups includes business and community representatives, service agencies, advocates, and homeless individuals.

The coordinator for the Homeless Initiative participates in community groups that have shared interests, including the Homeless Coalition, the Drug Treatment Subcommittee of the Buncombe County Drug Commission, the Adult System of Care Group, and BEACON (the network of emergency assistance providers). She also sits on the state's Interagency Council on Homeless Programs. This minimizes duplication and provides for broader community collaboration.

Point-in-time counts record the number of people experiencing homelessness on a single day. The most recent count was conducted on July 26, 2006:

Date	Total # Experiencing Homelessness	Experiencing Chronic Homelessness	Formerly Homeless in Permanent Housing
Jan 2003	700 estimate	293 estimate	n/a
April 2004	689	n/a	n/a
Jan 2005	502	169	n/a
Jan 2006	486	127	55
July 2006	598	134	78
Difference Jan-July '06	+112	+7	+23

Notes:

1) Chronic homeless individuals are those with a disabling condition who have been homeless for a year or more, or have had four episodes of homelessness in the last three years.
2) A seasonal increase in people experiencing homelessness is expected in the summer in our area; however, the number of chronically homeless has not significantly increased this year.
3) Most of the increase in the July count was in the number of people in families. This is due in part to better measurement of this group with almost 100% agency participation.
4) The Point In Time evaluation tool is now used uniformly across North Carolina and should remain consistent from this point forward.
5) Formerly homeless people in permanent supportive housing are not counted as homeless, but would likely face homelessness again without this support.

Six mandated agencies have been using the Homeless Management Information System (HMIS) since May, 2006. The Homeless Initiative is working closely with state-wide HMIS administrators to address technical problems and start to track data, including, eventually, an unduplicated count of people experiencing homelessness over a period of time. A group HMIS training is planned within the next two months, but the cost of joining the system is a major barrier to smaller agencies. The State has applied for additional HUD funding to mitigate some of these costs.

Housing First, the placement of chronically homeless people in permanent supportive housing as a first step in addressing their problems, is one of the key strategies adopted in the 10-Year Plan. The increase in numbers this year has been largely due to expansion of WNC Community Health Services' Shelter Plus Care program.

In addition to the existing units noted in the table above, 18 units at the rehabilitated Woodfin Apartments are currently being filled, with full lease-up expected over the next few weeks. Applications are also being accepted for the new Griffin Apartments, where 15 units will be available for homeless people by the end of October.

Representatives listed below have been meeting to plan the implementation of the Housing First program at the Griffin and Woodfin apartments.

- Mountain Housing Opportunities (Developer)
- Hospitality House (Case Management)

- Western North Carolina Community Health Services (Case Management - AIDS)
- Clay Properties (Property Management)
- Harris Brown (Property Management)
- The City's Community Development Division

A doctoral student from the University of North Carolina will be gathering research data on the cost effectiveness of supportive housing for persons who are chronically homeless.

Barriers:

- **Public Will:** There is a great deal of community support for the Homeless Initiative, as seen in the list of partners. However, ongoing clashes in downtown accentuate a piece of the problem and frustrate many community members. The answer is continued education, stakeholder collaboration, and community-wide events that show the positive work that is being done.

- **Mental Health Services:** Mental Health and Substance abuse treatment are essential. While the 10-Year Plan sets a goal of expanding mental health treatment, specifically with two interdisciplinary ACT Teams, this has not occurred. Recent state mental health reforms have had the opposite impact. Strict criteria, long waiting lists, and struggling service providers make accessing the mental health system a challenge felt across the community, including by those who are experiencing homelessness, or at risk of experiencing homelessness.

- **Funding:** Direct funding of services by the federal government is declining.

Some upcoming events include:

- **October: An Annual Report** will be presented to the community in the first week in October. Philip Mangano, Director of the United States Interagency Council on Homelessness will attend, along with local and state representatives. It would be an honor to have City Council members in attendance.

- **December: Project Connect** is a day-long national event planned for early December, with over 30 cities from across the country participating. Project Connect will provide a safe, friendly place where individuals experiencing homelessness can access a wide array of services, including health checks and housing options. We are very grateful to Mayor Bellamy for the support she has given to this event.

Ms. Sawyer and Ms. Charlotte Caplan, Community Development Director, responded to various questions/comments from Council (and those they were unable to respond to they would obtain that information and share it with Council), some being, but are not limited to: what is the total budget for Housing First, including housing, food, treatment, medical care, supervision, case management, etc.; is the target group still the core chronic homeless group downtown; what percentage of the people moving into the Griffin Apartments are working or have substance abuse or mental health problems; is treatment for substance abuse a requirement those who want to live in the apartments; what was the capital investment for Woodfin Apartments; are criminal background checks performed; is the Asheville-Buncombe Community Christian Ministries (ABCCM), Western Carolina Rescue Ministries and the Salvation Army been a part of the process; are the agencies participating in the Plan comfortable with the process; have you seen the number of chronic homeless decrease; is Asheville still amongst one of the largest cities that has the largest chronic homeless population in the state; and is the Housing Authority

involved and have they provided or will they participate in providing any units in some of the housing developments.

Councilman Mumpower didn't personally agree with some of the initiatives, but they are shining a light on the problem. He asked for detailed budget information if we are going to participating in this initiative going forward. He is concerned about the dollars and the effectiveness when we are dealing with a chronic population of substance abusers. He said we are talking about 33 people out of 134 and there is certainly a concern that after we get the 33 off the street they will be replaced with another 33. He personally has a hard time with the amount of money we will be putting into this for the limited number of people. When we look at all the people in the community who are working hard trying to make ends meet and then to set people up with limited requirements for behavioral maturity in an apartment of their own for free, doesn't seem right.

Vice-Mayor Jones said that Rev. Scott Rogers with the ABCCM did meet with the Housing & Community Development Committee and they had a constructive interchange. It is her understanding that he is committed to working with the City on this initiative in moving forward. In term of the 10-Year Plan, the chronic homelessness initiative is only one part of the Plan. She was very encouraged to hear how Buncombe County has integrated strategies straight out of the 10-Year Plan in their planning of the detox facility.

Councilwoman Cape said that the detox facility will have 16 beds and noted they are paying $350 per person per night for those beds for a total of about $10,000 per month per person. If we can get those 16 people into a stabilized situation through this initiative, that would be a lot of money freed up to do a lot of other things in our community on a larger scale. She felt this is a good step to addressing this problem and would be interested in seeing how it moves forward.

Mayor Bellamy said that there are some people who are homeless and some people who just like to hang out. One thing that has impacted the visibility is A-Hope's hours of operation. The day reporting center that was in place is one element missing. Mental health has a direct impact on our homeless issue, and we should write a letter to our legislators and congressmen asking them to assist with this issue now because it is going to be a huge burden on our resources. She asked for Council's support in sending the letter.

At the suggestion of Councilman Mumpower, it was the consensus of Council to instruct the City Attorney to draft a very specific resolution in response to recent events and that it be placed on Council's next formal meeting agenda.

On behalf of City Council, Mayor Bellamy thanked Ms. Sawyer for this update. She said that City Council will look for further updates in the future.

I-26 AESTHETICS ADVISORY COMMITTEE

Mayor Bellamy informed the public of three citizen information workshops being held by the N.C. Dept. of Transportation for the purpose of showing all preliminary designs for the I-26/240 widening project. Public input from these meeting will be included in the draft environmental impact statement and will be used in the decision making process.

Ms. Alice Oglesby, designer representing the I-26 Aesthetics Advisory Committee, updated Council on their progress over the past two years noting that they will be participating with the N.C. Dept. of Transportation at the public workshops.

She reviewed with Council some of the overview items and then showed them some focus areas they are targeting.

What they based everything on was what the Community Coordinating Committee had set up as design criteria, approved by Council. We are looking at matching the skill of the project to the character of the community. We are looking at reunification and connectivity of the community in various ways; recommend neighborhoods and downtown connectivity; compatibility with community's existing design vision and future plans - compatibility with river front; and designed with recognizable community character and included local artists. She reviewed with Council the areas of focus, i.e., river crossing bridges, overpasses/underpasses, etc.

She briefly discussed the I-4401 section sound barrier walls and showed Council examples of other walls across the country.

She then showed Council and explained some targeted areas using examples of other cities and how they addressed the aesthetics: Amboy Road, medium sound barrier walls in the center section, State Street underpass, Haywood Road overpass and bridge.

They will be looking for public comment from the community and then they will come back to Council at a later date with a recommendation.

On behalf of City Council, Mayor Bellamy thanked Ms. Oglesby for this update and looked forward to the next report.

STATUS OF UDO AMENDMENTS

Planning & Development Director Scott Shuford said that at Council's direction, Planning and Development staff members are hard at work on making significant revisions to the Unified Development Ordinance (UDO). These revisions include stand-alone ordinances and a comprehensive UDO re-write based on Council priorities. For example, Council concern about steep slope development warrants a stand-alone ordinance, whereas changes in UDO layout and formatting can be covered as part of the comprehensive re-write.

Stand-Alone Ordinances – These ordinances are among the more significant that Council will likely see prior to the comprehensive UDO update.

Steep Slope and Ridgetop Overlay/Retaining Walls/Open Space Ordinances – These separate ordinances are grouped together because of their interrelationship. Staff convened a focus group of design professionals to provide advice and guidance on a comprehensive steep slope and ridgetop ordinance that addressed the public safety and appearance issues in a comprehensive fashion. The associated retaining wall ordinance recognized that less grading on steep slopes will result in the construction of additional retaining walls, prompting an ordinance that primarily deals with the appearance of such walls. The open space ordinance has been revised to reflect current staff research on how this issue is handled in other communities and to ensure that Council Strategic Operating Plan direction concerning fees-in-lieu of open space and greenway development are adequately covered in the ordinance. On September 6, the Planning and Zoning Commission considered these amendments and continued action until their November 1 meeting to allow staff an opportunity to communicate more fully with stakeholder groups and the public.

Mixed Use District – This ordinance is being prepared for application on the Merrimon Avenue corridor as part of the zoning study for the corridor. It is anticipated to eventually replace two existing mixed use zoning districts (Neighborhood Corridor and Urban Place).

Comprehensive UDO Re-Write – These general categories of the update are currently being reviewed with the Planning and Economic Development Committee and the Planning and Zoning Commission for policy guidance.

Zoning Districts – Staff is not planning on substantive changes to residential zoning districts but does hope to be able to consolidate existing nonresidential and mixed-use districts into a smaller number of districts by classifying the districts by development type. For example, the following table provides examples of how this can be accomplished.

Category	New District	Would Replace	Comments
Suburban			
	Commerce	RB, HB, OB, CI, CB-I, CB-II	Floor Area Ratio Design standards
	Office	OI, OII, OB	
Urban			
	CBD	N/A	No substantive changes to existing CBD
	Urban Village	N/A	No substantive changes to existing UV district
	Mixed Use	NCD, UP, CB-I, CB-II	Allows "tailoring" of requirements for different areas
	Neighborhood Infill	NB, URD	
Specialty			
	Industrial	I, LI	No substantive changes
	Institutional	N/A	No substantive changes
	Resort	N/A	No substantive changes
Overlays			
	Existing Overlays	N/A	No substantive changes to existing overlay districts
	Mixed Use	New	Allows choice of suburban or urban development styles
	Adaptive Re-Use	New	Increases flexibility of use while retaining existing buildings
	Steep Slope, Ridgetop	New	Regulates slope and ridgetop development

Vulnerable Areas: These are areas where existing zoning is problematic for a variety of reasons. The following table describes the problem situation for each area.

Area	Problem	Proposed Resolution
Haywood Road	Zoning (CBD and CB-II) doesn't match desired development	Zoning study underway
Merrimon Avenue	Zoning doesn't match desired development	Zoning study underway
WECAN	Zoning doesn't match plan	UDO revision process
Large lot areas	Zoning doesn't match development pattern	Residential Estate zoning
Chestnut, Arlington, etc.	Potential for suburban development	Adaptive Reuse district
RM-16 areas	Zoning doesn't match development pattern	UDO revision process

Development Incentives – Council has requested staff create additional development incentives intended to encourage the following desired development types:

- Compatible infill development
- Higher density development
- Development that is Healthy-Built or LEED certified
- Development that is transit-oriented
- Development that promotes affordable housing
- Development that preserves historic or character-defining structures

Each category of development type (urban, steep slope, suburban, residential, etc.) lists existing or proposed incentives. Additionally, there is a listing of procedural incentives that may apply in a variety of development type situations.

Urban Development Incentives (Mixed Use Districts)

Density Incentives

Density standards - Maximum residential density shall be 32 units per acre but may be increased up to a maximum of 48 units per acre if at least 25% of the total number of dwelling units meet City of Asheville affordability standards or at least 10% of the total number of dwelling units meet City of Asheville affordability standards and at least 25% of the total number of dwelling units contain 700 square feet or less of gross floor area.

Other Incentives

Community Incentive Table - In order to promote community goals of energy efficiency, mixed use development, and historic preservation, the following gross floor area and height incentives may be applied provided the requisite goals are met. For the purpose of applying this table, each incentive is available for each goal achieved (e.g., a building that is LEED-certified can take advantage of both the gross floor area incentive and the height incentive).

Community Incentive Table			
Incentives	**Energy Efficiency**	**Mixed Use**	**Existing Historic Structures**
Total gross floor area up to 48,000 square feet	LEED or Healthy Built Certification or Green Roof	Ground floor is 100% nonresidential and a minimum of 50% of the gross floor area of the upper floors are residential	Compatible adaptive reuse and/or additions to historic structures provided the architectural character of the principal structure, including fenestration (i.e., door and window openings), is maintained with regard to any facade that faces a street or is prominently visible from adjoining properties

Maximum four story height (max. height of 55 feet; min. 70% of total gross floor area above ground floor)	LEED or Healthy Built Certification or Green Roof	Ground floor is 100% nonresidential and a minimum of 50% of the gross floor area of the upper floors are residential	Compatible adaptive reuse and/or additions to historic structures provided the architectural character of the principal structure, including fenestration (i.e., door and window openings), is maintained with regard to any facade that faces a street or is prominently visible from adjoining properties

Conditional Use Permit Incentives

Urban Place Conditional Use Permit - This proposed conditional use permit would allow up to Urban Place-level mixed use development to occur on urban properties of sufficient size to accommodate stand-alone urban development like the development proposed on Haywood Road at the St. Joan of Arc site.

Steep Slope Development Incentives

Density Incentives

Density bonus - A density bonus of 10% may be granted for each of the following items at the discretion of the planning and development director. A total density bonus of up to 50% of the allowable density may be achieved under this provision.

a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading.
b. Grading is limited to 10% or more under the maximum allowed under subsection (e) above.
c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas, which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways.
d. Grading of roads and access drives is located outside of slopes exceeding 20%.
e. Grading for principal structures is located completely outside of slopes exceeding 20%.

Intensity Incentives

Intensity bonus - An intensity bonus of 10% may be granted for each of the following items at the discretion of the planning and development director. A total intensity bonus of up to 50% of the allowable intensity may be achieved under this provision. No intensity bonus shall allow a structure of greater size than allowed under the underlying zoning district.

a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading, including placing parking in or under the principal structure(s).
b. Grading is limited to 10% under the maximum allowed under subsection (e) above.

c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways.
d. Grading of roads and access drives is located outside of slopes exceeding 20%.
e. Grading for principal structures is located completely outside of slopes exceeding 20%.

Suburban Development Incentives

Density incentives
Residential density "bonuses" will be developed to promote affordable housing. An example is provided below; the density allowance will vary based on the zoning district (e.g., the Commerce District would likely have a 24 unit per acre "base" density while the Office District would likely have a 16 unit per acre "base" density).

> **Density standards** - Maximum residential density shall be __ units per acre but may be increased up to a maximum of __ units per acre if at least 25% of the total number of dwelling units meet City of Asheville affordability standards or at least 10% of the total number of dwelling units meet City of Asheville affordability standards and at least 25% of the total number of dwelling units contain 700 square feet or less of gross floor area.

Intensity Incentives
Floor Area Ratio (FAR) bonuses – These can be used to encourage developments that the City would like to see for nonresidential suburban development. An example is provided below (numbers used are for illustration purposes only).

Site Design	FAR	Building size (1 acre lot)
One-story building(s)	0.2	8,712
Multistory building(s)*	0.35	15,246
LEED-Certified	0.3 (one-story)	13,068
	0.5 (multi-story)	21,780
150% landscaping	0.3 (one-story)	13,068
	0.5 (multi-story)	21,780
Green roof	0.3 (one-story)	13,068
	0.5 (multi-story)	21,780
Mixed use (50% or more residential)	0.3 (one-story)	13,068
	0.5 (multi-story)	21,780
Structured parking (50% or more spaces)	0.3 (one-story)	13,068
	0.5 (multi-story)	21,780

Maximum Allowable FAR = 0.5

*40% or more of total building GFA provided on second floor for a 2-story building and 60% or more of total building GFA provided on floors 2 and above for buildings 3-stories and taller

Conditional Use Permit Incentives
Mixed Use Conditional Use Permit – This proposed conditional use permit would allow up to Urban Place-level mixed use development to occur on

suburban properties of sufficient size to accommodate stand-alone urban development like Gerber Village.

Procedural Development Incentives

Fee Structure and Permit Processing Incentives
Building Safety Director Robert Griffin is developing fee structure and permit processing incentives for Green Building projects that will be shared in a separate memorandum.

Level III Thresholds
Proposed Level III exemptions and threshold adjustments:
Exemption for development in the downtown CBD. Development located in the downtown central business district shall be exempt from the Level III review requirements provided such development is in compliance with the downtown design guidelines as determined by the downtown commission in accordance with the applicable review procedures.

- **Exemption for development in a local historic district.** Development located in a local historic district shall be exempt from the Level III review requirements provided such development is in compliance with the applicable design guidelines as determined by the historic resources commission in accordance with the applicable review procedures.
- **Threshold adjustment for development in the NCD, URD and UPD districts.** The Level III threshold for residential development in the neighborhood corridor and urban residential districts shall be more than 100 dwelling units. The Level III threshold for residential development in the urban place district shall be more than 150 dwelling units.
- **Threshold adjustment for long-term housing affordability.** Dwelling units that meet City of Asheville requirements for housing affordability for a period of ten years or longer shall not be counted toward the Level III threshold requirement.
- **Threshold adjustment for smaller residential units.** Dwelling units that contain 450 or fewer square feet in gross floor area shall not be counted toward the Level III threshold requirement. Dwelling units that contain one or more bedrooms and 600 or fewer square feet in gross floor area shall not be counted toward the Level III threshold requirement. Dwelling units that contain two bedrooms and 850 or fewer square feet in gross floor area shall be counted at 0.5 unit toward the Level III threshold requirement. Dwelling units that contain three or more bedrooms and 1,000 or fewer square feet in gross floor area shall be counted at 0.5 unit toward the Level III threshold requirement.
- **Threshold adjustment for transit-oriented development.** The Level III threshold for residential developments located on a transit route and that significantly integrate transit into their site design and operation shall be more than 100 units. The Level III threshold for nonresidential developments located on a transit route and that significantly integrate transit into their site design and operation shall be more than 150,000 square feet of gross floor area provided such developments also meet the minimum requirements for approval of large scale commercial projects using the applicable checklist review by the planning and development department. (**NOTE:** There is a proposal for certain types/scales of developments to pay into a transit fund; this may be one way to allow developments to meet the transit-orientation requirement for a threshold adjustment.)
- **Threshold adjustment for LEED or Healthy-Built Certified developments.** The Level III threshold for residential developments certified as Healthy-Built shall be shall be more than 100 units. The Level III threshold for nonresidential

developments that are LEED-Certified shall be more than 150,000 square feet of gross floor area provided such developments also meet the minimum requirements for approval of large scale commercial projects using the applicable checklist review by the planning and development department.

Residentially-Zoned Properties Development Incentives

Density Incentives (Existing)

Development Standard Bonuses -There is an existing conditional use permit process that allows densities to be increased by up to 150% in single family districts and 200% in multifamily districts for developments that contribute to meeting City goals such as affordable housing, environmental protection, infrastructure provision, and public transit. The process also allows taller structures to be constructed in multifamily zoning districts to accommodate the increased density. Setbacks are established by the conditional use permit process. (**NOTE**: As part of the UDO update, staff will evaluate whether this bonus provision should be expanded to cover additional goals and whether the density incentives are sufficient to entice their use.)

Duplex Uses In Single Family Zones - Duplexes meeting certain design requirements are uses by right subject to special requirements in single family zoning districts.

Duplex, Triplex and Quadraplex Uses in Single Family Zones -These small-scale multifamily uses are allowed with a conditional use permit in single family zoning districts.

Density and Development Incentives (Proposed)

Adaptive Re-Use Overlay District - This proposed code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the ***Asheville City Development Plan 2025*** through the creation of an overlay district that allows for and provides incentives for adaptively reusing valuable buildings. Asheville has a stock of fine older buildings that greatly contribute to the City's quality of life and urban character. Due to design, location, and/or condition, these buildings may become functionally obsolete for use under their current zoning. An example of this is might be a very large older home on a large lot in a single family zoning district; the home may be too large for continued use as a single family home and the only value it may have for the owner is through demolition of the house and subdivision of the site into several lots. Adaptively reusing the building and lot in their current arrangement for multifamily and/or limited office uses may well be a much better option for the owner, neighborhood, and City relative to the subdivision option. The overlay district would "overlay" a selected portion of an existing zoning district, allowing supplementary incentives and requirements to apply to the property covered by the overlay district.

Cottage Development – Staff is working on a cottage development overlay district or conditional use permit process that would allow the clustering of single family homes on parcels of a certain size pursuant to a "cottage development" plan. Typical "cottage development" concentrates parking in one location and organizes home arrangement around a green or park area.

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Landscaping -- Staff has been working with a focus group of design professionals and Tree Commission members to significantly revise the landscaping and buffering sections of the UDO. These revisions will propose to:

- Simplify the requirements for greater clarity and compliance
- Resolve the conflict between loading and buffering in favor of buffering
- Assign buffering requirements by zoning district rather than use
- Establish a new fee structure for landscaping violations

Nonconformities – Staff has received policy direction from the Planning and Economic Development Committee concerning nonconformities. This direction is resulting in a proposed ordinance that will contain:

- Simplified language
- One key substantive change – still require site upgrades for renovations greater than 50% in value but define "renovation" as leaving the walls and roof structures intact; additions or expansions greater than 50% in value must bring building location, design into compliance for the expansion/addition area.

Standards and Specifications Manual – Planning staff is coordinating with other departments to move certain UDO standards into the updated Standards and Specifications Manual. These standards are primarily engineering standards such as parking and loading space size, width of parking lot travel aisles, and sight distance triangle requirements.

Enforcement – Planning staff is coordinating with the City Attorney's office to develop streamlined and more effective enforcement provisions into our zoning regulations.

Owens' Report Follow-up – Staff will be including the following specific adjustments to the UDO in response to the Owens' Report:

- **Sight distance triangle** - Staff will eliminate the confusion between the UDO and the Standards and Specifications Manual regarding application and enforcement of sight distance triangle standards. We will use traffic engineering "best practices" as the standard, rather than the somewhat arbitrary, non-site-specific standards in the UDO. These requirements will be placed in the Standards and Specifications Manual.
- **Sign height** - As part of the UDO update, we will correct the confusing table that has led some to interpret that sign height standards apply to attached signs.
- **Sign area/placement/background** - Staff will bring alternatives for sign area calculations, sign placement and sign background issues (and their consequences relative to existing signs) to the PED Committee for policy direction. The direction received will be incorporated into the UDO update.
- **Pedestrian-oriented uses/setbacks** - Planning staff has already implemented a "team" approach to the application of the ped-oriented setback allowances. Two or more planners must review ped designs and make a recommendation to the Planning Director as to whether the design meets the standards. Staff will also include clarifying language in the UDO update, such as clearly applying the design standards to corner side setbacks and providing greater direction as to what constitutes ped-oriented design. Lastly, the proposal to address urban and suburban design issues more explicitly in the UDO update will favorably affect how this code provision is implemented.
- **Loading vs. buffering** - Planning staff is currently working with a focus group of Tree Commission members and landscape design professionals to revise buffer standards as part of the UDO update. It is our intention to resolve the buffer/loading conflict in favor of buffering to the greatest extent practical.

- **Landscaping issues** – The focus group mentioned above is also addressing general landscaping issues with an eye to increasing both the simplicity of the regulations and their effectiveness. Included in this effort will be changes to the alternative compliance process to better identify and specify the situations in which that process may be used.
- **Driveways/residential streets** - This section of the UDO requires significant revision to reflect a variety of factors, including community expectations, case law on property rights, and application. These factors will be resolved in the coming amendments to the UDO. Staff will seek policy direction from the PED Committee if needed.
- **50% Improvement Issue** – Staff has discussed this matter with the PED Committee and has received direction to: (a) continue the site upgrade requirements already existing in the UDO; and (b) strengthen the requirements for what constitutes building "renovation" so that a greater degree of façade and building floor area preservation is a component of overall site upgrades when the nonconforming building location is to remain. This direction will be included in the upcoming UDO amendments. Additionally, Building Safety staff have instituted a new process for double-checking improvement values using standard construction valuation techniques.

Mayor Bellamy explained her concern with the exemption for development in the downtown CDB district being exempt from the Level III review requirements in relationship to mandatory review, but not mandatory compliance. Mr. Shuford said that if this exemption is in place, we would expect that the design guidelines to be mandatory at that point in time. However, there are proposed developments that are currently underway in our downtown that are in such scale that it may be appropriate for Council to look at them.

Mayor Bellamy also said that in the threshold adjustment for transit-oriented development and in the threshold adjustment for LEED or healthy-built certified developments, the threshold is 100 units, which is essentially doubling the threshold for current Level III review projects. She asked what rationale was used in the 100 units. Mr. Shuford said that the 100 units was a number put out for policy consideration, noting that none of the thresholds are to some degree arbitrary, but they represent sizes of projects that people can conceptualize and understand and that gives Council some way of determining whether that number is an appropriate one or not. Mayor Bellamy suggested a threshold between 50 and 100 units to first see if we get developers who are interested in these types of incentives and not move the community too far too soon.

Mr. Shuford said that we also want to make sure the development community has a chance to review these incentives to see if they will actually encourage the type of development we are looking for. He said that he would come back to Council with some rationales on any unit numbers they arrive at.

Councilwoman Cape said that she and Councilman Newman have been talking about a few things and essentially the idea is the development of a cafeteria-style point system that might identify what the strategic goals of our community are. And then a range of incentives based on how many of those goals they meet. It would be like earning incentives by the number of strategic goals that are met, whether it is a combination of green-building, affordability, transit-oriented or site selection, then all of them add up to make the threshold rise and fall accordingly.

Mayor Bellamy was concerned that in the cottage development incentives if we ask people to go through the conditional use permit process, it may deter people from pursuing this type of development because it will add more cost and time to the project and she understood our goal was to simplify the process. Mr. Shuford responded that the process by which cottage developments can be approved is an important policy issue for Council because they have the potential to be in areas that don't necessarily have to be on a major corridor. Perhaps there is

some way that in certain areas it is a use by right, subject to special requirements; in other areas, it might be better suited as a conditional use permit; and in other areas, it could be achieved as an overlay district. We may be able to come into this in a variety of ways being cognizant in making it a simpler process.

Councilman Mumpower said that with the need of approximately 10,000 new housing units needed in the next 10-15 years, we need to try to take away any hurdles for cottage, accessory or auxiliary housing developments.

In response to Councilman Freeborn, Mr. Shuford said we are looking at each of our zoning districts and what their purposes are and whether the list of uses are ones that support those purposes. We have done a fair amount of advanced planning in the River District from the Wilma Dykeman Plan to the River Redevelopment Plan. We are going through a public process to further refine the viewpoints of the major stakeholders, mainly the property owners that have invested in the river. He feels Council will see a shorter list of allowed uses in the River District after the process is complete. As far as the mixed use overlay, we noticed corridors in the City that seemed to be urban corridors and they need to have an urban development pattern; other corridors were suburban in nature; and some corridors are in areas of transition. One thing they have suggested in the past would be to have a parallel code so that you could have both a suburban development opportunity and a mixed use opportunity. That is what the mixed use overlay would attempt to do - give you the choice of whatever development pattern you felt was appropriate.

Upon inquiry of Councilman Freeborn, Mr. Shuford explained the vision of the new Neighborhood Infill District.

In response to Councilwoman Cape, Mr. Shuford explained why City staff thinks it may be appropriate to look at some of the areas zoned RM-16 Residential Multi-Family High Density District to identify whether the RM-16 District is really what the City's goal is. There are areas of the community that it would be appropriate to change the zoning to a single-family designation.

City Manager Jackson said that City staff is also taking a pro-active look at how we can stimulate job creation and capital investment. They are preparing a similar type of review and presentation for the Council Planning & Economic Development Committee and the Sustainable Economic Development Committee to talk about innovative ways we can really make an impact and take our economic development efforts to the next level.

At 5:07 p.m., Councilman Mumpower moved to go into closed session for the following reason: To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The locations include: Swannanoa River Road and Asheville Commerce Park. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 5:42 p.m., Vice-Mayor Jones moved to continue the closed session to the end of the regular meeting. This motion was seconded by Councilman Freeborn and carried unanimously.

At 5:42 p.m., Councilwoman Cape moved to go out of closed session and return to the regular meeting. This motion seconded by Vice-Mayor Jones and carried unanimously.

BROADBAND PLANNING

Information Technology Director Jonathan Feldman briefed council on broadband planning for our community.

The City of Asheville has significant operational requirements for high speed data networks. Ongoing operational costs of these networks is quite high even without stipulations for highly reliable service, so infrastructure builds are appropriate for internal usage.

It is unclear at this time whether cities should become involved in the provisioning of citizen networks. It is clear that cities who are participating in the great municipal experiment of providing broadband services to citizens are cities that are able to shoulder the risk of litigation and potential resource loss. However, there is potential economic development impact of having adequate or inadequate reasonably priced high speed data communications within a city, and Council may wish to re-examine municipal involvement in citizen broadband as conditions change. The history of cooperative/municipal electric utilities is instructive when considering this issue.

Current assets currently include fiber optic through the Charter Cable franchise agreement as well as the ERC (Educational Research Consortium) franchise agreement. Telecommunication towers are also a significant asset when considering future infrastructure planning for the City.

Policy direction for broadband at the City of Asheville essentially consists of choices between intended uses of the broadband infrastructure and how aggressively the City wishes to build its own infrastructure. Staff's recommendation is to be collaborative with other agencies when it comes to use; and to be strategic, rather than aggressive or minimal, when it comes to building infrastructure for future needs.

He reviewed a summary of current activities and projects, which included leveraging the current and future AFR fire station build-out to achieve a fault tolerant topology for City services.

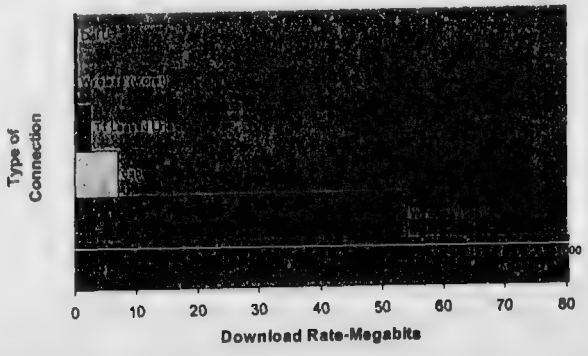
Next steps would include creating metrics to track success in activities as well as more exploration into how upcoming City department projects can be leveraged in order to provide more strategic broadband infrastructure for future use.

- **Data Rates & Operational Needs**

When making decisions about broadband, it is very helpful to know in general terms what is possible with which types of technologies, and it is also helpful to know where the limits are set as to what type of data speed constitutes "broadband."

Data speeds are generally measured in the industry as megabits (1000 bits) or gigabits (1000 megabits). The FCC (Federal Communications Commission) defines broadband as speeds greater than 2/10ths of a megabit. On the other hand, the ITU (International Telecommunications Union) defines broadband as speeds greater than 1.5 megabits.

The following chart shows a comparison of types of connectivity. It is worth noting that fiber optic connectivity has far greater capacity than any of the types shown. In fact, if the chart were to show the entire capacity of fiber optic, the other types would essentially show as zero because of the significant scale difference. It is also worth noting that wireless at its worst offers



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approximately the same data rate as the maximum speed of dial-up access. Even forthcoming higher-speed cellular based wireless such as EVDO (EVolution Data Optimized) only offer effective rates at approximately a half a megabit.

Without being paired up to real world needs, data rates remain an abstraction. So it is worth considering that the effective requirements for acceptable real-time GISerformance at remote fire substations is certainly well above the 10 megabit rate; and that this type of computing requires in the range of 100 megabits to perform without undue delay. It becomes obvious very quickly that any effective data network must integrate both wired and wireless data networking technologies in order to combine mobility capabilities with desired data rates in buildings.

However, acquiring high speed connectivity in North Carolina (and indeed in the United States in general) remains a costly exercise. Essentially, incumbent telecommunications organizations are in a very difficult, competitive, and low-margin business currently. Reasons for this are varied, but some cite the Federal Telecommunications Act of 1996 (which regulated the telcos) in combination with significant sunk costs in expensive-to-maintain infrastructure technologies. When last pricing high speed connectivity for City usage, rates were $1040/month for a 100 megabit link.

From a wireless perspective, it is difficult to say when cellular providers will deploy higher speed wireless data. Some industry insider estimates have EVDO reaching Asheville in late 2007, but this may be optimistic.

Ultimately, ongoing operational costs of institutional high speed network services remain quite expensive even without service level agreements (contracts with financial clauses for failure that tend to be more expensive, but that help to ensure that the provider has incentive for reliability). Preparing broadband infrastructure in a sensible way for city functions both now and in years to come is definitely a staff priority.

- **Citizen Broadband Perspective**

Clearly, it is of benefit for citizens to have a city services that have a robust and cost-effective data network. Whether it is for mundane purposes such as telephones or for critical emergency response purposes, city business happens more effectively for citizens if the city has an effective broadband network. It is less clear whether cities should become involved in the end-user provisioning of citizen networks. From staff's perspective, at this time, a city would need significant surplus resources and a mandate from citizens to embark upon such a task. From staff's perspective, these conditions do not now exist in Asheville.

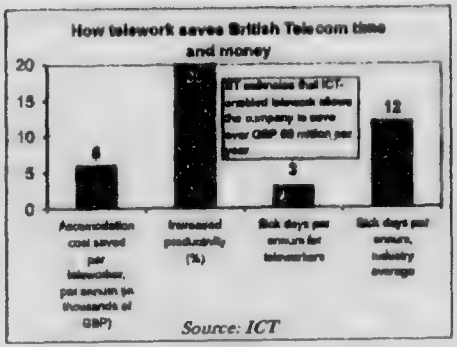
It is not a unique attribute of Asheville that consumer-grade high speed connections remain relatively expensive and sometimes tied to "bundling" practices where there is a punishment/reward discount for consumers choosing bundled services (such as cable or telephone services) along with data services. Bundling has the effect of creating a barrier to customers switching providers, and therefore gives citizens less choice.

Moreover, it also appears that carrier (telecomm / cable) data speed technologies are evolving at a far less dramatic rate than commodity wireless and wired technologies. Asheville is also not the attractive high-density data market that Atlanta or Charlotte is. Using history as a guide, there is a possibility in the future that citizens in Asheville may not have the connectivity choices that citizens of larger cities do. Since there is a potential economic development impact of having adequate/inadequate data communication in a given city, Council may wish to re-examine the role of the municipality in filling this need at a future time. (As a real example of how data network availability has translated into cash savings, see example figure showing how

British Telecom has quantified the savings of having adequate bandwidth available for workers to telecommute/telework.)

Again, history – not of data networking, but that of electric utility – can bring an interesting perspective to the matter at hand.

> *A century ago, private electric utilities ... insisted that that rural areas would be too costly to serve. In response, more than 3,000 communities formed their own utilities, arousing corporate charges of unfair competition, and "un-American" and "Bolshevik" tactics. Today, ¼ of the country's electricity is still generated by the remaining municipal and rural electrical cooperatives."*
> –Neal Pierce, Nation's Cities, 4/24/2006.



While cities such as St. Cloud, Florida, and Philadelphia, Pennsylvania, have constructed WiFi data networks for citizens, such constructions have shown that WiFi in a municipal context is a relatively slow technology that is fraught with radio frequency complications. Moreover, the model deployments (if they are done by the cities themselves rather than by private industry) have been shown to be legally challenged. In the case of municipally-done deployments that went forward (such as St. Cloud), legal challenges were obviously successfully overcome, but staff believes that most if not all municipal deployment to citizens will be legally challenged by the incumbent telecoms and cable companies. However, for longer term planning purposes, it is possible that conditions may change in Asheville or on a national level such that it may be in citizens' best interest for the City to get involved in such a deployment.

- **Current City Assets**

The City enjoys substantial connectivity not experienced by other agencies in Buncombe County. In particular, both the Charter Cable franchise agreement as well as the ERC (Educational Research Consortium, a 501-c3 started by Congressman Taylor) franchise agreements have had the effect of markedly expanding Asheville's truly high-speed data network. Many remote sites, including all fire stations and police sub stations are connected by this fiber, and Asheville citizens enjoy better service from personnel as a result of the high-speed (100 megabit) network.

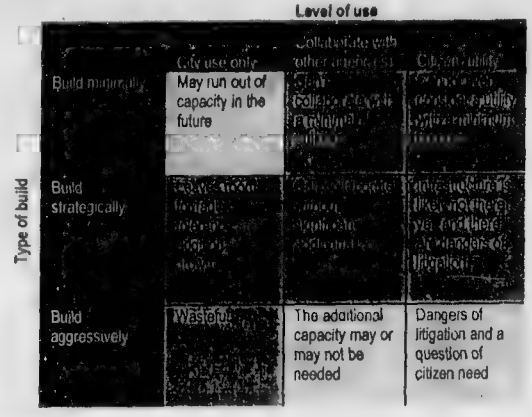
There are contractual restrictions on use for the Charter fiber, specifically that third party (e.g. non-City) traffic cannot travel on this network. Given the changing telecommunications climate, this may be something that the Council may wish to revisit when the franchise agreement is up for renewal in July of 2010.

Asheville has also been fortunate in building & utilizing its own telecommunications towers over the years. These towers are a significant strategic asset, not only for their current usage as public safety radio transmission/reception points, but also for future expansion of the City's data network. Any wireless networking is a challenge, given Asheville's mountainous topography, so the elevation and strategic locations of these towers are significant assets when considering any type of infrastructure planning.

- **Risks & Approach to Broadband Planning**

Staff would suggest that there are two areas of consideration when thinking about the City's approach to broadband planning. First, Council may wish to consider the level of infrastructure building that we engage in. Second, as mentioned previously, types and level of utilization is certainly an important aspect of how staff moves forward with tactical decisions.

Whatever Council's policy on use of the City's broadband infrastructure is (both now and in the future), an approach to infrastructure build-out that is that is too passive may leave us with significant future costs. Specifically, staff believes that when we build infrastructure, if it is not cost-prohibitive, we should be very mindful of future growth, City strategy, and Council policy direction. Of course, it is also desirable to avoid the risk of building out too aggressively, as this would not be a good use of public dollars. The following table summarizes each policy choice, showing green for low risk, yellow for some risk, and red for considerable risk. The checkmark indicates staff's current recommendation – collaboration and strategically building.



Staff's specific thoughts regarding this position are:

- Use Geographic Information System (GIS) analysis to understand where collaboration with local entities makes sense in order to explore cost-sharing and better communications between agencies.
- Build strategically so that cost is not prohibitive – but plan for some excess capacity for potential collaboration
- Maintain current direction of owning radio tower infrastructure; investigate further investment in infrastructure as City grows
- Actively investigate & implement "win-win" collaboration scenarios

- **Current actions/projects being undertaken:**

With the philosophy of "meet current short-term needs, and leverage existing projects to plan for future long-term needs," the following is a status update on tactical actions being taken to address broadband infrastructure needs:

- **Cellular Data Project for Patrol Cars.** Moves data services from sub-dialup speeds (.01 megabit) to speeds slightly better than dialup (.05-.12 megabit). Moving forward on this project as a pragmatic move to ensure that basic needs of APD Patrol are met. While this does not provide adequate bandwidth for future enhanced services, basic services such as reasonably responsive in-car mug shots and access to records management systems are supported.

- **Wireless HotZone Pilot.** An unfunded project for FY07 that would have built 11-54 megabit capabilities around fire and police stations as a proof of concept for covering a

larger area and providing enhanced data services to all city mobile operators (i.e. Building Safety, Fire, Police, etc). Staff intends to re-visit this as a CIP project for FY08.

- **Tower Site – Public Safety Radios.** To commence as a proposal for FY 2009-2010 CIP. As the City annexes out towards the West, it is apparent to staff that more radio coverage will be needed in order to enable Public Safety communications in these areas. Staff is currently in the process of (1) looking at 10-year plans for annexation; (2) assessing current city-owned land sites that are available as potential appropriate sites; (3) performing coverage analysis; and (4) obtaining estimated equipment costs. We pay $26,000 per year in rent on the current Westside tower (with an annual increase of 4%), which may not cover the full area needed by public safety in the future. Current risks of rental include no cost control and the potential for a carrier to deny us access to the tower in the future. Future benefits of strategically placed city-owned towers include potential to be used for broadband infrastructure for mobile users as well as tower rental income potential.

- **Fire Station Fault Tolerant Fiber Ring.** In the past, new site connectivity has been planned on a short-term individual site basis. Recently, AFR and IT Services have partnered on both the current and upcoming fire station construction in order to plan infrastructure in a more strategic manner.

  Instead of building more direct lines from fire stations to City Hall, staff has started the process of building a fault-tolerant fiber optic "ring". This layout utilizes links from existing stations, and requires less new construction via the Charter franchise agreement.

  The City Attorney and IT Services are currently investigating the possibility of performing industry-standard "fiber swap" agreements with other governmental and quasi-governmental agencies in order to complete the AFR ring without additional construction costs. In addition to providing a high level of service to both new and existing stations on the ring, this project will also open up exiting opportunities for better Continuity of Operations and potential Disaster Recovery for all City services.

- **ERC Relationship.** As previously mentioned, the ERC is a not-for-profit organization originally set up by Congressman Charles Taylor. In its mission statement it states that it seeks to "further economic development in the Western Carolinas through education, infrastructure and capital development." If contractually possible through the Charter agreement, ERC is one candidate for a potential fiber swap to complete the AFR fault tolerant fiber ring.

  Additionally, IT Services is pursuing a memorandum of understanding between ERC and the City in order to collaborate on centralizing storage of fiber optic data points. This will allow the City real-time access to ERC build-out points -- and thus, better planning capabilities.

- **EDC (Economic Development Coalition for Asheville-Buncombe County) Participation.** IT Services has been participating in the Technology subcommittee of the EDC (Cliff Dodson, Chair). The salient question has been "can we collaborate to build out broadband infrastructure similarly to other communities?" We are currently investigating which parts of the WNC EdNET project are appropriate for possible implementation here in Asheville.

- **Next Steps**

Clearly, broadband development is a cross-functional discipline involving City Information Technology, Planning, and Economic Development, among others.

Staff is very receptive to Council ideas regarding policy direction on these issues, and would suggest that policy direction be based on the "level of use" and "type of build" model outlined above.

Further next steps will certainly include creating metrics to track success in the various broadband infrastructure activities engaged in as well as more exploration into how upcoming City projects can be leveraged in order to better provide broadband infrastructure for the future.

When Councilman Mumpower noted that Council wanted to see how the City could take a leadership role in WiFi, but with the unreliability of some of the technology and fast-changing pace of the technology we may be stepping in over our heads to process forward. Mr. Feldman felt we would need a lot of resources and the will to see some of those resources at risk.

Councilman Mumpower wondered if there will be opportunities for us to take a leadership role in 2010 when we renegotiate our contract with Charter Communications. Mr. Feldman said that there are restrictions on how we can use the fiber that we are allowed to use under that agreement. If it is Council's wish to do any kind of operations other than collaborating with other agencies, we would need different language in that contract.

Councilman Mumpower spoke in support of receiving Mr. Feldman's report but not taking any direct action at this time, beyond those specific collaborative possibilities mentioned.

Vice-Mayor Jones didn't want to limit the collaborations to just other agencies, but to look for other opportunities as they unfold and collaborate with them as well.

In response to Councilman Freeborn, Mr. Feldman explained the citizen utility and the statement that our infrastructure is not there yet.

Councilman Davis said that he hoped the City is not being compared to Buncombe County as they providing WiFi services in the downtown area. What the City is talking about is very serious operations of the City business and the possibility of providing that service to the citizens. He understands that it is not practical at this time and supported collaboration in the future.

Councilwoman Cape noted that the kind of infrastructure we are talking about to serve our community would be massive.

In response to Mayor Bellamy, City Attorney Oast was instructed to prepare a memorandum to Council on what parts of the Charter Communications contract we can negotiate and what parts of the contract is under State control, when the contract expires in 2010.

WATER CAPITAL PROGRAM

City Manager Jackson said that this will be an overview of the (1) Capital Improvement Plan Rate Adjustment (residential customers); (2) Condo Associations; (3) Financial Plan Analysis (police direction); and (4) Uniform Rate Analysis (providing information only).

At the suggestion of Councilman Mumpower and after a brief discussion, it was the consensus to not discuss the uniform rate analysis at this time since Councilman Newman is not present.

Water Resources Director David Hanks reviewed with Council the residential customer overview: (1) 44,000 meter (customer base); (2) 99% have less 1 inch meter size; (3) less than 1% or approximately 150 customers have one inch or more meter size; and (4) analysis: oversized residential meters may have adverse impact on residential water bill - One inch meter: $48.00 per month; - 5/8 inch meter - $3.50 per month.

He recommended: 1 inch residential meter of $5.00 month; 1.5 inch residential meter of $6.00 month; and 2 inch residential meter of $7.00 month. He asked it be retroactive effective date of July 1, 2006. The affect on annual revenue is approximately $77,000. His alternative would be $3.50 per month for all single family residential customers: $80,000 revenue impact.

Regarding the Condo Associations' concerns, they have discussed (1) working with individual associations to reduce cost; (2) changing to combination fire protection/domestic meters have less than one year return on investment; (3) reduced domestic meter sizes will result in significant savings; (4) backflow/cross connection concerns being addressed; and; (5) recommend stay on course with fee structure. The condos (except one person) wanted to change to combination fire protection/domestic meters.

Regarding the uniform rate structure staff has provided information concerning uniform rates separately. In addition, staff recommends this issue be discussed at a future Council worksession for further policy direction.

In response to Councilwoman Cape, Mr. Hanks said the reason why some people choose a bigger than 5/8 meter is because of a service issue. Since the meters are at the road and the houses are several hundred feet away from the meter, a smaller 5/8 meter will not serve that unit.

Councilwoman Cape wondered if there is a consideration for people to pay a little more money because it costs more to get water to their homes. Mr. Hanks said that the cost variables for the City is actually the meter size as far as maintenance and replacement.

In response to Councilwoman Cape, Mr. Hanks said that the condos would have to change out their fittings in the near future because most have been in place for 20-30 years or more and they don't meet the current State requirement for backflow protection.

In response to Councilman Mumpower, Mr. Hanks explained the cost of replacing the different size meters.

Councilman Mumpower said we don't want to gouge anybody and are trying to find a point of fairness, but questioned if these amounts will compensate for the additional costs of repairing these meters. Mr. Hanks said that he did some analysis about how often are we having to replace these meters, and typically the larger meters last longer than the smaller meters. He does believe the $5, $6 and $7 adequately addresses the needs of replacement because of the longevity of those meters. If we are looking for equity across this whole class, the $3.50 could be considered also.

Mr. Hanks responded to Councilman Freeborn's question about why we are not looking at a CIP fee based on consumption.

After a brief discussion surrounding the residential fee and the publicity on that fee, it was the consensus of Council that for all single-family residential customers the rate be $3.50 per month and that this change be reflected at the next formal Council meeting.

Mayor Bellamy said that she has received a letter from the Buncombe County School Board in effect stating that they have to pay an additional $180,462 annually for the CIP water fee and were notified of this after they adopted their annual budget. Mr. Hanks said that he has had some discussion regarding this with the City Attorney's Office and has been advised that all State law doesn't allow us to differentiate within classes of customers and schools (City schools, County schools, UNC-Asheville, Warren Wilson, private schools, etc.) are a separate class for us.

Mayor Bellamy said that City schools have a supplemental tax and they have a little more flexibility than Buncombe County schools. She would like to see City staff see if there is something we can do for that class.

Councilman Freeborn understands the County School Board's concern, however, no one else in their class has complained and they are using our water system like everyone else. He felt that all organizations that face tough budget choices can always find a place to cut without sacrificing quality of service.

Councilman Mumpower supported Mayor Bellamy's suggestion and felt that large dramatic increases aren't fair to anyone, especially outside of the normal budget cycle, and if we have done that inadvertently, then we should look for alternatives.

City Manager Jackson said that he will look at the financing plan because the educational institutions are large users and to exempt them would be pretty significant adjustments without considering the large range impact. He suggested Council allow the Chief Financial Officer to look into the financing plan because that might be the better alternative than looking at a pay-as-you-go plan.

Vice-Mayor Jones is a strong advocate for education, however, Asheville has so much off the tax rolls that she thinks the CIP water fee is fair and this is one way water and water infrastructure can pay for themselves. She could not be supportive of looking at a way to make adjustment for that class because it is more complex that this.

In response to Councilman Mumpower, Mr. Hanks said that this has been discussed for 5 years and at many of the open forums and open meetings Buncombe County schools were represented. In addition, there has been a lot of coverage on this issue by the media.

Councilman Davis felt that even though the discussion has been going on for several years, the County schools are a large water customer and another governmental agency, we maybe we should have sent them a letter stating that this was going to happen soon. He suggested the Mayor write a letter apologizing the suddenness of the increase, but noting it has been very open discussion for several years.

In response to Councilman Mumpower, Chief Financial Officer Ben Durant said that he would have to report back to Council on what percentage did the CIP raise the County school's budget.

Chief Financial Officer Ben Durant said that key capital financing strategies/practices of where we are: (1) maintain adequate operating fund balance; (2) commit annual revenues to fund capital; (3) determine and remain within debt capacity; (4) maintain or improve bond ratings (A1); and (5) prepare multi-year forecast for operating/capital budget. Where we need to go is (1)

balance pay-as-you-go and debt financing; and (2) adopt governing board policies to guide capital finance.

He then explained five measures to calculate water system debt capacity.

The pay-as-you-go and debt financing includes earmarked revenues, cash reserves, grants or contributions, etc. It is similar to private sector use of equity to finance business capital needs. Debt financing is borrowing money to finance capital needs and making periodic debt service payments back to the lender.

We must achieve a balance of pay-as-you-go vs. debt. Over-reliance on pay-as-you-go creates project delays. Over-reliance on debt builds up fixed costs and limits operating flexibility. Capital needs are financed most effectively by striking the "right" balance.

Factors affecting debt vs. pay-as-you-go include: rate of community growth; rate of revenue growth; age of infrastructure; size of operating fund balances; size of capital reserves; operating budget's to fund recurring capital needs with annual revenue; rate of revenue growth; and who should pay, the current or future rate payers.

He then explained the current financing structure of (1) debt vs. pay-as-you-go ratio over a five-year period; (2) water capital improvement plan pay-as-you-go plan; (3) alternative financing structure of debt vs. pay-as-you-go ratio (assumes a $35 Million revenue bond issued at 5% coupon rate for major infrastructure needs); and (4) water capital improvements plan ($35 Million bond issue).

His general recommendations include (1) build capital reserves; (2) minimize future rate increases; (3) consider CIP fee rebates or other; (4) restructure residential CIP fee; and (5) provide specific recommendations in October pending further Council direction.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: does operating reserve equal fund balance; what would our annual debt payment be on $35 Million; will we be realizing our goals of capital improvements more quickly by this process; will this preclude us in looking at bond issues for other projects; why would we stage this for three years as interest only; what is the percentage of interest; are we treating the revenues we were getting prior to Sullivan Acts II and III as Fund Balance now and are they included in what we are doing, or is there an opportunity to treat that differently; what is the cost for capital improvements over the next few years; how do we determine if bonds are fixed opposed to adjustable; and do bonds have to be voted on by the citizens.

City Manager Jackson said that we would have to look at a project list and see what we can realistically manage. If Council wanted to see that, staff would develop some alternative schedules that would produce less balance of funds in those out years and get more projects done in the earlier years.

Councilman Mumpower's hoped we don't press on with this anytime soon until we get the legalities of the Sullivan Acts resolved. Mr. Durant said that he spoke with bond rating agencies who said that regardless of what happens with the Sullivan Acts, we have strengthen our position just from taking over our water system. In response, Councilman Mumpower said that he was concerned that even though it may enhance our position, it will not enhance the community's understanding of the complex realities of water.

At 7:25 p.m., Mayor Bellamy announced a short break.

ESTABLISHMENT OF SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Councilwoman Cape said that this is the consideration of a resolution establishing a Sustainable Energy and Environment Advisory Committee for the City of Asheville. This will follow up discussions by Council at the meeting of June 12 and July 18 of this year where she and Councilman Newman were asked to continue to work on the committee structure and return to Council for final review. This committee has been advertising for applications and is currently accepting them through an October 14 deadline.

The President's Council for Sustainable Development (PCSD) was established in June 1993 to develop a national strategy for meeting the needs of the present without compromising the opportunities of future generations. One of the implementation recommendations from the President's Council (PCSD) was to assist in the development of local councils as a way to strengthen communities and enhance their role in decisions about environment, equity, natural resources and economic progress. Cities throughout the United States have created committees and or departments on the environment, energy and sustainability to address the concerns of their communities about these issues.

In August of 1994, San Jose's City Council adopted San Jose 2020 as its general plan. Included within the plan was a new Strategy entitled the "Sustainable City Major Strategy." In Germantown, Pennsylvania, the Environmental Commission, an eleven member commission chosen from among the residents of the City, convenes to establish and support the *Sustainable Germantown Plan* which sets the example for Germantown's citizens and those of other municipalities through programs that conserve natural resources and promote energy efficiency. In 1993, the San Francisco Board of Supervisors established a Commission on San Francisco's Environment, charged among other things with drafting and implementing a plan for San Francisco's long-term environmental sustainability. The sustainability plan, now a City document, was drafted by a community collaboration in which City staff contributed on equal footing with members of other sectors of the community. From Port St. Lucie, Florida, to Seattle, Washington, cities across the country are employing stakeholder committees, in the dialogue about community energy, environment and sustainability issues.

The City of Asheville has a history of employing the expertise and interests of its Citizens by the implementation of Boards and Commissions. Currently 34 active, standing boards and commissions serve in this capacity addressing the diverse and complexities inherent in our vibrant city.

She suggested the Sustainable Energy and Environment Advisory Committee's powers and duties include: (1) Develop rules and by laws for the conduct of its business; (2) Develop an Energy and Environment Vision Plan; (3) Develop Benchmarks and standards by which progress toward the Vision Plan Elements can be measured; (4) Develop a program for increasing community awareness of energy and environmental sustainability issues through activities including outreach, education and publicity; (5) Work on special or one-time projects that are consisted with the goals of the Committee; and (6) The Committee shall generally advise council as to the above listed items and such other matters as may from time to time be referred to it by Council.

It is important to emphasize that an Energy and Environment Vision plan should be recognized as a *means*, not an *end*. The plan is a means by which we evaluate our current energy and environmental profile, and set goals and measures for future action. To proceed in a sensible way to change long-standing environmental and energy use practices, it's necessary to come up with practical goals, actions, and objectives to be achieved. To begin to address current

and future adaptation to the existing and emerging energy and environmental realities is to act responsibly for our own futures and the futures of our children.

She suggested the membership of the committee be nine members: One member with demonstrated expertise in the field of energy management (i.e. production, conservation, application; one member currently involved in a substantial way in the operation of a business with the City of Asheville; one member currently employed in the construction industry within the City of Asheville; one member currently employed in the real estate development industry with the City of Asheville; and five remaining seats shall be at large appointments.

She suggested the term of office shall be three years all of which shall be deemed to commence as of the date of appointment of the ninth member. Three of the initial terms shall expire on year from the date of commencement, three of the initial terms shall expire two years from the date of commencement and three shall be full terms, expiring three years from the date of commencement. Council shall designate the initial terms in its resolution of appointment.

Regarding reporting to Council, she suggested the Committee shall within 180 days from the date of commencement of their initial terms, provide a written report to Council setting forth is plan for carrying out its powers and duties and a timeline fore their goals. After this initial report, the Committee shall provide a report to Council on an annual basis or more frequently as directed by Council.

With regard to assistance, she suggested the City Manager shall upon request, make space available within city facilities for said committee to conducts its meetings, and shall provide clerical assistance in fulfilling the legal requirements for said meeting pursuant to Open Meetings Law of North Carolina and such other assistance as is customary for boards and commissions.

In summary, she felt that with the creation of the Sustainable Energy and Environment Advisory Committee, the City of Asheville publicly acknowledges that it has joined other cities in becoming energy and environmentally sustainable. Embarking on the path toward sustainability marks this council as one who is willing to make a commitment with our community partners to recognize the importance of current actions for future generations. It recognizes the importance of issues of the environment and energy within their jurisdictional purview and accepts the responsibility in participating this community dialogue.

She felt the pros of this Committee would be (1) The involvement of community stakeholders with the City in issues of energy and environment; (2) Support for the City in education, publicity and community dialogue on these issues; and (3) Initiation of a Vision plan for the community on these issues of community concern. Two cons she noted would be (1) Another committee; and (2) Staff resources will be needed for support as in all Committees.

Councilwoman Cape recommends adoption of the resolution establishing a committee to be known as the Sustainable Advisory Committee on Energy & the Environment.

Councilman Freeborn spoke in support of the Committee and felt the annual report would be good to tie in with the budget process if there are any recommendations that have budget implications for the City.

She is not proposing that the Committee takes on all roles concerning environment and energy and the dialogue of this Council. She thinks that staff and Council both have an interest in initiating some of that. She wants to be careful about giving them too much. The Committee's job is not to be the policy directors for energy and the environment, only convening the dialogue. She wants us to be careful to note that everything doesn't have go to through this Committee before it comes to Council.

Councilman Davis felt that the intent of the Committee is good, but had some concerns about how much power ultimately goes to the Committee. He can see this one having the room for a lot of latitude that some of the other boards don't have. Councilwoman Cape said that we didn't have that role to the Committee. She is not suggesting that this Committee be a policy directive agency. She envisions this Committee similar to the 2025 Plan Committee where they helped roll out a vision for us and we can refer to it.

Councilman Davis said that he would have a problem if the Committee becomes an oversight committee where Department Directors have to reconcile what they are doing with their activities. He is, however, okay with the Committee being just an advisory committee.

Councilman Mumpower thanked Councilwoman Cape for her leadership; however, he could not support this effort. He sees the potential for abuse and misinterpretation. He felt that the two issues of energy and environment should be a part of all Council decisions and should be incorporated in all that we do. He didn't think we needed another level of bureaucracy and control to do that.

Mayor Bellamy said that as a matter of procedure, we will place this resolution on the agenda for the next week's Council meeting.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to arrange the following interviews for a vacancy on the Crimestoppers Board of Directors: William Price and David Herbert. Regarding the City Council appointment on Crimestoppers, Councilman Mumpower said that he has modified his schedule and can continue in that seat unless another member of Council would like to participate on that Board. After a short discussion, City Attorney Oast was instructed to research the reasoning why one member has to be a City Council member (since Buncombe County's appointments did not have such a requirement). Depending on the outcome of such research, it was the consensus of Council to (1) continue with the two interviews for the one vacant at-large seat, and if the seat must remain a City Council member that Councilman Mumpower would remain on the Board; or (2) appoint William Price and David Herbert to the Board, if the Council member seat can be opened for an at-large member. If the Council member seat can be opened for an at-large member, the City Attorney was instructed to prepare the proper resolution making that change.

At 7:55 p.m., Councilman Mumpower moved to go back into closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

At 8:15, Councilman Mumpower moved come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:15 p.m.

Kristra Lipe
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – September 26, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Ms. April Alexander's 3rd Grade Class from Oakley Elementary School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn requested two minutes of silence.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER, 2006, AS "NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH"

Mayor Bellamy read the proclamation proclaiming September, 2006, as "National Alcohol and Drug Addiction Recovery Month" in the City of Asheville. She presented the proclamation to Councilman Mumpower, who is actively involved in the Asheville Drug Commission. Councilman Mumpower thanked Council for their support and showed Council the month of September Drug Commission poster.

B. PROCLAMATION PROCLAIMING SEPTEMBER 25-30, 2006, AS "DOLLAR WISE WEEK"

Mayor Bellamy read the proclamation proclaiming September 25-30, 2006, as "Dollar Wise Week" in the City of Asheville. She presented the proclamation to the Executive Director of the Consumer Credit Counseling, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER, 2006, AS "SISTER CITIES MONTH"

Councilman Davis read the proclamation proclaiming October, 2006, as "Sister Cities Month" in the City of Asheville. He presented the proclamation to Mr. Richard Hall, President of Asheville Sister Cities Inc, and members of Asheville Sister Cities Inc. who briefed City Council on some activities taking place during the month. Mr. Hall was pleased to show the award they received for the best humanitarian program, a hand-carved pen used to sign an agreement with a new Sister City, and a book given out by the Sister Cities International at the 50th anniversary conference.

D. PROCLAMATION PROCLAIMING OCTOBER 21, 2006, AS "AIDS AWARENESS DAY"

Vice-Mayor Jones read the proclamation proclaiming October, 21, 2006, as "AIDS Awareness Day" in the City of Asheville. She presented the proclamation to representatives from

Western North Carolina AIDS Project and the Western North Carolina Community Health Services who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda "B" be removed from the consent agenda for individual discussion.

At staff's request, Consent Agenda Item "D" was removed from the consent agenda until further notice.

Mayor Bellamy asked that Consent Agenda "E" be removed from the consent agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 12, 2006, AND THE WORKSESSION HELD ON SEPTEMBER 19, 2006

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRD PARTY ADMINISTRATOR AGREEMENT WITH PRIMARY PHYSICIANS CARE INC. FOR THE PURPOSE OF PROVIDING ADMINISTRATIVE, DISEASE MANAGEMENT AND WELLNESS AND RELATED SERVICES FOR ELIGIBLE CITY EMPLOYEES, RETIREES AND THEIR DEPENDENTS

This item was removed from the Consent Agenda for individual discussion.

C. RESOLUTION NO. 06-167- RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED AT 749 FAIRVIEW ROAD FOR A PORTION OF REAL PROPERTY LOCATED AT 723 FAIRVIEW ROAD

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

The City and Dan Zorn, principal of Famprop LLC (Famprop) have negotiated an exchange of a portion of City owned real property at 749 Fairview Road for a portion of property Famprop is purchasing at 723 Fairview Road.

The proposed exchange is to correct a long standing encroachment and provide a more consistent property line between the City's property and the Famprop property.

The City's property (PIN 9657.97-58-1784) is on the south side of Fairview Road at its intersection with Liberty Street, zoned RS8 and improved with a Fire Station, Public Library and Community Center. The portion to be exchanged is a 0.12 acre± parcel at Fairview Road on the west side of the City's parcel as it adjoins the Famprop property. This part of the property is on the outside of the City's fence and has never been utilized by the City. It is this portion of the property where one of the buildings on the Famprop property has encroached for a number of years.

The property being purchased by Famprop (PINs 9657.07-58-0712; 0682) on Fairview Road is on the south side of the street about 315' west of its intersection with Liberty Street. It is zoned RS8 and is improved with a large residential structure. The portion to be exchanged is a 0.12 acre± parcel located at the rear of the property adjoining the City's property.

A review of the tax assessments for the properties indicate broad variations between per acre values of parcels in the area that would be attributed to the size differential between parcels. Comparable lot values range from 21,500 for 0.16 acre to 27,400 for 0.42 acre The values of the parcels to be exchanged are estimated to be roughly equal based on shared characteristics including location, size, shape and topography. The value for each exchange parcel is estimated to be about $20,000± each for 0.12 acre.

Pros:

1. The exchange will be a fair exchange of value for value.
2. It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
3. It will correct the long standing structural encroachment.
4. It will provide a better more consistent property line.

Cons: There are no negative aspects to this proposal.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Economic Development, Fire Department and Parks & Recreation staff recommends adoption of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

RESOLUTION BOOK NO. 30 – PAGE 107

D. RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF REAL PROPERTY LOCATED ON RESERVOIR ROAD FOR STREET CONSTRUCTION

This item was pulled from the consent agenda to be considered at another date.

E. RESOLUTION AUTHORIZING NEGOTIATIONS WITH MOUNTAIN HOUSING OPPORTUNITIES AS THE QUALIFIED DEVELOPER FOR TWO PARCELS IN EAST RIVERSIDE AND REMARKETING OF TWO PARCELS IN EAST RIVERSIDE

This item was removed from the Consent Agenda due to a conflict of interest.

F. RESOLUTION NO. 06-169 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING A PROPOSED LEASE OF CITY-OWNED REAL PROPERTY AT 224 LOUISIANA AVENUE

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding execution of a Lease with the United States of America (USA) for the Army Reservoir Center at 224 Louisiana Avenue.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional. Due to its location and size the highest and best use for the property would be an institutional use, such as a nursing home, assisted living facility or high density residential. The single story building and other improvements located on the property

were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The property was leased to the USA in 950 at a rent of $1.00 for the entire 50 year term. The most recent lease for six years was signed in 2000 at an annual rent of $60,000.

The USA lease expired at the end of June and the Army Reserve has offered to enter into a new lease for the property for a term of three (3) years at an annual rent of $112,000. Although the lease does not contain an annual escalation clause the rent is at the high end of the rent range and the term was reduced to three (3) years. The Reserve Center has been a good caretaker of the property and no complaints have been received regarding any condition or activities at the site.

This item was pulled from the August 22, 2006, agenda in order for staff to assess the proposed lease in connection with the potential redevelopment of the property. It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property. A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

Pros:

- The rent revenue for this property will be significantly increased.
- The rent is at the high end of the rent range for this property.
- The shorter term will allow re-evaluation of the lease sooner.
- The Army Reserve Center provides a valuable public service.

Cons:

- The property does not generate tax revenue, but this is offset by the rent revenue.
- The current use does not add measurably to the economic activity in the area.

Economic Development staff recommends City Council adopt the resolution directing the City Clerk to publish a Notice of Intent regarding execution of a Lease with the USA for the Army Reserve Center at 224 Louisiana Avenue.

RESOLUTION BOOK NO. 30 – PAGE 109

G. RESOLUTION NO. 06-170- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING AGREEMENT WITH GREEN LIGHT ELECTRIC INC. TO CONTINUE PREVENTIVE MAINTENANCE ON TRAFFIC CONTROL EQUIPMENT OWNED AND OPERATED BY THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc. located in Weaverville, North Carolina, to continue preventive maintenance on traffic control equipment owned and operated by the City of Asheville through September 30, 2008, in the amount of $68,000.

In 2001, City staff determined that maintenance activities for traffic signals including preventative maintenance could be more efficiently accomplished through a combination of in-house activities and work contracted to the private sector.

The contract for traffic signal maintenance includes:

- Preventative maintenance consisting of annual inspection of all traffic signals and replacement or repair of deficient components;
- Maintenance activities to ensure compliance with federal and state requirements, and to protect public safety with the provision of a safe, dependable traffic signal infrastructure;
- Periodic replacement of signal components including poles, span wire, and signal heads;
- Upgrades to existing signals such as replacement of signals with LED technology to reduce burned out bulbs and power consumption, or the addition of pedestrian signals;
- Emergency response and timely repairs in cases of equipment damaged by crashes, weather, or other unforeseen occurrence.

Bids were solicited in 2002 for the contract. Green Light Electric, Inc.'s bid was the lowest, with the 2nd lowest bidder approximately 67% higher. Green Light Electric, Inc. was authorized for the work in 2003, and reauthorized in 2004, 2005, and 2006, and has performed acceptably during each contract period.

Ongoing maintenance of traffic signals is required to comply with State and federal standards and to maintain a safe and efficient infrastructure. Annual preventative maintenance identifies issues before they become problems and endanger the traveling public.

Pros:

- Maintenance of traffic signals is necessary to ensure public safety.
- Green Light Electric, Inc.'s fees are very competitive.

Cons:

- There are costs associated with maintenance of traffic signals.

Staff recommends adoption of the resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue preventive maintenance on traffic control equipment owned and operated by the City of Asheville.

RESOLUTION BOOK NO. 30 – PAGE 110

H. ORDINANCE NO. 3392 - BUDGET AMENDMENT TO ALLOW STAFF TO UTILIZE THE MONEY ALREADY RECEIVED AND TO PROCEED WITH THE GROVE PARK TRAFFIC CALMING AND SIDEWALK PROJECTS

Summary: The consideration of a budget amendment to transfer $375,000 already received from the Grove Park Inn into an expenditure account.

In 2004, City Council requested that the Grove Park Inn convey $375,000 for traffic calming and sidewalks to the City before starting any work on their site. A portion of this was dedicated to administrative costs of the work, including hiring of an engineering consultant to develop the projects. The Grove Park Inn has conveyed the required amount to the City which has already been received. The consultant's contract calls for a 6-month timeframe from notice to proceed for public involvement, engineering, and design. Upon completion of this contract, the City will release the project for bidding.

This budget amendment is technical requirement that allows for the inclusion of these funds in the annual budget in accordance the local government fiscal control act.

Staff requests that City Council approve a budget amendment in the amount of $375,000 to allow staff to utilize the money already received, and to proceed with the Grove Park traffic calming and sidewalk projects.

ORDINANCE BOOK NO. 23 – PAGE 94

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE VOTES

RESOLUTION NO. 06-166- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRD PARTY ADMINISTRATOR AGREEMENT WITH PRIMARY PHYSICIANS CARE INC. FOR THE PURPOSE OF PROVIDING ADMINISTRATIVE, DISEASE MANAGEMENT AND WELLNESS AND RELATED SERVICES FOR ELIGIBLE CITY EMPLOYEES, RETIREES AND THEIR DEPENDENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a Third Party Administrator agreement with Primary Physician Care, Inc., for the purpose of providing administrative, disease management and wellness and related services for eligible City Employees, retirees and their dependents.

A Benefits Committee, comprised of Human Resources, Health Services, Finance, Risk and line department representatives, was formed in 2004 to provide a balanced and broad overview of the health plan, wellness programs, and other benefits offered to City employees.

In January, 2006, the Benefits Committee began the process of looking for a third party administrator for the health plan. By March, the Committee had reviewed past performance of the health plan and made some initial determinations about what was needed from an administrator to continue and expand upon the City's nationally-recognized successes in cost control and improved employee health.

Working with Ferguson Employee Benefits Consultants, a detailed Request for Proposal (RFP) was developed and reviewed. By late April, the RFP was sent out to all companies providing these services that were registered in North Carolina and head-quartered in North Carolina or a contiguous state. In addition, the RFP was sent to the five largest TPA services providers. Forty-two companies received the RFP.

Fourteen companies' submitted responses, nineteen companies declined, and the remainder did not respond. Ferguson prepared cost comparison and service comparison matrices from the responses and in early July the Committee reviewed the submissions and narrowed the field to the top four candidates. The Committee considered rates for various services, disease management, large case management, wellness programs, and levels of customer service among other criteria.

The final four candidates were invited in for interviews and presentations during late July and early August, references were checked, and the Committee subsequently narrowed the field to three companies that were asked to shop stop-loss reinsurance for the program. The Committee reviewed all the responses in early September, considering both cost of services and the scope of services that would allow the City to continue and expand upon its nationally recognized disease management programs and its successful cost containment strategies, and by a unanimous vote selected Primary Physician Care to be the new Third Party Administrator.

Considerations:

- Primary Physician Care offers services that should enhance the City's successful health and wellness initiatives, provide data to evaluate the success of these initiatives, integrate the various aspects of the health care plan, reduce administrative burdens on the City, and provide excellent customer service to City employees, retirees and their

dependents, including a Customer Service Representative located in Asheville to service those needs.

- The comparative cost for the services needed was lowest among the finalists.

City staff recommends adoption of a resolution authorizing the City Manager to enter into a Third Part Administrator agreement with Primary Physician Care, Inc., for the purpose of providing administrative, disease management and wellness and related services for eligible City Employees, retirees and their dependents.

Upon inquiry of Councilman Mumpower, Chief Financial Officer Ben Durant explained the extensive open process the City used in looking for a third party administrator.

Councilman Mumpower moved for the adoption of Resolution No. 06-166. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 108

RESOLUTION NO. 06-168 - RESOLUTION AUTHORIZING NEGOTIATIONS WITH MOUNTAIN HOUSING OPPORTUNITIES AS THE QUALIFIED DEVELOPER FOR TWO PARCELS IN EAST RIVERSIDE AND REMARKETING OF TWO PARCELS IN EAST RIVERSIDE

Councilman Newman moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Freeborn and carried unanimously.

At this point, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Summary: The consideration of a resolution authorizing negotiations with qualified developer for two parcels in East Riverside and remarketing of two parcels in East Riverside.

One Statement of Qualifications (SOQ) was received prior to the deadline for response to the East Riverside Request for Qualifications (RFQ). The SOQ was from Mountain Housing Opportunities and the Green Family. Of the four (4) parcels offered, the submittal pertained to two (2): Ralph Street and Choctaw Street. An additional response was received after the deadline that was determined not to be acceptable due to failure to comply with the deadline. The Request for Qualifications (RFQ) was issued for an exclusive right to negotiate a contract for private sale and redevelopment as provided in NCGS 160A-457.

The SOQ was reviewed by the Developer Selection Team on September 5, 2006, who determined that it was responsive to the RFQ and recommended acceptance to the Planning and Economic Development (PED) Committee of City Council. On September 13, 2006, the PED Committee accepted the recommendation of the Selection Team and referred the SOQ to City Council for acceptance of qualifications and authorization to initiate negotiations.

The SOQ describes the development team consisting of: MHO; the Green Family; Mathews Architecture, PA; Sitework Studios; Carolina Cornerstone Construction, Inc and Roberts & Stevens, Attorneys at Law. The project vision set forth in the SOQ includes, involving and respecting the existing community, providing home ownership opportunities, good design, affordability and environmental stewardship. The SOQ includes evidence of experience, financial capacity and insurance along a number of references.

Consideration: Approval of the resolution will authorize staff to initiate negotiations with MHO as the qualified developer for the parcels on Ralph Street and Choctaw and issue a new RFQ or RFP or advertise for bids with conditions for the parcels on Asheland Avenue and Old Asheland Avenue.

Economic Development staff recommends adoption of the resolution authorizing negotiations with qualified developer for two parcels in East Riverside and remarketing of two parcels in East Riverside.

Councilman Davis felt that even though we only had two responses and one late response, the MHO response was a good model.

Councilman Newman was excited about the proposal and encouraged people to get involved in the process. He also hoped that the City doesn't make the process so complicated so as to discourage people from getting involved.

In response to Councilman Mumpower, Real Estate Manager Ed Vess explained why he felt more developers did not submit proposals. He said that some developers had a lot of other projects going on and some developers felt this was not the kind of project they were interested in doing. The desired plan included clustered housing and maximizing the density and some developers were generally in the single-family type development. We also found that we just didn't provide them enough information on the front end, even though we thought we had conveyed to them it was available and could be provided to them. We do want to stay very public with this process and will be placing the MHO proposal on the internet for those to see what it takes to be a winning proposal. In addition, we will be noting the lessons learned in this process and how the City plans to do a better job.

In response to Councilman Mumpower about the criteria, Mr. Vess said that after City Council heard the City-owned property report, Council indicated to staff that there was a desire to make this property available for work force housing.

Councilman Freeborn moved for the adoption of Resolution No. 06-168. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

RESOLUTION BOOK NO. 30 – PAGE 108

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 2 IRIS STREET FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY/CONDITIONAL ZONING FOR 84 RENTAL UNITS

Mayor Bellamy said that the developer has requested that this public hearing be continued until October 24, 2006, because of some last minute financial issues. Therefore, Councilman Davis moved to continue this public hearing until October 24, 2006. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Freeborn voting "no."

City Attorney Oast said that a valid protest pet'tion has been filed and that the petition will remain valid.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT

Mayor Bellamy said that this public hearing was originally scheduled for September 12, 2006, however, Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, asked that the public hearing be continued since they would not be able to complete the required Letter of Credit in the form appropriate for submission to City Council. That public hearing continuance request was granted until September 26, 2006.

Mayor Bellamy opened the public hearing at 5:49 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to conditionally zone property located at 7 Grandview Place from RS-8 Residential Single-Family High Density District and Community Business I District to Community Business I District/Conditional Zoning to correct a non-conforming parking lot. This public hearing was advertised on September 1 and 8, 2006.

In late 2000, the parking lot located to the south of the East Village Grill was constructed without permits and found to be in violation of the existing RS-8 residential zoning. To correct the violation, the property owner pursued a Conditional Use Permit for an "ancillary parking lot" in a residential district. This request was approved in March 2001; however, ancillary parking lots were later removed from the Unified Development Ordinance (UDO) as a Conditional Use (2002).

In September of 2004, the same property owner requested a rezoning of 4 lots located at Tunnel Road and Grandview Place. The existing restaurant use (East Village Grill + parking) was rezoned from Highway Business/RS-8 to Community Business I, and the adjacent American Legion building, along with a separate residential lot to the south, was rezoned from RS-8 to Community Business I. This request was approved in November of the same year. This rezoning corrected the non-conforming parking lot approved in 2001 and also provided the opportunity for the renovation of the American Legion building for a new business use.

Subsequent to the rezoning approval issued in November 2004, property owner Nick Papanastasiou submitted application for a level 1 site plan review for a new parking lot to be located at 2 Grandview Place and designed to support the newly established bakery housed in the former American Legion building. Site plans to develop this parking lot were approved in September of 2005.

Once construction of this parking lot was completed, staff was contacted to investigate a zoning violation that revealed the parking lot had been constructed to specifications larger than what had been approved, the new parking lot was found to be encroaching into residentially zoned property to the south of the site (7 Grandview Place), which had recently come under the ownership of the applicant. To bring this site into compliance would require either, (1) the partial demolition and reconstruction of the new parking lot, including a moderately sized retaining wall, or (2) rezoning of the portion of the residential property occupied by the non-residential use. The applicant has chosen to pursue a conditional zoning application to correct the violation. A Notice of Violation was issued on June 28, 2006; the applicant filed application to correct the violation before the expiration of the specified 30 day time period so no fines have been assessed at this time. The applicant is also seeking to secure a permanent Certificate of Occupancy (CO) which is being withheld at this time.

The parcel is located in the Asheville city limits with frontage on both Tunnel Road and on Grandview Place in East Asheville. The subject properties are the result of a lot recombination and total approximately .41 acres, of which approximately 2/3 of this lot is occupied by parking and 1/3 is occupied by the building.

The proposed project area is surrounded by other Community Business I zoned property to the east across Grandview Place which supports a separate parking lot that serves an adjacent restaurant use, RS-8 zoned property to the south supporting single family homes, and Highway

Business zoned property to the west supporting other larger commercial uses. Although the subject property has frontage on Tunnel Road, all vehicular access is from Grandview Place. A type 'B' landscape buffer is required between the low impact bakery use and the low density residential, as well as additional landscaping required for the parking area and street frontages.

As a result of the changes to the parking lot, the formerly approved plan is no longer valid and the site is now non-conforming for landscaping and stormwater. Landscaping may be made conforming through the application of alternative compliance and/or a lot recombination that could allow more room for the required buffer area. Additionally, the engineer for the project is currently working with the City's engineering staff to improve the stormwater issues.

The Technical Review Committee (TRC) reviewed this project at their July 17, 2006, public meeting and approved the project with conditions. A revised plan has been submitted addressing a number of those technical comments.

The Planning & Zoning Commission also reviewed this project at their August 2, 2006, public hearing where there was a moderate amount of deliberation over the history and circumstances of the violation. Ultimately, the Commission made a positive recommendation (7-0) that the project be approved with the following conditions: (1) Compliance with all technical review conditions; and (2) A performance bond in an amount to cover site landscaping and fencing must be submitted prior to City Council consideration.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site does present some topographical challenges that, when combined with the changes in the site plan, have contributed to some stormwater issues on site. The topography has been largely addressed with the construction of a moderately sized retaining wall and the engineer for the project has been working with the City's engineering staff on correcting the stormwater issue.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   This development is not expected to create a negative impact on adjacent property values; the proposed parking lot is required a 20' type B landscape buffer (or its equivalent) between it and the adjacent residential use which would mitigate light and noise. Changes in topography also contribute to the physical separation between the different uses, similar to what has occurred on the opposite side of Grandview Place.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

Mayor Bellamy said that this public hearing was originally scheduled for September 12, 2006, however, Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, asked that the public hearing be continued since they would not be able to complete the required Letter of Credit in the form appropriate for submission to City Council. That public hearing continuance request was granted until September 26, 2006.

Mayor Bellamy opened the public hearing at 5:49 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to conditionally zone property located at 7 Grandview Place from RS-8 Residential Single-Family High Density District and Community Business I District to Community Business I District/Conditional Zoning to correct a non-conforming parking lot. This public hearing was advertised on September 1 and 8, 2006.

In late 2000, the parking lot located to the south of the East Village Grill was constructed without permits and found to be in violation of the existing RS-8 residential zoning. To correct the violation, the property owner pursued a Conditional Use Permit for an "ancillary parking lot" in a residential district. This request was approved in March 2001; however, ancillary parking lots were later removed from the Unified Development Ordinance (UDO) as a Conditional Use (2002).

In September of 2004, the same property owner requested a rezoning of 4 lots located at Tunnel Road and Grandview Place. The existing restaurant use (East Village Grill + parking) was rezoned from Highway Business/RS-8 to Community Business I, and the adjacent American Legion building, along with a separate residential lot to the south, was rezoned from RS-8 to Community Business I. This request was approved in November of the same year. This rezoning corrected the non-conforming parking lot approved in 2001 and also provided the opportunity for the renovation of the American Legion building for a new business use.

Subsequent to the rezoning approval issued in November 2004, property owner Nick Papanastasiou submitted application for a level 1 site plan review for a new parking lot to be located at 2 Grandview Place and designed to support the newly established bakery housed in the former American Legion building. Site plans to develop this parking lot were approved in September of 2005.

Once construction of this parking lot was completed, staff was contacted to investigate a zoning violation that revealed the parking lot had been constructed to specifications larger than what had been approved; the new parking lot was found to be encroaching into residentially zoned property to the south of the site (7 Grandview Place), which had recently come under the ownership of the applicant. To bring this site into compliance would require either, (1) the partial demolition and reconstruction of the new parking lot, including a moderately sized retaining wall, or (2) rezoning of the portion of the residential property occupied by the non-residential use. The applicant has chosen to pursue a conditional zoning application to correct the violation. A Notice of Violation was issued on June 28, 2006; the applicant filed application to correct the violation before the expiration of the specified 30 day time period so no fines have been assessed at this time. The applicant is also seeking to secure a permanent Certificate of Occupancy (CO) which is being withheld at this time.

The parcel is located in the Asheville city limits with frontage on both Tunnel Road and on Grandview Place in East Asheville. The subject properties are the result of a lot recombination and total approximately .41 acres, of which approximately 2/3 of this lot is occupied by parking and 1/3 is occupied by the building.

The proposed project area is surrounded by other Community Business I zoned property to the east across Grandview Place which supports a separate parking lot that serves an adjacent restaurant use, RS-8 zoned property to the south supporting single family homes, and Highway

The proposed parking lot use is in character with the majority of surrounding land uses which are non-residential, along with the majority of the uses located along Tunnel Road. The parking lot itself is less compatible with the adjacent single family uses to the south of the site but will be buffered per the requirements of the UDO. Should the Planning & Zoning Commission find it necessary, additional conditions may be considered to further improve the compatibility of this project.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The Asheville City Development Plan 2025 encourages the (re)development of vacant or underutilized properties with compatible uses that provide citizens the opportunity to live and work in the same area. This rezoning request is to provide opportunity for the redevelopment of a parking lot that would support the adaptive re-use and renovation of an old American Legion building into a new bakery.

The ACDP 2025 also calls for the protection, preservation, and enhancement of existing neighborhoods. The unapproved parking lot expansion could be viewed as encroachment into a residential neighborhood that is unnecessary for a limited business use, particularly when shared parking opportunities exist.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The subject property is well positioned in respect to transportation facilities with easy access to major thoroughfares and a regular bus line operating on Tunnel Road. The project has also been reviewed by the TRC which did not indicate any problems with providing service to the property.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineering office who determined that the project would not cause undue traffic congestion or create a traffic hazard due to the relatively modest scale of the project. In addition, the project is proposing the creation of additional off-street parking that is expected to meet the needs of the visitors, thereby reducing the likelihood for on-street parking.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Shared parking opportunities exist that could reduce the need for the additional spaces created by the illegal expansion.
- A portion of the parking lot (including the retaining wall) could be removed and rebuilt to result in a conforming parking lot.
- A minimum of 15 spaces are required, a maximum of 22 spaces are allowed. The former approved plan accommodated 17 spaces, the as-built plan shows 22 spaces.
- Existing illegal parking lot is currently inadequately buffered. Alternative compliance and/or a lot recombination would be required.
- Residential lot and structure would have to remain conforming if request was granted.
- Approval of this request would correct the existing violation.

The parking lot work and resulting violation have already occurred; had the applicant come forward with this proposal initially, staff would have supported the request with conditions. Should the Council consider this request, staff would recommend the conditions below: (1) The

project shall comply with all applicable technical standards; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (4) A lot recombination shall be completed to allow for a conforming buffer; recommend against alternative compliance.

The bakery is currently operating a Temporary Certificate of Occupancy (TCO) and should this request be denied, the applicant will have to renew the TCO and will have to submit revised plans that would address the zoning violation as well as the stormwater violation, so there is potential for that TCO not being renewed in a timely fashion.

Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, spoke in support of the conditional zoning noting that the applicant has posted a bond to make sure that all improvements are complete.

Mayor Bellamy closed the public hearing at 5:56 p.m.

In response to Councilman Newman, Mr. Dennis Ponder, engineer for the applicant, said that the owner was acting as his own contractor and made a field decision, now realizing it was an unfortunate one. He explained why the owner tried to keep the parking lot away from the lower masonry wall. He said that the owner thought that since he owned the property in the area of encroachment, he could move the parking lot over slightly. In the field, it was hard to determine where the corners are located, without an accurate survey, which now had been performed.

Upon inquiry of Councilman Newman, Ms. Tuch explained that the East Village Grill, owned by the same property owner, had a similar incident regarding their parking lot.

Councilman Newman moved to deny the conditional zoning request. He could not support rewarding developers who do not comply with our ordinances. He would, however, support the bakery continuing to operate while the property is brought into compliance. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt that sometimes people don't understand our ordinances, but for this to happen twice to the same person is unfortunate. The owner should have learned from his first error and proceeded with caution. However, this represents a fairly minimal intrusion on that neighborhood and he does own the property being intruded on. He asked if staff could work with the developer to address the concerns and explore ways to fix this without causing a catastrophic impact.

Ms. Tuch showed the original plan approved in 2005 which accommodated 17 spaces and then the as-built plan which shows 22 parking spaces.

In response to Councilman Mumpower, Mr. Aceto noted that when the plan was approved, it said 15-22 spaces.

Discussion surrounded options to bring the parking lot into compliance and how the stormwater issue is related to this site.

Councilwoman Cape can understand how this happened but we often have a sense that people are ignoring the process. She would like for Council to consider what policy options are available for us, even to the point of a fine per day for being out of compliance. Sometimes consequences are the things that make people think twice about their actions. She wondered if there are factors that could be added in to the benefit of this neighborhood.

Councilman Mumpower felt that fines represent a heavy, authoritative and punitive approach that he would speak against.

Councilman Newman withdrew his motion to explore if there are other ways to get at a solution for this.

Vice-Mayor Jones noted that not only is there a cost for the developer for a solution, there is a cost to our City taxpayers as well which consists of staff hours involved.

Mayor Bellamy felt that we need to adopt good policies so when something is done wrong, there are penalties. However, we need to make sure that our zoning ordinances are clear and understandable.

Councilman Mumpower moved to continue this matter until October 10, 2006. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Freeborn voting "no."

C. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES ON HENDERSONVILLE ROAD FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION**

Mayor Bellamy said that City staff has requested this public hearing be continued to October 10, 2006, as the petitioner was unable to make adjustments to the site plan in enough time to have City staff review them. Therefore, Councilman Mumpower moved to continue the public hearing until October 10, 2006. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

D. **PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF 430 MCDOWELL STREET IN ORDER TO MAINTAIN THE EXISTING INSTITUTIONAL/CONDITIONAL ZONING ON APPROXIMATELY .81 ACRE IN ORDER TO UTILIZE THE EXISTING BUILDING FOR A DAYCARE FACILITY**

ORDINANCE NO. 3393 - ORDINANCE CONDITIONAL ZONING PROPERTY LOCATED AT 430 MCDOWELL STREET IN ORDER TO MAINTAIN THE EXISTING INSTITUTIONAL/CONDITIONAL ZONING ON APPROXIMATELY .81 ACRE IN ORDER TO UTILIZE THE EXISTING BUILDING FOR A DAYCARE FACILITY

Mayor Bellamy opened the public hearing at 6:39 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone property located at 430 McDowell Street in order to maintain the existing Institutional/Conditional Zoning on approximately .81 acre in order to utilize the existing building for a daycare facility. This public hearing was advertised on September 15 and 22, 2006.

Ms. Hamel said that the subject property is located off of McDowell Street across from Asheville High School. The parcel, in its current configuration, is considered both a through lot and a corner lot with street frontages on McDowell Street, Grindstaff Road and St. Dunstans Road. The topography is steeply sloped from the top of the property towards the west (McDowell Street). The property currently houses a vacant building that was historically used as a daycare Center. Access to the site and parking area is located off of Grindstaff Road.

In April 2006, the Asheville City Council approved a Conditional Zoning request to rezone a portion of this property from RS-8 to Institutional/Conditional Zoning with approval to establish

an office use. The residual portion of the lot fronting St. Dunstans Road remained RS-8 and is to be subdivided into two or three residential parcels. The applicant, Mr. Dan Waldman, is now requesting approval to maintain the Institutional District/Conditional Zoning and to also receive approval to change the proposed use of the building from an office use to a child daycare center.

Surrounding land uses and zoning include the Asheville High School zoned Institutional to the west across McDowell Street; retail business zoned Institutional and a single-family dwelling zoned RS-8 to the north across Grindstaff Road; single family dwellings zoned RS-8 to the east; and vacant property owned by NCDOT zoned RS-8 to the south fronting McDowell Street.

The new conceptual site plan proposes an up-fit of the existing 3, 700 square foot building for the proposed child daycare facility that will provide service for up to 50 children and 4 employees. The site plan illustrates use of the existing parking area off of Grindstaff Road that consists of 7 spaces. Modifications to the existing drive entrance and parking area will be necessary in order to comply with several conditions required by the Technical Review Committee including required driveway widths, parking lot maneuvering and pedestrian connections from the building to the street.

The ordinance requires a 20-foot, Type B landscape buffer around the east and south sides of the property where adjacent to residential uses. The plan is meeting this requirement, except along the eastern side and portions of the south side of the property where the buffer width has been reduced to install a privacy fence and other plantings; the ordinance permits a fence to be installed to reduce buffer width and that is what is proposed in this case. The mature vegetation shown along the west and north sides of the property will be maintained and credited towards the street tree requirements.

On Monday, August 21, 2006, the Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report. The majority of these conditions will be addressed in a more detailed review of the project by the TRC pending approval from City Council.

The applicant is requesting a modification of Section 7-8-15(f)(9) of the Unified Development Ordinance (UDO) that prohibits parking to be located within the setbacks. The conceptual site plan shows a 2-3-foot encroachment of two parking spaces into the side setback (10-feet) along the eastern side of the project. This project proposes use of the existing parking area in order to avoid additional grading on the western slope and to avoid land disturbance that could affect the mature vegetation along the property line. Although staff agrees with this reasoning, the applicant does have an option that would eliminate the need for the variance. This option involves increasing the width of the proposed modification area along the west side of the parking lot (that was required by the TRC for additional maneuvering room) by an additional 3-feet. This, however, could result in the need for construction of a larger and more visible retaining wall in order to stabilize the slope from the disturbance around the parking area.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by the Technical Review Committee and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the

Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The overall development and disturbance on the property will be minimal, as the applicant is only proposing modifications to the existing parking area. The amount of disturbance in this area is necessary in order to provide for additional maneuvering area within the parking lot and to also provide a pedestrian connection from the building to the street. Since there is a rather steep slope from the parking area towards McDowell Street, the disturbance will necessitate a retaining wall to stabilize the parking lot. The only other land disturbing activity associated with the project will be the construction of the sidewalk along McDowell Street, and the installation of the privacy fence and other landscape buffer materials. Any renovation needed to bring the current structure up to code will be confined to the interior of the structure.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This property was historically used as child daycare facility but was considered a non-conforming use under the prior RS-8 zoning classification. A child daycare facility is a permitted "low impact" use in the proposed Institutional District. The project is not expected to injure the value of adjoining or abutting properties as the site will be enhanced through the installation of privacy fencing and landscape buffers where adjacent to residential uses. This will assist in mitigating any potential negative impacts.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This project proposes a rezoning only on the portion of the lot that is currently developed. The daycare facility will utilize the existing building, parking lot and play area on the site. The remaining portion of the property will remain RS-8 and be subdivided from the main tract in order to create two to three residential infill lots that will be located and have access off of St. Dunstans Road.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project supports pursuit of compatible redevelopment and adaptive reuse of an existing structure with a low impact use. Traditional neighborhood development patterns are also recognized through the creation of several residential infill lots located within the core of the neighborhood.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This project site is located within the City Limits and has access to all City services including water, fire and police protection and waste disposal. The project site is located on McDowell Street that is serviced by public transportation, including a transit stop located on the corner of McDowell Street and Grindstaff Road.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project has been reviewed by the City's Traffic Engineer who indicated that the proposed use would not cause undue traffic congestion or create a traffic hazard.

Considerations:

- The former use of the building as a daycare center was considered a non-conforming use under the previous RS-8 zoning and has been used commercially since 1956. Previous commercial up-fits to the building make it an unlikely candidate for the use to convert back to residential. A rezoning to Institutional district will allow a conforming use to occupy the lot.
- The proposed split zoning on the lot and creation of several residential parcels off of St. Dunstans Road assists in protecting the integrity of the neighborhood by preventing access to the commercial portion of the existing parcel; and adds to the character of the neighborhood by creating additional single-family infill lots.
- Adaptive reuse of an existing structure.
- The conditional zoning process allows neighbors an opportunity to have a clear idea of how the property will be used.
- Additional traffic may occur along St. Dunstans Road in order to utilize the traffic signal at the corner of St. Dunstans Road and McDowell Street.
- The rezoning could be viewed by some as an encroachment of nonresidential uses into a residential area.

On Wednesday, September 6, 2006, the Planning and Zoning Commission reviewed the conditional zoning request and the request for modification to the setback encroachment and voted unanimously to approve the conditional zoning request subject to the TRC staff report, staff's recommended conditions and the following condition: A sidewalk shall be provided in accordance with the requirements of the City of Asheville Engineering Department with consideration given to a physical barrier affording reasonable protection to pedestrians on the McDowell Street side.

Subsequent to the meeting, the applicant contacted the Engineering Department in an effort to determine if a safety railing would satisfy the P&Z condition noted above. Engineering staff determined that in order to install a safety railing the applicant would need a total of 6-feet in width; the plan currently calls for a 4-foot wide sidewalk in this area in an effort to avoid blasting. The only means of gaining the additional 2-feet in width would be to blast through the rock outcropping that is being avoided. Staff feels that the applicant has made a good faith attempt in trying to provide a physical barrier for pedestrian safety. It, however, does not appear that without significant blasting of rock that this condition can reasonably be achieved.

Staff recommends approval of the project subject to the conditions outlined in the staff report and with the following conditions: (1) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (2) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (3) Foundation plantings shall be installed along the proposed retaining wall in order to soften the visual appearance of the structure from the street; (4) Applicant shall complete the subdivision of the land within 60 days of City Council approval; and (5) The applicant shall return to the Technical Review Committee with detailed site plans for review of compliance with all conditions.

Mr. Gerald Green, representing the developers, spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 6:48 p.m.

Vice-Mayor Jones encouraged the developer to consult with the N.C. Child Care Division to make sure that Council doesn't have to revisit the Master Plan. She also encouraged them to be open to children who are supported by the voucher system. Mr. Ricky Graham, co-owner of the Academy of Asheville, responded that they do understand the process as they have opened multiple daycare centers and have a lot of experience in this area.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3393, to conditionally zone property located on located at 430 McDowell Street to maintain the existing Institutional/Conditional Zoning on approximately .81 acre in order to utilize the existing building for a daycare facility, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the following conditions: (1) all conditions being met in the TRC staff report; (2) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (3) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (4) Foundation plantings shall be installed along the proposed retaining wall in order to soften the visual appearance of the structure from the street; (5) Applicant shall complete the subdivision of the land within 60 days of City Council approval; and (6) 5. The applicant shall return to the Technical Review Committee with detailed site plans for review of compliance with all conditions. This motion was seconded by Councilwoman Cape and carried unanimously.

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At 6:59 p.m., Mayor Bellamy announced a short recess.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW CELL TOWERS IN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AS A CONDITIONAL USE AND TO AMEND THE CONDITIONAL USE STANDARDS

Mayor Bellamy opened the public hearing at 7:22 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to allow cell towers in RM-16 Residential Multi-Family High Density District as a conditional use and to amend the conditional use standards. This public hearing was advertised on September 15 and 22, 2006.

The UDO currently allows telecommunication towers as a Conditional Use in a number of non-residential districts including: Office/Business; Community Business II; Resort; Institutional; Highway Business; Regional Business; Commercial Industrial; River; Industrial; and Light Industrial.

Additionally, telecommunication towers can be considered as a conditional use in residentially zoned property that is occupied by non-residential uses such as libraries, fire/police stations, community centers, schools, and public housing developments. The "conditions" of the Conditional Use Permit are extensive and deal largely with the unique technical features of a telecommunication tower and the support documentation needed to limit their unnecessary proliferation.

As the demand for cellular service increases in the Asheville area, so does the need for more complete coverage. Providing an additional district in which a tower may be located enhances the ability for a service provider to appropriately locate in the most optimal area for complete coverage, while limiting unnecessary overlap.

This amendment would add an additional condition for towers located in residential districts to blend in with the natural environment through placement and disguise; although towers could be located within a residential area, this condition does specify a minimum separation from residential uses and adjacent properties in order to maintain a separation of uses. In addition, the

Conditional Use process allows for the site specific review of the ability for an application to address compatibility concerns.

The Planning & Zoning Commission reviewed the proposed amendment at their meeting on September 6, 2006. During the meeting, staff recommended adding a condition that a minimum lot size of 5 acres be required for all proposed sites in the RM-16 zoning district. The Commission voted to approve the amendment (6-1) with the added condition.

Considerations:

- This amendment increases the amount of real estate that could be considered for the development of a telecommunication tower.
- This amendment improves the ability for towers to be more evenly distributed throughout a service area.
- This amendment could be considered to reduce the injustice of permitting towers in areas of low income housing while prohibiting them in other residential developments.
- Compatibility of a telecommunication tower in a residential area could prove challenging.

City staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to add telecommunications towers as a conditional use in the RM-16 Residential Multi-Family High Density District and to amend the conditional use standards.

Mr. Bill Ammon, employee with Chase Real Estate Services, spoke in support of the text amendment and said that by the time you get to the conditional use permit, the carrier has really exhausted in most cases every opportunity for an alternative to a new structure, that would include church steeples, water towers, etc. The conditional use process has built within it a list of safeguards and the specific text amendment goes beyond that and has additional criteria that will ensure that if a tower is constructed, it would be appropriate for the site.

Mayor Bellamy closed the public hearing at 7:30 p.m.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: was this text amendment in the process prior to an application being filed; was there anything in particular that brought forth this text amendment; are there any maps showing where the gaps are located in the City; why did we choose RM-16 as the zoning district; explanation of the conditional use process for cell towers; can you build something else on the property with a cell tower; do cell phone companies buy land or lease it; have there been any amendment to the cell tower provisions since adoption of the UDO; why can't we have cell towers in all districts as a conditional use permit process; what is the rationale for the 100-foot buffer if they are allowed on church steeples, etc.; and is it inappropriate to put a structure on a residential building opposed to a commercial, office or institutional building.

Vice-Mayor Jones was concerned of losing potential developable land for multi-family housing and urged City staff to work with the companies to make it possible for housing to also be developed on that property.

Councilman Mumpower felt that the technology has improved so vastly and many more people rely on cell phones.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved to adopt the ordinance amending the UDO to allow cell towers in RM-16 Residential Multi-Family High Density District as a conditional use and to amend the conditional use standards. This motion was seconded by Councilman Davis.

Councilman Davis said that with the new technology, including the stealth technology, there is not so much opposition to cell towers and there is still the opportunity of building on the property. In addition, this is a conditional use permit process and Council will have the opportunity to craft any other conditions.

Councilman Newman wondered dif there was a way to be more proactive about this approach to this changing technology, like looking at the places in the community where we know there are gaps in coverage. The goal is we want good quality and as few cell towers built in our community as possible. Ms. Tuch responded that is a good idea and a very big project. We have been trying to put that responsibility on the applicant to do that research and demonstrate to us that they are filling in one of those gaps.

City Attorney Oast said that the providers are frequently in contact through our Real Estate Manager to try to identify appropriate sites for these facilities and we have a number of cell phone antennas co-located on towers that we operate and maintain.

Mayor Bellamy was not convinced that this is the best use for our RM-16 zoning. She was concerned that public housing is not considered a residentially zoned place and asked for staff to review our ordinances to make sure that change is made.

The motion made by Councilman Mumpower and seconded by Councilman Davis failed on a 3-4 vote, with Councilman Davis, Councilman Mumpower and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape and Councilman Freeborn voting "no."

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD TOWNHOUSES AS A USE BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS IN THE URBAN RESIDENTIAL ZONING DISTRICT AND TO AMEND THE TOWNHOUSE STANDARDS

ORDINANCE NO. 3394- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ADD TOWNHOUSES AS A USE BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS IN THE URBAN RESIDENTIAL ZONING DISTRICT AND TO AMEND THE TOWNHOUSE STANDARDS

Mayor Bellamy opened the public hearing at 7:57 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to add townhouses as a use by right, subject to special requirements (USSR), in the Urban Residential Zoning District and to amend the townhouse standards. This public hearing was advertised on September 15 and 22, 2006.

The City of Asheville's Unified Development Ordinance (UDO) currently defines "townhouses" as: "*Dwellings, townhouse* means two or more single-family dwelling units having a common wall or zero setback separating units where land underneath each dwelling unit is sold with that unit."

Townhouses are permitted as a USSR in several residential districts including: RM-6, RM-8, RM-16, Office, Office II, Office/Business, Community Business II, Resort, Highway Business, Central Business, Regional Business, Commercial Industrial and provide opportunity for home and real estate ownership in areas appropriately located to existing infrastructure, transportation, employment, and goods and services. Townhouses can also be used to provide a more affordable housing product where building materials and other resources are shared in order to keep costs down. This amendment increases the variety of housing options that would

be available in the Urban Residential zoning district, while allowing for the efficient use of real estate to increase the total number of units allowed under the current density requirements.

Unlike condominiums, townhouses exist on individual lots and require a subdivision review to ensure that the lots comply with the City's subdivision and USSR standards. Currently, the special requirements of townhouses allows for flexibility in setbacks and waives minimum lot sizes provided that some amount of undeveloped (green) space is kept in common ownership to keep the overall density compliant.

This amendment would still require that density be met in the same manner but allows townhouse developments in the higher density districts to use commonly owned property for purposes other than undeveloped green space. Particularly in urban areas where high density is desired and space is limited, the ability to use commonly owned property for other features such as swimming pools, clubhouses, and parking areas would afford developers more flexibility and opportunity to optimally develop the site. It also allows for distinction between individually owned lots and property that may be maintained by a homeowner's association. Providing undeveloped green space would still remain an option to meet density requirements in an Urban Residential townhouse development.

The Planning & Zoning Commission reviewed this amendment at their September 6, 2006, public hearing where the amendment was approved unanimously.

Considerations:

- This amendment increases the variety of housing types allowed in the Urban Residential zoning district.
- This amendment provides opportunity for the construction of a more affordable housing option in urban areas appropriately located for access to infrastructure, transportation, employment, and a variety of goods and services.
- This amendment encourages maximizing the development options of a site while providing flexibility for more sensitive design.
- This amendment requires the preservation of undeveloped open space in the lower density residential district (RM-6).
- An amendment to the City of Asheville's Open Space requirements (not yet adopted) would allow for open space requirements to be met through other means.

City staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to amend the townhouse standards and to add townhouses as a use by right, subject to special requirements in the Urban Residential Zoning District.

Mayor Bellamy closed the public hearing at 7:58 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3394. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 101

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-171 - RESOLUTION ESTABLISHING THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Councilwoman Cape explained that she reviewed this proposed resolution at the September 19, 2006, worksession and recommended adoption of the resolution establishing a committee to be known as the Sustainable Advisory Committee on Energy & the Environment.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower felt we didn't need another layer of bureaucracy to serve as a filtering agent when it comes to energy and the environment and it should be a component of all of our decisions. He felt we have adequate representation by City staff and others to cover these areas. He was also concerned about abuse. He was pleased to see Councilwoman Cape take the leadership on this issue and creating new initiatives, but this is not one he could support.

Councilman Davis agreed with Councilman Mumpower in that we are creating another layer of bureaucracy that we really don't need.

Vice-Mayor Jones felt that this is an act of leadership to take our community to a place we need to go. We are a long way off from reaching our goals, but are excited that our community has this type of vision.

Councilwoman Cape felt that our community has been going in this direction for a long time and part of being a good leader is being receptive and attentive to that.

Mayor Bellamy believed we are moving in the right direction, but stressed that this is an advisory committee and their recommendations will not be automatic. She said that City Council sets policy direction for the community, not committees.

Councilman Newman moved for the adoption of Resolution No. 06-171. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 111

B. RESOLUTION NO. 06-172 - RESOLUTION REQUESTING SUPPORT OF LOCAL MENTAL HEALTH AND SUBSTANCE ABUSE ISSUES

City Attorney Oast said that this is the consideration of a resolution requesting support of local mental health and substance abuse services.

This resolution grows out of the report received at Council's worksession of September 19, 2006, from Buncombe County, regarding the Crisis Stabilization Facility, and is also in response to the closing of a local facility providing substance abuse and mental health services to economically marginalized individuals.

The City of Asheville and Buncombe County are experiencing an increase in the need for services and facilities to assist persons, especially low income persons, who suffer from mental health and substance abuse problems. Existing facilities and services are being affected by closings and reductions in funding. The Governmental Affairs Task Force of the Asheville Chamber of Commerce identified support of mental health reform as a State legislative priority for the area for 2006. The need for such support has recently grown more acute, especially within the City of Asheville, which is the center for mental health and substance abuse services in Buncombe County and the region. The City Council hereby supports local mental health and

substance abuse facilities and services in Asheville and Buncombe County, through funding and other means, is urgently needed, and action to provide such support is strongly encouraged. The City Clerk is directed to transmit a copy of the resolution to each member of the North Carolina General Assembly whose district includes the City of Asheville.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

At the request of Vice-Mayor Jones and the consensus of City Council, City Attorney Oast said that he would amend the resolution to include that the City Clerk be directed to also transmit a copy of the resolution to our United States Congressional representatives, including our two Senators and Congressman Taylor.

Councilwoman Cape moved for the adoption of Resolution No. 06-172, as amended pursuant to the City Attorney. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 113

C. RESOLUTION NO. 06-173 - RESOLUTION AUTHORIZING THE CHANGE IN SCHEDULE I OF THE FEES AND CHARGES OF THE WATER FUND TO REFLECT CHANGES IN THE CAPITAL IMPROVEMENT PROGRAM FEE FOR SINGLE-FAMILY RESIDENTIAL WATER CUSTOMERS

Water Resources Director David Hanks said that this is the consideration of a resolution authorizing the change in Schedule I Fees and charges of the Water Fund to reflect changes in the capital improvement program fee for single family residential water rate customers (SFR).

City Council at its September 19, 2006, worksession directed staff to change the CIP fee structure for single family residential customers from its current meter size base rate a more equitable cost structure for this customer class.

The CIP fee rate structure was established using a meter size basis for the monthly charges. Most single family residential customers have a 5/8 inch meter. Approximately 150 single family residential (SFR) customers have larger domestic meters from one (1) inch to two (2) inch with significantly higher monthly fees. The monthly fee structure for one (1) inch meter is $48.00; one and one-half (1.5) inch meter is $80.00; two (2) inch meter is $140.00. The fee structure was established to help reduce the water utility cost on SFR customers and this small group of customers is paying much more than the average SFR customer. Staff presented Council with options to reduce the fee to either $5.00 per month (1 inch meter SFR customer); $6.00 per month (1.5 inch meter SFR customer); and $7.00 per month (2 inch meter SFR customer); or all residential customers paying the same monthly fee of $3.50.

PRO:

- A reduced meter fee for SFR customers is fair and equitable based upon the current tiered rate structure where SFR customers pay more than other classes of customers for consumed water.

CON:

- Each meter reduction scenario decreases water fund revenue. A flat fee of $3.50 per month has an $80,000 annual revenue impact. The reduced fee structure has a $77,000 annual revenue impact on the water fund.

City staff recommends adoption of the resolution authorizing the change in Schedule I Fees and Charges of the Water Fund to reflect changes in the capital improvement program fee for single family residential water rate customers.

City Manager Jackson said that in addition to this adjustment to the residential rate structure, City staff will be providing City Council with a response back from the Chief Financial Officer at the October worksession wherein he will provide more specific recommendations on how to use debt financing to apply toward alternative rate structures and establishing a capital reserve and provide for potential off-setting future rate increases as well.

In response to Councilwoman Cape's inquiry about the condo association issues, Mr. Hanks said that we have been working with the various condo associations in the area. Some are going to a combination meter, where they will be paying the fee scheduled based on the smaller size not only for water but for sewer. This actually a tremendous reduction in fees they will be paying, based on the number of units in those condos. Those that didn't want to go that route were offered a contract where they are actually treated as single-family residential customers paying the $3.50 per unit.

City Manager Jackson said that this is an adjustment for residential accounts only. A condominium is not a residence with one customer, but it is a grouping under one billing structure.

Mr. Hanks said that we have condo associations from as few as 32 units to close to 200 units. Basically we offered up the same thing to all of them. Some have some really old meters that do not meet the current state requirement for back flow and cross connection so they were going to have to look at replacing their meters anyway. This was just an opportune time for them to do it and save money on their return on investment. Most of them will have a savings of approximately $1,200-$1,400 a year based on the reduced sewer charges and the CIP for water.

At the request of Mayor Bellamy, City Manager Jackson said that he would provide Council with information on how many residences are not served directly by the City because we sell water to condo associations, apartment complexes, mobile home parks, etc. He felt it would also be helpful for Council to receive background information about the complexities and difficulties in establishing that relationship with condo associations, apartment complexes and mobile home parks. The action today is making adjustments to where we have a direct contractual account with the residents.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-173. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 114

VI. OTHER BUSINESS:

Councilwoman Cape encouraged the community to participate in the Energy Star Change a Light bulb, Change the World Campaign.

Mayor Bellamy encouraged citizens to attend the N.C. Dept. of Transportation public hearings on October 9 and 10, 2006, to learn about the I-26 Connector.

Councilwoman Cape announced the first meeting of the Community & Economic Development Alliance and was excited about seeing plans begin to move forward with the inclusion of the public.

The following claims were received by the City of Asheville during the period of September 1-14, 2006: LaRhonda Moss (Parks & Recreation), William E. Smith (Transit

Services), Joyce Swann (Water), Frances B. Taylor (Water), Mary Frances Miller (Water), Arribelle Bolden (Streets), Michael Caldwell (Water), William Anixter (Water) and BellSouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton was of the opinion that we must stop supporting a culture which encourages our children to deny the truth that we are one and teach spiritual education.

Mr. Jeff Sheppard spoke to Council about his concern over the crime and violence he has experienced.

Ms. Liz Oldre asked for Council's consideration of allowing BMX bikes on the Food Lion Skate Park. She cited many cities/counties skate parks that allow BMX bikes, many of which are concrete. She asked that they be allowed to use the Skate Park at designated times and dates. Mayor Bellamy referred this request to City Manager Jackson and the Recreation Board and asked for the recommendations to be brought back to Council.

Mr. Chris Johnson, owner of a small mobile home park, spoke about the 140% increase in his water bill from the water CIP fee. After a brief discussion, City Manager Jackson said that he will be reporting back to Council at the October worksession with some details outlining what Mr. Yalson is experiencing and relate that to how other multi-family and multi-residential locations are affected by the CIP fee. He will share with Council an analysis on how the City is working with various different accounts and lay out for them what, if any, other practices there are in the State of North Carolina for treating those types of customers. He said we will present Council with alternatives and seek direction.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:37 p.m.

Kristina Lipe
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – October 10, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Ms. Susan Lifchez' 4th Grade Class from Ira B. Jones Elementary School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 24, 2006, AS "ACUPUNCTURE AND ORIENTAL MEDICINE DAY"

Councilman Newman read the proclamation proclaiming October 24, 2006, as "Acupuncture and Oriental Medicine Day" in the City of Asheville. He presented the proclamation to Ms. Beth Anne Grant, Operations Manager for Atlantic University of Chinese Medicine, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda Items "G" and "H" were pulled from the Consent Agenda until a later date.

At the request of Councilman Mumpower, Consent Agenda Items "B", "D" and "F" were removed from the consent agenda for individual discussions.

At the request of Mayor Bellamy, Consent Agenda Items "K" and "L" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 26, 2006

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER LOCATED AT 224 LOUISIANA AVENUE

This item was pulled from the Consent Agenda for individual discussion.

C. RESOLUTION NO. 06-175 - RESOLUTION AUTHORIZING THE MAYOR TO EXCHANGE A PORTION OF REAL PROPERTY LOCATED ON 749 FAIRVIEW ROAD FOR A PORTION OF REAL PROPERTY LOCATED AT 723 FAIRVIEW ROAD

Summary: The consideration of a resolution authorizing the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

The City and Dan Zorn, principal of Famprop LLC (Famprop), have negotiated an exchange of a portion of City owned real property at 749 Fairview Road for a portion of property Famprop is purchasing at 723 Fairview Road.

The proposed exchange is to correct a long standing encroachment and provide a more consistent property line between the City's property and the Famprop property.

The City's property (PIN 9657.97-58-1784) is on the south side of Fairview Road at its intersection with Liberty Street, zoned RS8 Residential Single-Family High Density District and improved with a Fire Station, Public Library and Community Center. The portion to be exchanged is a 0.12 acre± parcel at Fairview Road on the west side of the City's parcel as it adjoins the Famprop property. This part of the property is on the outside of the City's fence and has never been utilized by the City. It is this portion of the property where one of the buildings on the Famprop property has encroached for a number of years.

The property being purchased by Famprop (PINs 9657.07-58-0712; 0682) on Fairview Road is on the south side of the street about 315' west of its intersection with Liberty Street. It is zoned RS8 Residential Single-Family High Density District and is improved with a large residential structure. The portion to be exchanged is a 0.12 acre± parcel located at the rear of the property adjoining the City's property.

A review of the tax assessments for the properties indicate broad variations between per acre values of parcels in the area that would be attributed to the size differential between parcels. Comparable lot values range from 21,500 for 0.16 acre to 27,400 for 0.42 acre. The values of the parcels to be exchanged are estimated to be roughly equal based on shared characteristics including location, size, shape and topography. The value for each exchange parcel is estimated to be about $20,000± each for 0.12 acre.

Pros:

1. The exchange will be a fair exchange of value for value.
2. It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
3. It will correct the long standing structural encroachment.
4. It will provide a better more consistent property line.

Cons: There are no negative aspects to this proposal.

Economic Development, Fire Department and Parks & Recreation staff recommends adoption of the resolution authorizing the exchange of a portion of City owned real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

RESOLUTION BOOK NO. 30 – PAGE 116

D. RESOLUTION FOR INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENT INITIATIVES (ICLEI) AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION

This item was pulled from the Consent Agenda for individual discussion.

E. RESOLUTION NO. 06-177 - RESOLUTION AUTHORIZING PINES PROPERTIES INC. TO CONVEY PROPERTY LOCATED AT 128 MCENTIRE

ROAD IN RUTHERFORDTON, N.C., TO BRAD FORD IN THE AMOUNT OF $398,800

Summary: The consideration of a resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

Pines Properties, Inc. advertised for upset bids pursuant to a bid from Brad Ford for real property at 128 McEntire Road, Rutherfordton, North Carolina, in the amount of $398,000. The advertisement was published on September 29, 2008, and no upset bids were received.

128 McEntire was bequeathed to the City as by Jake Rusher. It is an irregular shaped parcel comprising 23.79 acres±. It is improved with a three bedroom log house, a barn, several outbuildings and fencing. It is located in a rural area of Rutherford County. The offer from Brad Ford is in the amount of $398,800. The offer was submitted through the listing agent, Scott Jackson of Odean Keever & Associates. The property was listed at $389,500 based on a market analysis at the time of listing. A previous offer of $370,000 was advertised and upset by the current offer. The real estate commission on the sale will amount to 6% or $23,928.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. The sale will generate revenue from the disposition of an un-needed asset.
3. It will return property not needed for public use to private ownership.
4. It will transfer responsibility for maintenance to the private sector.

Cons: There is no negative impact.

The proceeds from the sale of this parcel will be General Revenue Income.

Economic Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

RESOLUTION BOOK NO. 30 – PAGE 119

F. **BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO COVER DAMAGES TO AZALEA PARK RESULTING FROM HURRICANE IVAN**

This item was pulled from the Consent Agenda for individual discussion.

G. **RESOLUTION AMENDING THE INTERLOCAL AGREEMENT FOR REGIONAL AIR QUALITY CLEAN AIR PROGRAM - COMMUNITY TRUST**

This item was removed from the Consent Agenda until a future date.

H. **RESOLUTION ACCEPTING THE RIGHT-OF-WAY OF GERBER ROAD AS A CITY MAINTAINED RIGHT-OF-WAY**

This item was removed from the Consent Agenda until a future date.

I. **RESOLUTION NO. 06-178 - RESOLUTION ACCEPTING THE U.S. DEPT. OF JUSTICE GRANT FOR THE WEST RIVERSIDE OPERATION WEED AND SEED CRIME INITIATIVE**

Summary: The consideration of (1) a resolution to accept the U.S. Department of Justice Grant for the "West Riverside Operation Weed and Seed" Crime Initiative; and (2) a budget amendment, in the amount of $175,000, to accept these funds.

On July 12, 2006, the U.S. Justice Department announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed program aimed at reducing crime. This process began in October of 2004 when a number of concerned elected officials, city staff, community residents and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the target area.

As per the requirements of the U.S. Department of Justice application process, a series of "Public Input Meetings" were held to determine the concerns of residents of the target area. The Weed and Seed Program concept was also introduced to the community and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the program. The West Riverside Operation Weed and Seed Steering Committee, residents and several community based resource proving agencies such as the Housing Authority, Asheville City Schools, Children First, YMCA/YWCA, NAACP, Mission Hospital, A-B Technical Community College, UNC-Asheville and others will collaborate to improve quality of life for the residents of the Pisgah View, Burton Street and Asheville.

On August 15, 2006, Attorney General Alberto Gonzales formally announced the approval of the City of Asheville's application for funding as a new site in the amount of $175,000. Fifty percent of the funds will be used to support community police programs; and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean up, housing services, and to hire a Weed & Seed Site Coordinator that will work out of the Parks & Recreation Department. No City funding will be required to support this first-year grant. The grant may potentially be a multi-year grant that will require an application each year.

Pros:

- Significantly reduce violent crime and drug activity in the area of the city that highest number of criminal activity
- Provide a comprehensive plan to address law enforcement, neighborhood restoration and preventive/intervention/treatment programs for the residents of the target area
- Mobilize community residents to collective improve the conditions of the target area
- Provide resources for residents as a means of personal growth and development
- Multi-agency collaboration relative to addressing social, education, economical, cultural problems in the target area.
- Leverage resources to sustain the program and replicate the strategies in other problem areas of the city

Cons:

- Resistance and fear of change in the target area.

This recommendation is keeping with the City of Asheville Strategic Plan by contributing to the:

- "Livability" of Asheville by improving the safety and wellbeing of residents of the target area
- "Sense of Place" of Asheville and the need to educate citizens about the importance of working together as a community to improve the conditions of the community
- "Participation" of Asheville citizens in the process of program development as programmatic and strategic contributors

The Parks and Recreation Department on behalf of the West Riverside Operation Weed and Seed Steering Committee recommends adoption of (1) the resolution to accept the U.S.

Department of Justice grant in the amount of $175,000 for the "West Riverside Operation Weed and Seed" Crime Initiative; and (2) a budget amendment, in the amount of $175,000, to accept these funds.

RESOLUTION BOOK NO. 30 – PAGE 120

J. **ORDINANCE NO. 3396 - BUDGET AMENDMENT TO ACCEPT THE U.S. DEPT. OF JUSTICE GRANT FOR THE WEST RIVERSIDE OPERATION WEED AND SEED CRIME INITIATIVE**

Summary: See Consent Agenda "I" above.

ORDINANCE BOOK NO. 23 – PAGE 105

K. **RESOLUTION NO. 06-179 - RESOLUTION ACCEPTING LAND KNOWN AS OWENS-BELL PARK FROM MOUNTAIN HOUSING OPPORTUNITIES AND APPROVING THE NAME OF OWENS-BELL PARK**

This item was removed from the Consent Agenda due to a conflict of interest.

L. **RESOLUTION NO. 06-180- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEAGUE SOCIAL AS A PART OF THE ASTON PARK-TENNIS CENTER**

This item was removed from the Consent Agenda for a separate vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 06-174- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER LOCATED AT 224 LOUISIANA AVENUE

Summary: The consideration of a resolution authorizing execution of a Lease of City-owned real property at 224 Louisiana Avenue to the United States of America.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional. Due to its location and size the highest and best use for the property would be an institutional use, such as a nursing home, assisted living facility or high density residential. The single story building and other improvements located on the property were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The property was leased to the USA in 1950 at a rent of $1.00 for the entire 50 year term. The most recent lease for six years was signed in 2000 at an annual rent of $60,000.

The USA lease expired at the end of June and the Army Reserve has offered to enter into a new lease for the property for a term of three (3) years at an annual rent of $112,000. Although the lease does not contain an annual escalation clause the rent is at the high end of the rent range and the term was reduced to three (3) years. The Reserve Center has been a good caretaker of the property and no complaints have been received regarding any condition or activities at the site.

This item was pulled from the August 22nd agenda in order for staff to assess the proposed lease in connection with the potential redevelopment of the property. It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property. A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

Pros:

a. The rent revenue for this property will be significantly increased.
b. The rent is at the high end of the rent range for this property.
c. The shorter term will allow re-evaluation of the lease sooner.
d. The Army Reserve Center provides a valuable public service.

Cons:

a. The property does not generate tax revenue, but this is offset by the rent revenue.
b. The current is not the ideal, long-term development.

Economic Development staff recommends adoption of the resolution authorizing execution of a lease of City-owned real property at 224 Louisiana Avenue to the United States of America.

Upon inquiry of Councilman Mumpower, Real Estate Manager Ed Vess explained why the rent escalated from $1 to $60,000 to $112,000 annually.

Councilman Mumpower wondered if the reason why the lease was only $1 annually in the 1950's is because there was some community spirit to support our Army Reserve. He feels like we are gauging the Army Reserve and felt $112,000 annually was too high.

Mayor Bellamy asked the Army Reserve is using all the property or is there a portion of property available for development. Mr. Vess said that if the slope were graded down, we could probably add another 25% to the total usable area; however, the lease is for the entire property. Even though the reservists are not there all the time, when they are there, they do need the entire property.

Mayor Bellamy said that the Social Security Office has a lease for $33,000 a month for rent in their current location and at that location, we cannot serve them with bus service. She asked if Council would be interested in directing City staff to see if there is any opportunity for

these two federal programs to co-exist on that property, which would save the federal government some money.

Councilwoman Cape felt that the property sets in an area that is part of our core development plans and there could be other higher and greater uses for the property in the long run. She felt we should look into this idea further.

Councilman Freeborn felt that if that location is not suitable, it might be a possibility to offer the Social Security Officer another piece of city-owned property that is on the bus line.

Vice-Mayor Jones would be interested in beginning conversation on this possibility, however, was not as interested in looking at City-owned property.

It was the majority of Council's decision to direct City staff to see if there is any opportunity for the Army Reserve and the Social Security Office to co-exist at 224 Louisiana Avenue.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-174. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 115

RESOLUTION NO. 06-176 - RESOLUTION FOR INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENT INITIATIVES (ICLEI) AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION

Summary: The City of Asheville will join ICLEI as a Full Member and participate in the Cities for Climate Protection Campaign and, as a participant that pledges to take a leadership role in promoting public awareness about the causes and impacts of climate change.

In addition, the City of Asheville will undertake the Cities for Climate Protections Campaign five milestones to reduce both greenhouse gas and air pollution emissions throughout the community and specifically; (1) Conduct a greenhouse gas emissions inventory and forecast to determine the source and quantity of greenhouse gas emissions in the jurisdiction; (2) Establish a greenhouse gas emissions reduction target; (3) Develop an action plan with both existing and future actions which when implemented will meet the local greenhouse gas reduction target; (4) Implement the action plan; and (5) Monitor and report progress.

Also, the City requests assistance from ICLEI's Cities for Climate Protection Campaign as it progresses throughout the milestones.

Councilman Mumpower was concerned about the language and the potential for abuse.

Councilman Davis confirmed that the membership fee of $1,200 is for software and staff support for the greenhouse gas emissions inventory for use by in-house staff.

Councilwoman Cape felt this is a good tool for us to use in-house because it is important to have a baseline understanding of where we are at and how we can improve and save money and energy at the same time.

Councilman Newman asked if the software tool would be available to other organizations in the community. City Manager Jackson said the software maybe copyrighted and we would not be able to reproduce or distribute the software, without their permission. However, what information the City does learn will be shared with the Task Force formed by Council.

City Manager Jackson said that this will be administered by his office. In addition Director of Public Works Mark Combs will be serving in the role of environmental manager.

Councilman Newman moved for the adoption of Resolution No. 06-176. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 117

ORDINANCE NO. 3395 - BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO COVER DAMAGES TO AZALEA PARK RESULTING FROM HURRICANE IVAN

Summary: The consideration of a budget amendment in the amount of $781,062 ($597,472 in anticipated reimbursements from Federal Emergency Management Agency ("FEMA") and $183,589 from fund balance) to cover damages to Azalea Park resulting from of Hurricane Ivan.

The City of Asheville sustained severe damage at Azalea Park from the hurricanes of September 2004. The damage included:

1) the destruction of soccer turf on 1½ of the fields
2) the accumulation of large amounts of debris and sediment at the Azalea Park site
3) the erosion of stream banks which serve as a protective barrier for wetlands

The City subsequently 1) replaced the damaged soccer fields; 2) removed the debris and sediment and; 3) rebuilt the stream banks to reduce the impact of future floods and to protect the existing wetlands. FEMA previously approved a reimbursement of $418,000 (which is already budgeted) to cover the initial estimated cost of clean-up and repairs. The actual cost for replacing the field replacement and clean-up the debris, however, ended up totaling $1,199,062, leaving a balance of $781,062 for which the City has requested an additional reimbursement.

The cost over run occurred in the following areas:

- The replacement of the artificial turf on the soccer field cost was almost double the original turf cost.
- Debris clean-up of the greenway was more extensive than originally planned.
- Protection of the wet land was not in the original estimate.

This budget amendment in the amount of $781,062 is necessary to replenish city funds that have already been spent for the additional debris clean-up and wet-land protection costs and to allow the City to pay the contractor (who has yet to be paid) for the replacement of soccer fields. FEMA site co-coordinators are recommending reimbursing the City for $597,473 of the total additional amount (pending proof of expenditure and final approval from FEMA) to cover the soccer fields and some of the additional clean-up costs, but are not recommending reimbursement for protection of the wetland; rebuilding river bank to help prevent damage from future flooding; and removing debris on the greenways and park which was not developed prior to the storm. They have concluded that these costs fell outside of the FEMA guidelines for reimbursement. An appeal will be prepared and sent to FEMA for reconsideration of the aforementioned denial. In the meantime, the balance not covered by FEMA ($183,589) will come from the City's fund balance.

Pros:

- This will allow the City to pay the contractor for the soccer field and replenish the Azalea road project budget for additional clean-up expenditures in incurred.

Cons:

- Failure to approve the amendment will prevent the completion of the original project.

Staff recommends approving the budget amendment in the amount of $781,062 to be funded with anticipated reimbursements from FEMA grant and a transfer of funds from fund balance.

Councilman Mumpower was personally frustrated by the amount of money involved and was concerned that it cost twice as much to replace the turf. He could not support this budget amendment.

Upon inquiry of Councilwoman Cape, Chief Financial Officer Ben Durant explained the process to date and the reasoning why the cost of the replacement turf was so high.

Upon inquiry of Councilwoman Cape, Mayor Bellamy explained that the City Manager has the authority to sign change orders up to $50,000; however, as a courtesy, City Manager Jackson brings change orders to Council when they are over $25,000.

Upon inquiry of Mayor Bellamy, Chief Financial Officer Durant said that he would provide Council with a written response regarding the FEMA housing assistance for Hurricane Katrina evacuees.

Councilman Freeborn moved for the adoption of Ordinance No. 3395. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 – PAGE 103

RESOLUTION NO. 06-179- RESOLUTION ACCEPTING LAND KNOWN AS OWENS-BELL PARK FROM MOUNTAIN HOUSING OPPORTUNITIES AND APPROVING THE NAME OF OWENS-BELL PARK

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Owens-Bell Lane and naming said park "Owens-Bell Park."

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. Mountain Housing Opportunities, Inc. (MHO) has offered to donate an approximately 0.85± acre parcel on Owens-Bell Lane (PINs 9648.05-08-7526 and 9648.08-08-6523) to become part of the City's parks and greenway system.

The subject property lies between Clingman Avenue, Rector Street and Owens-Bell Lane. It is transverse by a constructed storm water wetland. Using a series of wetland pools and aquatic plants to slow and filter peak water flow, this system enhances water quality while providing an attractive amenity for the park. The wetland will present an opportunity for educating the community about the environment as well as storm water mitigation. The park has been improved with a paved trail and landscaping. It is sloping and grassy and the banks of the wetland area are planted with low maintenance plants. It is in a residential area making it an attractive location for passive recreation. The estimated value of the land is $29,700

Pros:

- The improvements to the park have been installed by the donor.
- The park will preserve green space and storm water wetland in perpetuity.
- It is an efficient use of resources both public and private, because the City will own only the property best suited to the greenway and storm water wetland.
- A park in this general area was shown in the WECAN Master Plan (published in 2001).

Cons:

- The City will incur the cost of maintaining the park at an approximate cost of $2,500 per year.

City staff has on file a Phase I Environmental Site Assessment which states: "Based on the results of our Phase I ESA, there is no documented evidence of any environmental incidents on the subject site." The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the parks and greenways system.

City staff recommends adoption of the resolution authorizing the Mayor to accept a donation of real property on Owens-Bell Lane and naming said park "Owens-Bell Park."

Councilman Freeborn moved for the adoption of Resolution No. 06-179. This motion was seconded by Councilwoman Cape and carried unanimously.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

RESOLUTION BOOK NO. 30 – PAGE 121

RESOLUTION NO. 06-180- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEAGUE SOCIAL AS A PART OF THE ASTON PARK TENNIS CENTER

Summary: The consideration of a resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at a league social as part of the Aston Park Tennis Center Enhancement campaign on October 13, 2006, at the Aston Park Tennis Center.

The Asheville Parks and Recreation will produce the fundraising event to help raise funds to support the cost of renovations at Aston Park Tennis Center. The event will be held at the Aston Park Tennis Center.

The Asheville Parks and Recreation staff recommends adoption of the resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at a league social as part of the Aston Park Tennis Center Enhancement campaign on October 13, 2006, at the Aston Park Tennis Center.

Councilman Newman moved for the adoption of Resolution No. 06-180. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 122

III. PUBLIC HEARINGS:

A. ORDINANCE NO. 3397 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 1155 TUNNEL ROAD AND A PORTION OF 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH

DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT

Mayor Bellamy said that this public hearing was held on September 26, 2006, and continued to this date to see if the developer and City staff could work out a reasonable alternative to the existing parking lot violation.

Assistant Planning & Development Shannon Tuch said that on September 26, 2006, the City Council voted to continue consideration of the 7 Grandview Place Conditional Zoning request to allow the applicant and his engineer the opportunity to work with staff on a reasonable alternative to the existing parking lot violation.

In the intervening week, staff has spoken with the engineer for the project and has worked out an alternative that can be accomplished in conjunction with the work that must be completed to correct the current stormwater violation. The portion of the parking area directly behind the bakery must be demolished to allow access to a sub-standard stormwater pipe and for some other stormwater improvements. Staff has proposed to withhold repaving the area in question to allow for an attractive landscaped island that may also contain some small café tables for patrons of the bakery. This alternative will result in the loss of 4 parking spaces for a total of 18 spaces (1 space more than what was originally approved).

Some considerations that staff has identified include:

- ~~Reduces impermeable surface area of the parking lot~~
- Provides an attractive outdoor seating area for the patrons
- Does not require the reconstruction of any retaining walls or the parking lot
- Provides ample parking for the bakery
- Will require rezoning the portion of the parking lot that falls within the residential zoning

City staff does feel this alternative result in a more compatible and appropriate solution to the existing parking lot violation.

Mr. Steve Aceto, attorney representing the owner and developer, spoke in support of the alternative site plan and urged Council to support this conditional zoning request.

Upon inquiry of Councilman Mumpower, Mr. Dennis Ponder, engineer for the developer, said that the alternative plan will cost approximately $2-3,000 more, however, in his opinion, the bond to the City will cover these modifications. He did feel this will be an amenity to the neighborhood.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3397, to conditionally zone property located at 1155 Tunnel Road and a portion of 7 Grandview Place from RS-8 Residential Single-Family High Density District and Community Business I District to Community Business I District/Conditional Zoning, and approval of the alternative site plan, subject to the following conditions: (1) The project shall comply with all applicable technical standards; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (4) A lot recombination shall be completed to allow for a conforming buffer; recommend against alternative compliance, noting that the request is reasonable based on information provided in the staff report. This motion was

seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 23 – PAGE 107

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES LOCATED AT 1875 HENDERSONVILLE ROAD TO AMEND THEIR MASTER PLAN FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION AND CONSIDERATION OF MODIFICATIONS TO A FRONT SETBACK FOR A PROPOSED OUT PARCEL

Mayor Bellamy said that City staff has requested this public hearing be continued to November 14, 2006, as the petitioner was unable to make adjustments to the site plan in enough time to have City staff review them. Therefore, Councilwoman Cape moved to continue the public hearing until November 14, 2006. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

C. PUBLIC HEARING TO CONSIDER CLOSING A PORTION OF AN UNOPENED RIGHT-OF-WAY LOCATED OFF OF MONTFORD AVENUE

RESOLUTION NO. 06-181 - RESOLUTION PERMANENTLY CLOSING A PORTION OF AN UNOPENED RIGHT-OF-WAY LOCATED OFF OF MONTFORD AVENUE

At the request of Councilman Newman, Councilwoman Cape moved to excuse Councilman Newman from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 5:54 p.m., Mayor Bellamy opened the public hearing.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution permanently closing a portion of an unopened right-of-way located off of Montford Avenue. This public hearing was advertised on September 15, 22, 29 and October 6, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Brownie Newman has requested the City of Asheville permanently close to the public a portion of an unopened alley way off of Montford Avenue as shown as "alley (unopened)" on the plat recorded in Plat Book 79, Page 87 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened alley is not a City maintained street. Closure of this unopened alley will not deny any of the abutting properties a reasonable means of ingress or egress. The two parcels that abut this section of alley are identified as PIN Nos. 9649-13-03-2964 and 9649-13-04-2004. Both abutting property owners have joined in signing the petition for the closure. There have been no objections to the closing.

There will be retention by the Metropolitan Sewerage District of a 20-foot wide permanent easement for the operation and maintenance of a public sewer line and also retention by the City of Asheville of a permanent 10-foot wide easement for the operation and maintenance of a public water line.

The closure of an unopened alley is a routine process performed by the Public Works Department.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution permanently closing a portion of the unopened alley off Montford Avenue.

Upon inquiry of Councilman Mumpower, Mr. Grant said that the two abutting property owners will split the ownership of the alley, each receiving 7.5 feet.

Upon inquiry of Councilman Mumpower, Mr. Grant explained the process by which petition closings are investigated by the City.

Mayor Bellamy closed the public hearing at 5:57 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-181. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 123

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-182 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PROVIDE THE CITY WITH THE OPTION OF UPGRADING TO DECORATIVE TRAFFIC SIGNAL POLES

ORDINANCE NO. 3398- BUDGET AMENDMENT FOR THE UPGRADE OF THREE DOWNTOWN TRAFFIC SIGNALS WITH DECORATIVE POLES AND ARMS AS FOLLOWS: (1) BROADWAY AND COLLEGE STREET; (2) BROADWAY AND PATTON AVENUE; AND (3) COLLEGE STREET AND CHARLOTTE STREET

City Traffic Engineer Anthony Butzek said that this is the consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to provide the City the option of upgrading to decorative traffic signal poles; and the consideration of a budget amendment for the upgrade of three downtown traffic signals with decorative poles and arms.

In 2005, a public workshop was held in order to gather input regarding how our traffic signals should look. Options were presented for color, pole shape, and decorative base style, and strong feedback allowed us to designate a preferred style for signal poles. NCDOT is installing this preferred style in three locations near Broadway & Woodfin Street as part of the interchange construction currently underway.

Decorative poles are desirable at gateways, key locations or corridors of visual importance, as parts of a streetscape, and places with significant pedestrian activity.

The NCDOT is currently planning to replace traffic signal poles at three locations (College & Broadway, Patton & Broadway, College & Charlotte). They have given the City the option of upgrading the planned replacement of standard metal poles and arms to decorative poles and arms in our preferred style. The City would pay the cost differential of the decorative upgrades, estimated as $10,000-20,000 per intersection (full signal replacement costs are estimated at $100,000-150,000 per intersection).

The cost differential of the upgrades is being determined. It is initially estimated at:

• Broadway & College:	$10,200
• Broadway & Patton:	$22,000
• College & Charlotte:	$21,400
TOTAL:	$53,600

Patton & Broadway is our city's central intersection, and College & Broadway is a key downtown intersection. College & Charlotte is a key gateway intersection to our downtown. All three locations are important components of the look of our downtown. This is a one-time opportunity at each location to make major aesthetic upgrades at a relatively low cost.

This agreement defines the format for how such replacements will take place for these and all future replacements. The City will be given a specific cost estimate for the upgrade of each specific location. We will then have 30 days to decide whether to advance each specific project and reimburse NCDOT for the difference, or to allow NCDOT to proceed with standard poles.

Pros:

- Signing of this agreement provides a mechanism to consider decorative upgrades.
- Decorative upgrades are a key part of developing an attractive downtown environment.
- Decorative poles will match those going in at Broadway & Woodfin and those selected by the public.
- Decorative poles will improve downtown's streetscape and complement the new Pack Square Park and College Street projects.
- NCDOT has agreed to replace these poles in part to complement the other improvements we are making downtown, and this contribution supports this partnership.
- Decorative upgrades are a key part of developing an attractive downtown environment.

Cons:

- While the cost is minimized when upgrades are made as signals are replaced, the cost is still significant.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the NCDOT to provide the City the option of upgrading to decorative traffic signal pole and authorize a budget amendment for decorative traffic signal poles at these three key intersections.

Mr. Fred English felt that the City needs its roads paved and not decorative traffic signal poles.

Rev. Christopher Chiaronmonte urged Council to use this money to invest in two jail-style public restrooms in the downtown area.

Councilwoman Cape liked the decorative poles but was concerned with the additional cost. She suggested contacting some of our partners, e.g., Tourism Development Authority (TDA) to see if they would be interested in contributing to this since they are interested in supporting the gateway projects.

In response to Councilman Mumpower, Mr. Butzek explained why the traffic signal poles are being replaced and their time span.

Councilman Davis felt this is a good opportunity for a replacement with decorative poles. He agreed with Councilwoman Cape in that this is part of the aesthetics of downtown and there has been an interest in Wayfinding and signage by the TDA. He felt this is a good opportunity to use some dollars generated by tourism to help with citizens pay for that infrastructure.

There was a brief discussion, initiated by Councilwoman Cape, about having 30 days to decide whether to advance each specific project.

Vice-Mayor Jones, liaison to the TDA, said she would be happy to carry this request to the TDA at their next meeting. Her sense is that there is a lot of openness for investments in this, but there is a whole process for allocating dollars. She felt this might be a good sign of the City's small investment to show good faith to the TDA, who will be investing a lot of money in a lot of other needs.

At the suggestion of Mayor Bellamy, and the concurrence of Councilman Davis, Chair of the City Council Planning & Economic Development Committee, it was the consensus of Council to add an agenda item to the Committee's next meeting to develop a list of people and organizations who may have an interest in this effort and then send them a letter seeking contributions.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 06-182. This motion was seconded by Councilman Freeborn and carried unanimously.

A brief discussion was held about postponing the budget amendment for two weeks to see if any individuals or organizations would like to contribute.

Councilwoman Cape noted the number of Wayfinding and city enhancements the City is doing regularly so we need to continue that conversation with other individuals and organizations for assistance. Mayor Bellamy also noted that the City isn't just waiting for assistance from the private sector but moving forward.

City Attorney Oast said that even if Council commits to spending the money, it doesn't stop the City from soliciting participation by other partners and then amending the budget to reimburse the City for any funds that are forthcoming.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Because City Council can adopt a budget amendment if other funds become available, Councilman Davis moved to adopt Ordinance No. 3398, with an emphasis on soliciting funds from other individuals and organizations. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt there was not urgency in this and felt Council should wait two weeks before considering the budget amendment.

Councilman Newman felt decorative traffic signals are nice, but when he thinks about the financial responsibilities and key infrastructure that we already have in terms of downtown, in particular the Civic Center, he thought that other people might need to lead on things of this nature.

The motion made by Councilman Davis and seconded by Councilman Freeborn carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

RESOLUTION BOOK NO. 30 – PAGE 125

ORDINANCE BOOK NO. 23 – PAGE 110

C. RESOLUTION NO. 06-183- RESOLUTION APPOINTING A MEMBER TO THE CRIMESTOPPERS BOARD OF DIRECTORS

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Crimestoppers Board of Directors.

Ms. Nancy Ray Durham has not met the attendance requirements and therefore there exists a vacancy until June 30, 2008.

At the September 19, 2006, City Council instructed the City Clerk to arrange interviews for William Price and David Herbert. Mr. Herbert was unable to attend the interview.

In addition, at the September 19, 2006, worksession, City Council instructed the City Attorney to determine if the City Council seat could be changed to just an at-large member. City Attorney Oast reported that the by-laws of the Crimestoppers of Asheville-Buncombe Inc. specifically state that one member must be a member of City Council.

After Council spoke highly of the candidates, William Price received 4 votes and David Herbert received 3 votes. Therefore, William Price was appointed as a member to the Crimestoppers Board of Directors to fill the unexpired term of Ms. Durham, term to expire June 30, 2008, or until his successor has been appointed.

At the suggestion of the Boards & Commissions Committee and the consensus of City Council, City Attorney Oast was instructed to send a letter to the Board of Directors of Crimestoppers of Asheville-Buncombe Inc. asking them to revise their by-laws by amending the requirement that the City Council seat be an at-large City Council appointment and to report back to Council their response.

RESOLUTION BOOK NO. 30 – PAGE 126

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of September 14 - October 5, 2006: Sherlee Ward (Sanitation), N.C. Dept. of Administration (Streets), Janice Burleson (Streets), James Charles Oliver (Police), Jennifer K. Godfrey (Transit Services), BellSouth (Water), Ben Halligan (Parks & Recreation) and Ronnie Hoglen (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton was of the opinion that we must stop supporting a culture which encourages our children to deny the truth that we are one and teach spiritual education.

Rev. Christopher Chiaronmonte urged Council to build two jail-style public restrooms in the downtown area.

Mr. Fred English stated that people want highways and they should not be toll roads since residents already pay numerous taxes and licenses.

Ms. Heather Rayburn, representing the Mountain Voices Alliance, presented City Council with research on the steep slope ordinance.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:37 p.m.

Kristra Lipe
CITY CLERK

Terry Bellamy
MAYOR

Tuesday – October 17, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

ECONOMIC DEVELOPMENT STRATEGY AND TOOLS

Economic Development Director Sam Powers said that many existing economic development programs have traditionally sought to emphasize growth, that is, expanding the number of jobs and increasing capital investment for the community. Each component of the three-pronged strategic approach of most communities – business recruitment, existing business retention and new business creation is important to bring new growth into the community. This is considered a "supply-side" strategy that will impart cost advantages to outside businesses and increase the likelihood of successful recruitment to the community and retention of business in the community.

Sustainability, as proposed by many writers, is a way for communities to sort through their development options and arrive at a strategy that is more balanced with respect to the full range of economic, environmental, and social characteristics that together comprise the community. Many economic development programs and communities are now seeking to incorporate sustainability into the practice of economic development.

Sustainability calls for an emphasis on *development* strategies that lead to an economy that is built from within and is more diverse and self-reliant and more socially and environmentally responsible.

A sustainability strategy can be built within a mainstream perspective. One way to integrate sustainability into the community's economic development strategy is to revise and expand the ways that existing development tools are used in the community.

There is a wide range of economic development tools that communities utilize to influence economic development.

Supply-side - attempts to influence business decisions by affecting the costs of production. Included among the variety of supply-side tools are low-interest loans, tax exemptions and abatements, subsidized employee training, and subsidized land. These are typically used by communities to attract new companies or retain existing ones.

Demand-side - this approach involves the active intervention of an "entrepreneurial state" in the identification and exploitation of business development opportunities. Demand-side tools are essentially designed to encourage the start-up of new companies or enhance the ability of existing ones to compete, and include incubators, seed capital funds, technology development partnerships, and small business development centers.

Economic development tools - can be organized info five categories: marketing incentives, infrastructure investment, regulatory and governance, land-based incentives, and financial incentives. He reviewed a chart which listed the tools by the different categories and

provided a description of each under the supply/demand perspective and the sustainability perspectives.

Using a flow chart, Mr. Powers reviewed with Council the Economic Development strategies of his department. He said that a year ago Council formalized the Sustainable Economic Development Advisory Committee (SEDAC) and they have been interested in taking the strategies and making recommendations. He recommended that Council authorize SEDAC to look at the existing Council goals and priorities, prioritize them, and bring back their recommendations to the Planning & Economic Development Committee and then to City Council.

Mayor Bellamy asked that SEDAC provide benchmarks that are measurable for the next 18-24 months.

In response to Mayor Bellamy, City Manager Jackson explained how the HUB Committee and the Chamber of Commerce's Economic Development Coalition will play a part in the recommendations.

Mayor Bellamy expected the outcome to be a specific program of activities.

Councilman Mumpower felt these are mostly secondary tools using taxpayer money to provide land or money, noting that there may be some value to that. He didn't see many primary tools that bring business to the community including public safety, regulatory taxes and fees, infrastructure, and an overall policy whether it encourages or discourages development.

The majority of Council supported SEDAC looking at the existing Council goals and priorities and bringing back the City's economic development plan with action steps including benchmarks.

The majority of Council supported SEDAC reviewing the core issues and giving Council some direct guidance on the core and secondary issues.

Mayor Bellamy initiated discussion relative to the City's relationship with the Economic Development Coalition. She and Councilwoman Cape felt they do support many of our goals and noted that in the last two fiscal years, we have not provided them any monetary support. After discussion and the recognition that City residents already contribute to the Coalition through their County tax dollars, the majority of Council supported the Economic Development Coalition providing the City with a specific proposal that focuses on an economic development project within the City.

After discussion initiated by Councilwoman Cape, as a member of the Film Commission, about providing an economic development incentive to a film production company due to begin filming in downtown Asheville, the majority of Council supported adding an item to the October 24, 2006, agenda waiving parking meter fees in specific downtown locations for 10 days of filming, which would be an approximate $1,600 waiver. She noted that they project they will be spending $800,000 in our region.

After discussion and request by Mr. Powers, it was the consensus of Council to support SEDAC looking at the issue of providing on-location assistance by City departments and film related incentives as part of the economic development plan. Councilwoman Cape clarified that the Film Commission will be moving forward at looking at what other cities are doing in terms of incentives to bring the film industry to their areas.

After a brief discussion initiated by Councilman Newman on a living wage policy, City Manager Jackson said that City staff is gathering some benchmark information on the legal

framework for a living wage policy. He said that we have gathered some information on initiatives that have been taken by other municipalities, along with input from the City's new Human Resources Director. We will have that completed by the end of the month and will seek Council's direction on when and how Council wants to schedule that policy discussion.

RETIREE HEALTH INSURANCE CONTRIBUTION RATES

Mr. John Ferguson, with Ferguson Benefits Agency, said that retirees with access to other health insurance coverage through their spouses (or through Medicare or their own post-retirement employment) are not subsidized by the City to the same extent as retirees who have no access to other coverage. This means that individuals with the same length of service to the City may pay different amounts for their health insurance. This is perceived as an inequity to retirees of the City. Council asked for options about how to approach this issue.

Resolutions passed by Council over the years have, since 1984, provided that retirees who have access to other coverage through their spouse could stay on the City health plan, but would not have their coverage subsidized by the City.

Recently, this provision was brought before Council as being unfair because two employees who worked for the City for the same amount of time paid different rates based on whether their spouses worked and had insurance coverage.

Following an initial meeting with Council, the Ferguson Benefits Agency undertook a review of the City's contribution strategy for retirees, especially those with access to other coverage.

He then reviewed the following consideration of changes in the contribution strategy for retirees with access to other health insurance.

The City of Asheville allows retires that do not have access to other health insurance to remain on the City's health insurance plan and subsidizes most of the monthly cost while the retiree cost is the same as an active employee. The current City of Asheville subsidy is nominally $346.01 for retiree only coverage. For the high option (selected by the vast majority of retirees) the actual cost to the City ranges from $419 (retiree only) to $1,398 for retirees electing family coverage. If a retiree has access to other health insurance through a spouse, his or her own employment, or Medicare or Medicaid, the full monthly cost is charged to the retiree.

The City of Asheville requested the estimated financial impact of subsidizing the cost of the retirees with access to spousal insurance at the same level as those without access to other health insurance. An initial calculation based on the nominal cost indicating a maximum annual cost of $266,452 was presented to Council on July 18, 2006. Council requested contribution alternatives that would be cost neutral to the City for current retirees and employees. Due to "condition of employment" legal concerns, some retiree policy changes may need to be applicable only for future employees hired after a specific date.

Based on the City of Asheville's actual claims experience, the claims for retirees under age 65 are 2.23 times more than those of active employee. Since the retiree past claims are not entirely predictive of future claims, the minimum recommended cost differential should be set at 1.5 retiree-to-active employee ratio. The estimated cost for retirees under 65 for 2007 is $444.03 per month, based on the high option.

The potential alternatives come down to five options outlined below. The below examples assume retiree only coverage for the sake of illustration:

1. Make no changes to the current retiree policy. Retirees with access to other insurance through his or her spouse would continue to pay $370.92 per month while retirees without access to other coverage through their spouse would pay $35.52 under 2007 rates.

    - Pros: No financial impact to the City of Asheville or the current covered retirees without access to other health insurance, other than the 1-1-07 scheduled increases.
    - Cons: The perceived inequity (emphasized by years of service) remains in place.

2. City of Asheville could subsidize the monthly cost of retirees with access to other insurance through his or her spouse at the same level as retirees without access to other insurance beginning with retirements on or after 1-1-07.

    - Pros: Eliminates perceived inequity.
    - Cons: Significant financial impact to the City of Asheville. Based on the 2007 projected cost of $444.03 (high option), the revised estimated annual cost is $4,902 per retiree per year. The City on average has 7 retirees each year under the age of 65 who decline health coverage. Assuming that all 7 of them had access to coverage through their spouse and declined due to the elevated cost, and assuming the addition of all 7 retirees, and with each retiree staying on an average of 9 years, the first year additional cost would be $34,314, going up by that same amount each year with an estimated additional maximum annual cost of $308,834 assuming an additional 63 retirees eligible for the subsidy. With such a high level of City contribution, we must assume all 63 would enroll.

3. The City of Asheville could change their contribution policy such that there is no contribution differential based on access to other coverage through a spouse. In order for this to be a revenue neutral option this will necessitate a significant increase to the 141 retirees who currently do not have other coverage available via a spouse. Conversely the 5 retirees who are on the plan now and who have access to other coverage through a spouse would see a significant reduction in their cost. Since a significant cost would remain for the retiree, not all would enroll, and calculating a cost neutral alternative contribution varies greatly depending upon the number who actually do so. Assuming that all 7 would enroll with increased City contribution, the High plan retiree contribution (for all retirees) would increase from the 2006 rate of $24.92 to $42.00 per month instead of the $35.52 that is currently scheduled for 2007. The Standard plan retiree cost would increase from the 2006 rate of $0 to $20.00 per month instead of $10.66 that is currently scheduled for 2007. However, since the average retiree stays on the plan 9 years, we can assume there will eventually be 63 total retirees (9x7) who might now wish to access the plan due to the increased City contribution. If all 63 did so, the High plan retiree cost would more than triple to $148.00 and the Standard plan go up to $68.00 for 2007. For planning purposes we must assume "worst case scenario" and would recommend using the $148 (high option) and the $68 (standard option) figures.

    - Pros: Eliminates perceived inequity for those retirees with access to insurance through his/her spouse and does not create a financial impact to the City of Asheville.
    - Cons: An increase of $123 per month would have a significant impact on fixed incomes which are as low as $500 per month, or even lower. Changing the policy for those retirees who have no other coverage available would create a new perceived inequity by retirees with no other options who then feel they are now paying the same amount as those who do have other options. This option could

also create "condition of employment" legal issues which would have to be addressed by legal counsel.

4. City of Asheville could create a separate partial subsidy schedule specific to retirees with access to other insurance through his or her spouse without changing the subsidy for current employees and retirees without access to other insurance. This new subsidy schedule would apply to all NEW employees hired on or after 1/1/07 so that access to other insurance through his or her spouse would not differentiate the City contribution. The City could offer this to employees who retire on or after 1/1/07 since it is an enhancement of their current position.

    - Pros: No financial impact to current retirees that do not have access to other insurance eliminating the possibility of a "condition of employment" issue.
    - Cons: The financial impact to the City of Asheville is significant. Unlike in option 3 above, the "revenue neutral" state would take a long time to develop, and in fact only be totally achieved once all current employees are both retired and off the plan. For example, the City could subsidize ½ of the monthly $444.03 (high option) for $222.02 per retiree. Assuming a minimum of 7 additional retirees, the annual cost would be $18,650. Assuming the development over 9 years of the maximum of 63 additional retirees, the annual cost would be $167,850. Compare this cost to option 2 at twice that cost.

5. The City of Asheville could implement a sliding contribution scale based on years of service to determine the amount the City will contribute towards current retirees (and current employees upon retirement) with access to other coverage through his or her spouse, and to all new employees hired after 1-1-07. Contribution would remain the same for current retirees (and current employees upon retirement) who do not have access to other coverage through a spouse. This alternative mirrors the strategy now being put in place by the State of NC. A percentage of the subsidy based on years of service would be applied to the 2007 City contribution of $408.51 for High and $344.57 for Standard as shown below:

25 or more years of service	100% of subsidy
20 but less than 25 years of service	80% of subsidy
15 but less than 20years of service	65% of subsidy
10 but less than 15 years of service	55% of subsidy
5 but less than 10years of service	50% of subsidy
Less than 5 years of service	0 (no contribution)

It should be emphasized that these are not percentages of the total cost of coverage, but of the "full" subsidy figures. An illustration is provided below.

Applying these percentages to 1-1-07 subsidy results in the following contributions:

	High-Option Plan		Standard Plan	
	COA	Retiree	COA	Retiree
25 or more years of service	$408.51	$ 35.52	$344.57	$ 10.66
20-24.99 years of service	$326.81	$117.22	$275.66	$ 68.91
15-19.99 years of service	$265.53	$178.50	$223.97	$120.60
10-14.99 years of service	$224.68	$219.35	$189.51	$155.06
5-9.99 years of service	$204.26	$239.77	$172.29	$172.28
Less than 5 years of service	$ 0.00	$444.03	$ 0.00	$355.23

- Pros: This option should eliminate any "condition of employment" issues. The sliding scale would help moderate the short term additional City cost. Assuming an additional 7 retirees, the annual City cost would increase approximately $24,000. Assuming the development over 9 years of the maximum 63 additional retirees, the estimated cost would be an additional $242,200 as compared to the cost without the sliding scale of $311,381; a savings of approximately 20%. Though the short term cost may increase, in the long term this will significantly reduce retiree costs and is consistent with recent changes in the State of NC plan.
  Cons: Short term costs will increase dependent upon enrollment because approximately 75% of all recent retirees had more than 15 years of service with The City of Asheville and retirees (including future retirees employed prior to 1-1-07) with no access to other coverage through their spouse retain the current subsidy. Who might feel another inequity has been created by this change? First, at retirement, employees hired prior to 1-1-07 with fewer years of service and with access through a spouse will still be receiving a smaller subsidy than similar situated employees without access through a spouse. While the perceived inequity that began this discussion will have been lessened, and in fact eliminated for retirees with 25 or more years of service, retirees with fewer years of service may still perceive an inequity. Second, because these options assume maintaining the current City policy of not allowing retirees to access the plan once off the plan, such retirees may complain that had this option been available at retirement they would have stayed on the plan, and they may feel that they should have been given a second opportunity at this time to enroll under the new subsidy.

NOTES:

1. For all other cases, i.e. Medicare or retiree's own employment, the current provision would not change.

He then summarized the five options reported:

Option	Pros	Cons
1. Maintain current practice	No financial impact to City	Perceived inequity
2. Subsidize same regardless of spouse coverage	Eliminates perceived inequity	Could cost City more than $300,000 per year over time.
3. Level payments for all retirees unless coverage through Medicare or own subsequent employment (revenue neutral)	a. No financial impact to City b. Eliminates perceived inequity	a. Substantial increase in cost to employees with **no access** to other coverage ($148 vs. $35) b. "Condition of employment" concerns
4. Partially subsidize coverage if spouse coverage is available	a. Reduces perceived inequity b. No impact on unaffected retirees c. No "condition of employment" issues	a. Could cost City more than $150,000 (for 50% subsidy) per year over time

5. Implement a new subsidy scale based on years of service – apply to a. current employees who retire on or after Jan. 1, 2007 who have access to coverage through spouse --- and --- b. all employees hired on or after Jan. 1, 2007 Continue no subsidy if coverage available through Medicare or own subsequent employment.	a. Reduces cost to the City for future employee's retiree health coverage by about 20% b. Fair approach to retiree health coverage for future employees c. No "condition of employment" issues d. Eliminates perceived inequity for current employees who retire with 25 or more years of service e. Reduces inequity for current employees who retire with 5 to 25 years of service	a. Could cost City as much as $24,000 for the first year and up to $240,000 per year after nine years, but that would end as employees leave or retire, and cost savings of approximately 20% of current rates would follow

City staff recommends adoption of a sliding scale for retiree health contribution that would apply to all employees hired on or after January 1, 2007, and that would apply to all individuals who retire on or after January 1, 2007, who have access to other coverage through their spouse. This sliding scale would be as follows:

YEARS OF SERVICE	PERCENT OF SUBSIDY (Not of Premium)
25 or more	100% of subsidy
20 but less than 25	80% of subsidy
15 but less than 20	65% of subsidy
10 but less than 15	55% of subsidy
5 but less than 10	50% of subsidy
Less than 5	No subsidy

Mr. Ferguson, Human Resources Director Lisa Roth, and Underwriter Cheryl Walker responded to various questions and/or comments from the concerned Council regarding the different options, the current policy, and COBRA.

Councilman Freeborn felt this would be good to survey our employees since this is a change on their employment package. City Manager Jackson said that he could solicit input from various levels of employees about what is proposed by City staff and report back to Council within 30 days so we can still fold this into the enrollment period.

When Ms. Roth said that this will only affect current employees if they retire January 1, 2007, going forward and all new hires effective January 1, 2007, Mayor Bellamy cautioned any current City employee thinking of retiring before January 1, 2007, to at least wait until January 1, 2007, to make the retirement effective, if Council makes this retirement policy change.

It was the consensus of Council to place this item on the next formal meeting agenda.

Upon inquiry of Councilman Newman regarding Option 3, City Attorney Oast said that there are legal implications to all of these options and depending on the direction from Council, he will look into those and report back to Council. The condition of employment issue raised is a matter of concern and he will look into that as well.

WATER CAPITAL IMPROVEMENT PLAN RATE UPDATE

Water Resources Director David Hanks said that per Council's direction, staff has 1) further examined the water system capital improvement (CIP) fee structure for condo associations, multi-family apartment complexes, mobile home parks and customer charges available to owners of sub-metered or master metered properties; and 2) developed an option for financing the water system capital improvement program that uses debt issuance to help lower the CIP fee.

Staff has been working with condo associations to change out their larger meters to a combination fire/domestic service with Water Resources providing installation and procurement of the new meters at cost. In consultation with the City Attorney's Office, staff has provided reduced fees to smaller associations, including condos and home owners, served through master meters via change in the fee structure through a contract basis, changing the status to single family residential. He reviewed examples of condo associations changing their meters and enhancing their backflow requirements while reducing their CIP fee charges. He also reviewed examples of mobile home parks and apartment complexes with same size meters serving a variety of living units.

Staff has also reviewed master metered customers that have sub-metered their tenants or charge for utility services through a pass on charge or built the charges into the rent. When a customer sub-meters and has more than 15 connections, it becomes a private utility that is governed by the State Utility Commission, which sets rates and charges. The private utility must submit their rate structure to the Commission for approval and any increase must be approved by the Commission before it can be charged. If a customer does not sub-meter, but wants to charge for utilities provided, then it becomes a private business transaction between the owner and the renter. There is no legal authority for a water system or municipal government to set utility rates that private owners of rental property that are not governed by the State Utility Commission can set.

The Finance Department has examined options for financing the water system capital improvement program, which includes the issuance of debt to help lower the CIP fee while allowing for the leveraging additional capital project funds. Staff has determined that that securing a $35 million revenue bond issue to supplement our on-going pay-as-go support of the water system capital improvements program will allow us to invest approximately $66 million into the Water System CIP over a 6 year period while lowering the current CIP fee by 20%.

Mr. Hanks responded to various questions/comments from Council.

Councilwoman Cape expressed equity concerns in that a few weeks ago Council discussed residences all paying the same rate of $3.50 and now we're charging some condo associations and mobile home parks lower rates. Councilman Freeborn felt this is a small incentive to encourage people to live in higher density.

Councilwoman Cape suggested Council explore how we as a City can approach the idea of mobile home parks as viable aspects to our community for consideration of inclusion in our overall infrastructure expansion and how the City can participate in the stabilization of those viable neighborhoods. At the suggestion of Mayor Bellamy, Vice-Mayor Jones, Chair of the Housing & Community Development Committee, said that her Committee would be happy to look into that.

Councilman Newman was concerned that the base rate for large water users are getting water at a tiny fraction of the cost that other families in Asheville pay. Another concern is that some of the bigger multi-family residential developments are being successful in looking at ways

to bring their costs down, but one of the reasons why we did the meter based fee was to provide some certainty about water revenues. He felt the revenue projections that we had will be dramatically reduced. Mr. Hanks responded that if all the condo associations the City is working with change their meters out, this will have about a $200,000 negative impact on the water fund.

Mayor Bellamy noted that there was no Council support for sub-metering, however, there was support for City staff moving forward with the reduced fees to smaller associations, including condos and home owners, served through master meters via change in the fee structure through a contract basis, changing the status to single family residential.

At 5:18 p.m., Mayor Bellamy announced a 20-minute recess.

Chief Financial Officer Ben Durant reviewed with Council the Water Capital Financial Plan.

Using charts, he reviewed the current CIP fee/pay-as-you-go plan; current CIP fee/$35 Million revenue bond; and the 20% CIP fee reduction/$35 Million revenue bond.

City staff's general recommendations are (1) Approve across-the-board 20% reduction in CIP fee and give direction on $35 million revenue bond issue; and (2) Build reserves for future projects and operating flexibility.

Throughout the presentation, Mr. Durant and Mr. Hanks responded to various questions and/or comments from Council.

Upon inquiry of Vice-Mayor Jones, Mr. Hanks said that we would spread the $35 Million over several years. If we were to do too many projects in one year, it would disrupt people's lives. We would develop a schedule of what the projects would be and the cost for each project. Then we would come back to Council for approval. We would then set up the debt financing to meet the schedules. It will take about 2-3 years to start the projects and if Council gives staff direction, they will start the bid process.

Councilman Mumpower explained that to make substantial changes on how we finance the water infrastructure before the legal issues are resolved is premature and felt that the City should wait until the initial ruling on the Sullivan Act lawsuits.

Councilwoman Cape said that we are running the water system under the same limitations if we lose the lawsuit. She felt we are trying to make decisions in the most fiscally sound way and with the extra piece of the revenue bond, we can repair the system quicker.

Councilman Davis felt there should be a list of what repairs will be made with on-going updates on the progress.

Vice-Mayor Jones wondered if Council should look at the $1.2 Million savings being allocated among the one-inch meters and higher, opposed to spreading the savings across the board. Councilman Davis agreed in that those businesses are employing people.

Councilman Newman felt that the current rate structure is pinching the small to medium size commercial customers; and if any adjustments are made, Council should look at the most fair way to do it.

Upon inquiry of Councilman Mumpower, Mr. Durant said that our consultant, Brown and Caldwell, recommended that the City borrow the funds to aggressively address the CIP. They

recommended we begin in 2-3 years from now; however, we are being more aggressive and are asking for Council to begin the process now.

Mayor Bellamy asked who would be responsible for the debt if our water system is taken out of our hands or a merger. Mr. Durant said that the bonds are guaranteed by the system's revenues which are the ratepayers, so whoever has the system has the liability. City Attorney Oast said that would be a point of negotiation. He felt that any arrangement would have to be subject to approval of the bond holders.

The majority of Council supported Mr. Durant talking with the bond counsel specifically about if there was a merger or the system is taken away how will that affect our obligation and also information about structuring the debt so we draw down the funds at the right time. He would be able to provide that information to Council in approximately 1-2 weeks.

Upon inquiry of Mayor Bellamy, Mr. Durant said that if Council votes on this matter at the first formal meeting in November, it would take approximately 5-6 months before we would get the money.

QUARTERLY FINANCIAL REPORT & CAPITAL IMPROVEMENT PROGRAM

Chief Financial Officer Ben Durant updated City Council on the Fiscal Year 2006-07 General Capital Improvement Program (CIP) and provided a preview of the City's long-range capital improvement needs.

Staff has identified $2.5 million in one-time funding that is available to augment the capital improvement budget that was approved for FY 2006-07. This $2.5 million in funding will come from two sources. At the time of budget adoption, there was approximately $1.5 million in property and sales tax revenue that was not included in the budget. Council directed staff to report back after the first quarter on the possibility of appropriating this funding for capital needs. Based on the City's financial performance through the first quarter, staff is recommending that the additional $1.5 million that was not budgeted in June now be appropriated for high priority capital needs.

In addition, the preliminary year-end audit figures for Fiscal Year 2005-06 show that the City's fund balance will be approximately $23.8 million or 31% of total expenditures. Based on these numbers and staff's projections that fund balance will grow to 34.1% in Fiscal Year 2006-07, we recommend that Council appropriate an additional $1.0 million from fund balance to help address capital needs; bringing the total available funding to $2.5 million.

He then briefly reviewed the highlights of the quarterly financial report. Objectives: (1) review first quarterly operating results; (2) receive Council direction on enhancing development review services; (3) present immediate high priority capital improvement needs and receive Council direction on funding; and (4) preview long-range capital needs. He said the amended budget is $78,377,543.

General Fund revenue highlights: (1) additional property tax revenue will total $1.27 Million; (2) strong economic growth is boosting revenues: (a) current sales tax base higher than anticipated; (b) sales taxes projected to exceed budget by $530,000; and (c) state utility taxes projected to exceed budget by $346,000; (3) higher investment earnings; and (4) overall, general fund revenues are projected to exceed budget by $2.76 Million.

General Fund expenditure highlights: (1) departments projected to save $877,000 through targeted savings plans and normal attrition; (2) these savings combined with $2.76

Million in excess revenue will more than offset the $1,039,269 in fund balance used to balance the budget; and (3) fund balance will increase by $2.6 Million.

He reviewed the chart for Fund Balance revised budget was 29.86%, and now based on year end is 34.13%.

Proposed operating amendment: development review services: (1) additional staff in Planning & Building Safety to enhance development review services: (a) better manager and track zoning violations, fines, etc.; (b) perform zoning field inspections throughout the construction process; (c) devote more resources to long-range planning; and (d) meet demand for plan review services; (2) implementation Date: January 1, 2007; (3) cost of enhancement package: $132,996; (4) funding proposal is to budget a portion of extra state utility tax revenue; (5) effect on Fund Balance is that it will be educed to 33.9%; and (6) staff recommendation is to put a budget Amendment on the October 24, 2006, agenda.

Budget Manager Tony McDowell reviewed with Council the capital improvement planning going over the current high priority projects and preview of long-term needs: The current year Capital Improvement Plan totals $13,360,401.

Highest priority capital needs include: (1) funding proposal: additional $2.5 Million ($1.5 Million in property and sales tax revenue that was not included in the adopted budget; and $1.0 Million in available fund balance); and (2) effect on fund balance - reduces fund balance to 29.9%.

He reviewed the capital project prioritization process, which is staff-identified the highest priority capital projects based on the following set of criteria: Council goal, deferred maintenance, risk management, maintain service, economic impact, energy efficiency, and quality of life.

Manager-Recommended highest priority capital projects: (1) land purchase for Fire Station 12 - $250,000; (2) Civic Center Arena Roof (the total cost of $1.5 Million. There is $600,000 in unused funding already in the Civic Center CIP) - $900,000; (3) Haw Creek Sidewalks (the amount represents the City match. Total cost is $700,000) - $370,000; (4) Patton Avenue Sidewalks (the amount represents the City match. Total cost is $450,000) - $300,000; (5) Fleet Replacement - $255,000; (6) street and sidewalk maintenance - $200,000; (7) Public Safety radio replacement - $100,000; and (8) Richmond Hill Entrance/Parking - $125,000. Totaling $2,500,000.

He reviewed the five-year capital improvement needs.

Long-term capital planning funding strategies include: (1) continue pay-as-you-go funding (5-Year financial forecast assumes a 3.0% annual increase; or (2) issue additional debt (current debt capacity/debt ratios).

He used charts to show the existing debt schedules.

Long-term capital planning next steps include (1) budget amendment to enhance development services on the October 24, 2006, agenda; (2) $2.5 Million budget amendment on the October 24, 2006, for a one-time capital funding; and (3) begin community process to establish a 5-year capital improvement program; including consideration of debt issuance.

Mr. Durant responded to various questions/comments from Council.

When Councilman Freeborn asked to see the analysis of what the cost savings would be for taking out debt for capital improvement projects, Mr. Durant said that he would perform that analysis and report back to Council at a later date.

City Manager Jackson responded to Councilwoman Cape regarding why the Richmond Hill Entrance/Parking is included on this list.

In response to Councilwoman Cape, City Manager Jackson said that specifically when it has come to capital improvements, the past practice has been to do more with less. We have concluded is that we can facilitate a better policy decision-making with Council by laying out a five-year plan. Historically it has been, tell us what you can accomplish at a modest investment. We will now show Council realistically what it takes to build the project (including costs at each phase) at the standard Council and the community want the project to be built. Council at that time can then scale back the project. We need to look at the five-year plan to see what we can do with the revenue stream and make that five-year listing of projects more of a plan, than just an allocation or lining up based up on priority. And then indicate what resources we see coming from the capital improvement program and what resources don't currently exist. We don't want to create any false expectations of when it's going to happen, and what we need in terms of grants, or donations, or other different revenue sources. In the past there hasn't been that level of detail.

There was discussion of the recommended highest priority capital improvement items, with the City Manager noting that we have a lot of other projects below $100,000 that don't rise to this level of decision-making, but are moving forward.

Councilwoman Cape felt it was important to have a discussion about bond issuance and what that would bring to the table for us in addressing the many needs of our community.

Councilman Newman presented Council with a proposal to maintain the momentum gained through the 90 day ride-for-free promotional campaign by offering a convenient fare-structure for transit ridership. He said the campaign concludes on November 11 and we need to maintain the increased ridership. He said that lower fares result in higher ridership and we need to make it simple for people - buy a pass one time and have unlimited access to service. He explained the comparable situation of parking in Asheville, when it was changed to the first hour fee and monthly and annual parking passes in the parking garages. He felt there are many benefits to his proposal and if we create these attractive new monthly and annual transit pass options, we can market the programs directly to existing customers. If we wait several months and the ridership falls, we will have missed the change to market this option directly to people who we know will use transit if it is convenient and financially attractive. He did say there will be some loss of fare-box revenue, but felt it would be offset by higher state funding levels if ridership remains higher and there will be more revenue generated if ridership increases.

Regarding the transit proposal, Councilman Mumpower didn't think we should evaluate a program in mid-stream and he didn't believe that our parking needs have decreased during this trial period. He didn't mind subsidizing people going to work, to the hospital, or getting groceries, but does have a problem in subsidizing people who are joy-riding on the buses.

Upon inquiry of Mayor Bellamy, City Engineer Cathy Ball said that we have seen an increase in parking since July 1, 2006, and feel we are at a point where we need to start planning for downtown parking in order to meet the needs of the people downtown. We have identified some locations and will be prepared to do a detailed presentation on parking at the October 24, 2006, meeting.

The majority of Council supported placing on Council's October 24, 2006, agenda the (1) budget amendment to enhance development services; and (2) the $2.5 Million budget amendment for a one-time capital funding.

The majority of Council supported moving forward on discussions on how long term capital needs will be presented as outlined by City Manager Jackson, which will be through a series of worksessions.

Councilwoman Cape asked when would be the appropriate time for Council to discuss instructing City staff to seek an alternative bid for a green-roof at the Civic Center. City Engineer Ball said that when we do the Request for Proposals (RFP) for a new roof and if we get direction from Council, we could add an alternative for a green-roof and they will provide us with the cost and time involved with a green roof. Staff will then come back to Council to award the contract and if Council decides to do a green-roof and the amount exceeds the budget, then City staff will come back again with a subsequent budget amendment. She would need authority from Council to add a green-roof as an alternative, noting that including it in the RFP won't cost the City any extra money.

After a brief discussion about the transit fare structure issue and the request that it be considered before the promotional campaign runs out on November 11, the majority of Council directed staff to look further into Councilman Newman's proposal, e.g., how it would affect the budget, what type of budget amendment would be needed, and the amount the City is subsidizing and place the item on the October 24, 2006, agenda. Councilman Newman, liaison to the Transit Commission, also noted that he would solicit the input from the Transit Commission, noting that the Commission meets on October 23, 2006, and staff will compliment the report at the October 24 meeting.

BOARDS AND COMMISSIONS:

Regarding the Sustainable Energy & Economic Advisory Committee's membership, (1) the City Clerk was instructed to prepare a document that Council could give to each interviewee at the time of the interview for each candidate to self-identify which specific category they would fill; (2) the City Clerk was instructed to arrange the following interviews over three different formal meeting days: Robert Sweetser, David Spector, Leah Karpen, Keith Bamberger, Cathy Holt, Marjorie Vestal, Peter Waskiewicz, Christopher Gilbert, Tabetha Reyes, Sasha Vrtunski, John Wilson, Kathryn Gubista, Victor Fahrer, Yuri Koslen, Chad Leatherwood, Mark Mathews, Catherine Shane, Michael Murphy and Bruce Mulkey (noting that Maggie Leslie and Margie Mears are candidates, but no interview is necessary); (3) the City Clerk was instructed to re-open the application process with a December, 2006, deadline in order for Council to actively recruit diversity on this Committee; and (4) the City Attorney was instructed to modify the resolution (a) establishing one of the members being a person representing Progress Energy (to be appointed by Progress Energy); and (b) research the membership resolution to see if the membership is restricted to City residents and report back to Council for possible resolution amendment.

Regarding the Film Commission vacancies, City Council said that attendance and reappointment information was not available and asked that these appointments be delayed until that vital information is received.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:08 p.m.

Tabetha Lipe
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – October 24, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Rocko Smucker's First Grade Class from Hall Fletcher School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 10, 2006, AND THE WORKSESSION HELD ON OCTOBER 17, 2006**

B. **RESOLUTION NO. 06-184 - RESOLUTION AMENDING THE 2006 CITY COUNCIL MEETING SCHEDULE TO DELETE THE COMMUNITY MEETING SCHEDULED FOR OCTOBER 31, 2006**

RESOLUTION BOOK NO. 30 – PAGE 127

C. **RESOLUTION NO. 06-185- RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO EXECUTE A LICENSE AGREEMENT FOR SHARED PARKING WITH FAMPROP, LLC. AND AUTHORIZATION OF A REZONING APPLICATION FOR TWO PARCELS ON FAIRVIEW ROAD**

Summary: The consideration of a resolution directing the City Clerk to publish a notice of intent to execute a license agreement for shared parking with Famprop, LLC, and authorization of a rezoning application for two parcels on Fairview Road.

The City of Asheville owns property in Oakley known as Oakley Murphy Park identified as PINs 9657.06-48-8841 & 7385 which parcels are currently zoned RS-8. The parcels are improved with a Police Resource Center, tennis courts, ball field, parking and driveway. There is parking available for 30+ vehicles. During normal business hours the parking spaces are mostly empty as there is little recreational activity then, while after hours the spaces generally are filled as the recreation facilities are utilized

Famprop has acquired property at 723 Fairview Road adjoining the City's property which it proposes to renovate for office space for Families Together, Inc., a for-profit mental health services provider operating in Western North Carolina. Off-street parking for about 25 cars will be

required. Famprop has land on which a parking lot could be constructed; however, that part of the land is currently a green area which provides a natural buffer to the adjoining park. Since the parking lot on the City's property is readily accessible to Famprop's property and the lot is largely unused during the times that Families Together would need parking, it is an efficient and environmentally responsible use of existing infrastructure for Families Together to share the City's parking lot.

Famprop has proposed to enter into a license agreement for the use of the parking spaces and driveway on a non-exclusive basis. The license agreement would provide for an annual fee of $3,000 for a term of three (3) years. In order for Famprop to use the parking spaces it will be necessary for the City's parcels to be rezoned Office District.

Approval of the resolution will direct the City Clerk to publish a notice of intent to enter into the License Agreement and authorize the City Manager to sign an application for rezoning.

Pros:

1. The City will receive revenue that it does not currently receive.
2. Parking spaces that are currently vacant during business hours will be used.
3. It is an efficient use of existing infrastructure to satisfy parking standards.
4. Green space will be preserved instead of being converted to parking.
5. The impact on storm water runoff that would be associated with a new parking lot is eliminated.

Parks & Recreation staff, Planning & Development staff and Economic Development staff recommends adoption of a resolution directing the City Clerk to publish a notice of intent to execute a license agreement for shared parking with Famprop, LLC and authorization of a rezoning application for two parcels on Fairview Road.

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Resolution No. 06-136 -

D. RESOLUTION AUTHORIZING FIT COMMUNITY SIGN PANELS TO BE INSTALLED AT "WELCOME TO ASHEVILLE" SIGNS LOCATED ON STATE-MAINTAINED ROADS

Summary: The consideration of a resolution authorizing Fit Community sign panels to be installed at "Welcome to Asheville" signs located on state-maintained roads.

The City of Asheville was recently designated a Fit Community, a designation recognizing North Carolina communities that have excelled in promoting healthy lifestyles among their residents in areas of physical activity, healthy eating in schools and community, and tobacco prevention efforts with youth. Asheville is one of the first communities in North Carolina to receive the Fit Community designation.

Fit Together, a statewide initiative by the North Carolina Health and Wellness Trust Fund and Blue Cross and Blue Shield of North Carolina to combat obesity and overweight, launched the Fit Community program in 2005 to reward communities for supporting healthy life styles through healthy eating, physical activity and tobacco free living through policy and community infrastructure.

A benefit of designation is the posting of Fit Community sign panels to be installed at "Welcome to Asheville" signs located on state-maintained roads that will be provided by Fit Community and installed by the local division of the Department of Transportation.

Pros:

- Asheville's Fit Community designation will be proudly displayed at the major gateways into the city on state maintained roads.
- Fit Community panels will be provided and installed at no expense to the City of Asheville.

Cons:

- None

The Asheville Parks and Recreation Department recommends City Council to adopt a resolution authorizing Fit Community sign panels to be installed at "Welcome to Asheville" signs located on state-maintained roads.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CHANGING THE STREET NAME OF "GENERAL AVIATION DRIVE" TO "WRIGHT BROTHERS WAY"

RESOLUTION NO. 06-187- RESOLUTION CHANGING THE STREET NAME OF "GENERAL AVIATION DRIVE" TO "WRIGHT BROTHERS WAY"

Mayor Bellamy opened the public hearing at 5:07 p.m.

Ms. Abby Moore, Emergency Address Coordinator, said that this is the consideration of a resolution renaming the existing street of "General Aviation Drive," located off Airport Road, to "Wright Brothers Way." This public hearing was advertised on October 13 and 20, 2006.

The Asheville Regional Airport Authority has petitioned the City of Asheville to rename "General Aviation Drive" to "Wright Brothers Way." As the Airport expands, the Authority will look at additional roads and petition for naming to other historical aviation figures. City staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. The adoption of the new street name is to enhance emergency response to the citizens and for easy of use for the Asheville Regional Airport Authority.

Pros:

- The street will be utilized to access the existing business and infrastructure to the Asheville Regional Airport Authority.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Cons:

- There are no negative affects of for assignment of "Wright Brothers Way" to this existing road.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the city's strategic operation plan. This action complies with the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council adopt a resolution renaming the existing street of "General Aviation," located off Airport Road, to "Wright Brothers Way."

Mr. Fred English felt we should name our streets after people who promote Asheville.

Mayor Bellamy closed the public hearing at 5:09 p.m.

When Councilman Davis felt that we have a number of very important people in aviation locally, Ms. Moore responded that the Airport does have other roads which can be named after Asheville aviators.

Mr. Kevin Howell, member of the Airport Authority, described the process in which the Authority looked at several different names, ultimately requesting the name "Wright Brothers Way." Regarding the names on the aviations pilot wall at the Airport, Airport staff felt it was unrealistic to pick one name out of the over 50 names on the wall.

There was a brief discussion about asking that the Airport Authority re-visit the issue and consider renaming the road after a local aviator.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower felt that since there are other streets that can be named after our local aviators and because the Airport Authority is a body that is advisory to City Council, he moved to approve renaming "General Aviation Drive" to "Wright Brothers Way." This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Mumpower voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Newman voting "no."

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B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 2 IRIS STREET FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY/CONDITIONAL ZONING FOR 84 RENTAL UNITS

Mayor Bellamy said that the petitioner has withdrawn his application on this matter and no public hearing is necessary.

C. PUBLIC HEARING TO AMEND THE CITY'S 2006 CONSOLIDATED ACTION PLAN TO INCLUDE A NEW COMMUNITY DEVELOPMENT BLOCK GRANT OF $160,000 TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE FOR CONVERSION OF VACANT PUBLIC HOUSING UNITS AT PISGAH VIEW APARTMENTS INTO A COMMUNITY SERVICES CENTER

RESOLUTION NO. 06-188- RESOLUTION AMENDING THE CITY'S 2006 CONSOLIDATED ACTION PLAN TO INCLUDE A NEW COMMUNITY DEVELOPMENT BLOCK GRANT OF $160,000 TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE FOR CONVERSION OF VACANT PUBLIC HOUSING UNITS AT PISGAH VIEW APARTMENTS INTO A COMMUNITY SERVICES CENTER

Mayor Bellamy opened the public hearing at 5:18 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to amend the 2006 Consolidated Action Plan to include a new Community Development Block Grant (CDBG) grant of $160,000 to the Housing Authority of the City of Asheville for conversion of vacant public housing units at Pisgah View Apartments into a Community Services Center. This public hearing was advertised on October 13 and 20, 1006.

The Housing Authority of the City of Asheville (HACA) has requested a CDBG grant to convert six vacant public housing units in Pisgah View Apartments to create a community services center which will house a range of educational and family self-sufficiency programs. The housing units are surplus to needs because of diminished demand for 4-bedroom apartments.

Services will include:

- "I Have a Dream" program – long term mentoring, tutoring, and enrichment assistance for 40 low-income children from elementary school through college
- ARP/Phoenix parenting classes
- A-B Tech GED program
- "Project MARCH" life skills counseling for parents and youth by Children First
- West Riverside Weed & Seed program office

These programs will not only benefit Pisgah View residents but also support the City's Weed & Seed initiative, which covers the entire West Riverside area.

To meet code requirements for educational uses, extensive renovations are needed. At this stage only 4 of the 6 apartments in the building will be converted, creating two community service units. The requested $160,000 CDBG grant will leverage $335,000 in HACA funds, for a total project cost of $495,000 ($100 per square foot).

Architectural plans for the project are almost complete, and construction should start early in 2007, with completion in the summer of 2007

Because of loan payoffs received late in Fiscal Year 2006, we currently have $251,099 in unallocated CDBG program income.

Pros

- Substantially enhances the delivery of educational and self-sufficiency programs in our largest and, by some measures, most troubled public housing development.
- Supports the Weed & Seed program and provides space for the Weed & Seed office
- Commits unallocated CDBG funds to a fast-moving project, improving our spending rate

Cons

- A large grant which uses up most of the unallocated CDBG funds, diminishing the City's ability to respond to other urgent needs for the remainder of the fiscal year.

Staff recommends approval of a resolution to amend the City's 2006 Consolidated Action Plan.

Mr. Walter Plaue felt that this money should be used strictly for affordable housing needs and not a community center.

Ms. Robin Merrill, Senior Staff Attorney at Pisgah Legal Services, urged Council to support this initiative. She explained the community center is not only for Pisgah View residents but the entire Weed & Seed service area, which covers the entire West Riverside area. She felt that investing $160,000 of CDBG money is worth the effort of being part of the entire solution to save 252 units of affordable housing at Pisgah View since HUD is changing the way they are subsidizing housing. Over the past two years, they have gotten a great deal of input from the residents at the Burton Street Community Center and at Pisgah View and they want to see their neighborhoods and their quality of lives improved.

Mr. Fred English felt that the vacant apartments should be remodeled because having a place to live is more important than having a community center.

Rev. Christopher Chiaronmonte urged Council to build public restrooms in the downtown area.

Mr. David Nash, Deputy Director of the Housing Authority, said that currently at Pisgah View Apartments there are 83% of residents earning less than $15,120 annually; many hard working families, many with small children, have special needs; serious crime problems documented by over 2,300 Asheville Police Department (APD) calls in the last year; and the Housing Authority is currently with the APD to develop new crime prevention strategies. This proposal supports the West Riverside Weed & Seed Initiative with CDBG bricks and mortar investment. City staff requested renovated office space for Weed & Seed Coordinator and other service providers (Children First/Project MARCH, I Have a Dream, Sisters of Mercy/ARP Phoenix, GED Program) need more functional space as well. After consultation, the Housing Authority jointly developed a plan that supports these important community services programs and facilitates their close collaboration with the Weed & Seed Coordinator. The CDBG request is $160,000 and the Housing Authority will match the CDBG funds 2 for 1. In addition, they will seek additional funding necessary to complete Building 16 renovations.

Ms. Laurie Newman, Burton Street resident, spoke in support for this initiative.

Mayor Bellamy closed the public hearing at 5:39 p.m.

Councilman Mumpower was convinced that we have to care about and uplift people, especially in public housing, but he has trouble in throwing money and bureaucracy at deep, serious problems and hope it will fix them. He felt that we are using CDBG money to reduce our housing stock, not to add to it. He doesn't disagree with the need, but disagrees with the approach. He felt that $500,000 is a good deal of money that can be put into special efforts, like law enforcement. He did feel that there is a tremendous need for 4-bedroom apartments in Asheville, but no parent who has the choice would go to Pisgah View because they are afraid, and we are not on top of law enforcement in public housing. He felt that we need more people and communities involved and must have a stronger law enforcement presence there.

Councilwoman Cape felt that the community needs a place for people to meet. When people can come together, support one another and build community, then you can build places where people want to live. It's unfortunate that we have a place where 4-bedroom apartments are vacant because there is no sense of community there. But, we have to help this community build community with proven programs and she felt this is a good investment to do just that.

Upon inquiry of Mayor Bellamy, Mr. Nash said that the 4-bedroom units have been vacant for at least 8-9 years. He said that at one time there was a plan to rehabilitate this building by the WNC Community Health Services for a clinic; however, they renovated a different building on Haywood Road instead. He noted that the Housing Authority does not receive applications, by those who quality under the HUD guidelines, for 4-bedroom apartments.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-188. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 131

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE DOUBLETREE HOTEL, LOCATED AT 117 HENDERSONVILLE ROAD, FOR AN EXPANSION OF THE EXISTING HOTEL AND TO PURSUE A HEIGHT MODIFICATION

ORDINANCE NO. 3349 - ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR THE DOUBLETREE HOTEL, LOCATED AT 117 HENDERSONVILLE ROAD, FOR AN EXPANSION OF THE EXISTING HOTEL AND APPROVAL OF A HEIGHT MODIFICATION

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:51 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of the issuance of a conditional use permit for Doubletree Hotel, located at 117 Hendersonville Road, for an expansion of the existing hotel and to pursue a height modification.

He said that this review concerns a proposed five-story addition to an existing Doubletree Hotel. The hotel shares a site with a T.G.I. Friday's restaurant as well as a second hotel, a Sleep Inn (Attachment to City Exhibit 3 - Location Map). The addition is proposed at 39,208 feet, which, when combined with the existing 104,340 square feet, requires a level III site plan review (Attachment to City Exhibit 3 - Aerial Map). The facility would provide a new entrance, meeting space and waiting area as well as 37 additional rooms.

The site is located in a Highway Business zoning district within the corporate limits of the City of Asheville, on the west side of Hendersonville Road, just south of Biltmore Village (Attachments to City Exhibit 3 - Photographs of Existing Conditions and Front Elevations). There are vehicular accesses from both Hendersonville Road and Vanderbilt Road. The proposed addition would be on the side of the existing Doubletree building farthest from Hendersonville Road. One portion of the affected parking lot area lies in the jurisdiction of the Town of Biltmore Forest. The parking lot modifications in that area were approved by the town's Board of Adjustment and Design Review Board in September.

Lodging facilities are a permitted use in the Highway Business zoning district, and the building's size falls below the 200,000 square foot limit for multi-tenant structures. The scale of the proposed modifications to the site requires that the entire site be reviewed for compliance.

As a multi-tenant structure over 75,000 square feet, the proposed development must also address the conditions outlined in Sec. 7-16-2(d)(10)(a): Employ high quality building design; Blend building design and layout with other site features; Avoid bland and monotonous building design; and Ensure that buildings contribute to the community character of the City. Staff did not feel that the initial submission adequately addressed these conditions, but the applicant has since conferred with staff submitted revised elevations. Planning staff opinion is that the revised elevations sufficiently address these conditions while providing an appropriate match to the existing hotel's structure.

At their October 2, 2006, meeting, the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. At their October 4, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend approval, with the understanding that building height be noted as an issue and that any architectural modifications to the façade should take this into account.

The proposed building height is approximately 67 feet, higher than the 60-foot maximum typically applied to the Highway Business district (Attachments to City Exhibit 3 - Overall Site Plan; Front and Rear Elevations; Left Side Elevation and Right Side Elevation). Thus, approval of the building will require City Council to grant a modification to the height standard for this project. Staff is of the opinion that the structure's position on land below the surrounding roads makes the proposed (relatively small) height increase above the normal limit a reasonable proposition.

The project will include the addition of roughly 1200 feet of sidewalk along Hendersonville Road. The applicant is currently in discussion with the City of Asheville Engineering Department about an alternative to the 5-foot wide sidewalk and 5-ft wide grass strip adjacent to the road (required in the TRC Staff Report), so as to minimize the loss of some of the mature evergreen trees on the property.

The one communication that staff has received from a neighbor regarding this project was a letter from the Zoning Administrator of the Town of Biltmore Forest, received the day of the Planning and Zoning Commission hearing. The letter expressed concerns about the height of the building and encouraged the preservation of an extensive tree buffer. Since the height of the building would be located so close to the Town of Biltmore Forest, if a variance were granted, they felt if there was extensive tree buffering, it would be beneficial to the Town of Biltmore Forest

and the City of Asheville. This letter was discussed at some length during the Planning and Zoning Commission meeting, where a representative for the Town of Biltmore Forest was in attendance.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The area of the property on which the building would occur is flat and has previously been paved, graded, or built upon. Only a small amount of open space will be affected by the addition of required parking spaces. The building site's lower elevation relative to the surrounding roads and terrain reduce the perceived mass of the structure. The proposed project is thus compatible with the topography and natural features.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed project would be in proximity to other large hotels and buildings, as well as the interstate, and would be in harmony with the neighboring area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The *Asheville City Development Plan 2025* includes a series of Smart Growth Land Use Policies. The second of these states that "Compatible, higher density commercial … infill development should be encouraged." It can be argued that the proposed project complies with this policy. Further, one of the long-term goals of the Strategic Operating Plan is increased street and sidewalk connections. This project would provide a significant sidewalk extension along Hendersonville Road.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project's location off Hendersonville Road ensures access to major transportation facilities and other services. Transit route 6 serves the area, passing immediately in front

of one entrance to the site. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- High density infill development and significant addition of sidewalk would further goals of City of Asheville comprehensive plan, smart growth policies, and strategic operating plan.
- Project would require a special modification to the height standard.
- Neighboring land closest to the building is all owned by the applicant.
- Town of Biltmore Forest has expressed concern about the height of the proposed building.
- Applicant has improved façade design to address conditions in ordinance for large structures.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report. Staff also recommends approval of the modification to the dimensional (height) standard for this project.

After rebuttal, Mayor Bellamy closed the public hearing at 6:02 p.m.

Councilman Mumpower moved for the adoption of Ordinance No. 3399, granting a conditional use permit adopting the proposed Master Plan, with the requested modification to the zoning district's height standard, for the Doubletree Hotel, located at 117 Hendersonville Road, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (5) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits. This motion was seconded by Councilman Freeborn and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 112

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. **RESOLUTION NO. 06-189- RESOLUTION APPROVING A $500,000 HOUSING TRUST FUND LOAN TO SHELTER DEVELOPMENT, LLC, FOR THE DEVELOPMENT OF 63 UNITS OF AFFORDABLE SENIOR RENTAL HOUSING ON SPRINGSIDE ROAD**

Ms. Adria Hardy, Community Development Analyst, said that this is the consideration of a resolution approving a $500,000 Housing Trust Fund (HTF) loan for the development of 63 units of affordable senior rental housing.

Shelter Development, LLC plans to build 63 one- and two-bedroom apartments for the elderly on Springside Road in South Asheville, using a combination of Low Income Housing Tax Credits (LIHTC), this HTF loan, and HOME funding.

The developer was previously awarded $300,000 in HTF funds in March, 2006 for an 84-unit development on the same site. The HTF commitment was withdrawn when the project failed to win an LIHTC award and could not proceed as planned. The developer has now revised the project to be more competitive in the LIHTC process and plans to apply again for tax credits in January, 2007. Additionally, Shelter Development plans to submit an application for $300,000 in 2007 HOME funds. The combined value of the local HTF and HOME investments will earn crucial additional points for the project in the state-wide tax credit competition.

Tenants will have income below 60% of area median income and the rents will be below 110% of HUD fair market rents, qualifying the project for the most favorable HTF loan terms. The terms requested are 2% annual interest-only payments with principal deferred for 30 years.

The application was evaluated by a panel of outside experts and staff and scored well against the HTF criteria. Shelter Development has an excellent track record with LIHTC projects and other senior housing developments nationwide. The proposed rents are very affordable and the LIHTC rules guarantee 30 years of continued affordability.

The development cost of $133,000 per unit is higher than some other projects, but the cost will cover many amenities for the senior residents including a wellness center, exercise room, dining area, and beauty salon. The LIHTC application process is lengthy and awards will not be made until July, 2007. However, if tax credits are awarded, it is very likely the development will proceed successfully. Housing Trust Funds will not be released prior to the award of tax credits.

The Housing and Community Development Committee reviewed the application on October 9, 2006, and has recommended awarding a HTF loan in the amount of $500,000 at the terms requested.

Currently, just over $1,200,000 remains uncommitted in the Housing Trust Fund.

Pros:

- Creates 63 units of new affordable housing for seniors
- 30 years of continued affordability is assured.
- Project will increase tax base, adding approximately $20,000 a year in City taxes alone.

Cons:

- Ties up $500,000 of HTF for eight months before results of LIHTC competition are known.

Staff recommends approval of a resolution approving a $500,000 Housing Trust Fund (HTF) loan for the development of 63 units of affordable senior rental housing.

When Councilman Freeborn asked if there were any other pending applications, Ms. Hardy said that the City does not have any applications currently on file.

Councilman Mumpower didn't want to speak against affordable housing for the elderly, but what he can speak against is that we allocate almost $1 Million of City tax dollars into the Housing Trust Fund and mostly people who support that do not have access to wellness centers, exercise rooms, dining areas and salons. In addition, a portion of this money is coming from the federal government and at a time of unprecedented federal deficits, for us to be building at this level is out of touch with reality.

Mayor Bellamy explained that this is a loan request only, which will be paid back to the City. Ms. Hardy noted that the developer will be making annual interest-only payments of $10,000 a year. Over the 30 years that will be $300,000 coming back and then the lump sum of $500,000 and the end of 30 years for a total re-payment of $800,000.

At the request of Councilwoman Cape, Community Development Director Charlotte Caplan explained the low income housing tax credits and how they work.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 06-189. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 132

B. RESOLUTION TO COMMIT FEDERAL LOAN AND GRANT FUNDS FOR THE REDEVELOPMENT OF PROPERTY ON EAGLE AND MARKET STREETS

Mayor Bellamy said that this item has been removed from the agenda at this time.

C. RESOLUTION NO. 06-190- RESOLUTION ESTABLISHING ELIGIBILITY AND COST FOR RETIREE HEALTH BENEFITS UNDER THE CITY OF ASHEVILLE SELF-INSURED HEALTH PLAN FOR EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2007, AND TO ADOPT CHANGES IN SUBSIDY RATES FOR EMPLOYEES HIRED ON OR BEFORE DECEMBER 31, 2006, WHO UPON RETIREMENT HAVE ACCESS TO COVERAGE THROUGH THEIR SPOUSE

Human Resources Director Lisa Roth said that this is the consideration of a resolution establishing eligibility and cost for retiree health benefits under the City of Asheville self-insured health plan for employees hired on or after January 1, 2007, and to adopt changes in subsidy rates for employees hired on or before December 31, 2006, who upon retirement have access to coverage through their spouse.

Retirees with access to other health insurance coverage through their spouses (or through Medicare or their own post-retirement employment) are not subsidized by the City to the same extent as retirees who have no access to other coverage. This means that individuals with the same length of service to the City may pay different amounts for their health insurance. This is perceived as an inequity to retirees of the City. Council asked for options about how to approach this issue.

In addition, given the effect of GASB 45 and the increasing costs of health insurance, staff considered how the City might approach, in an equitable way, providing retiree health benefits to future employees.

Resolutions passed by Council over the years have, since 1984, provided that retirees who have access to other coverage through their spouse could stay on the City health plan, but would not have their coverage subsidized by the City.

Recently, this provision was brought before Council as being unfair because two employees who worked for the City for the same amount of time paid different rates based on whether their spouses worked and had insurance coverage. Pursuant to discussion during a Council work session on October 17, 2006, Council wishes to formally consider the following proposal.

For current employees and future employees with a date of hire on or before December 31, 2006, the current resolutions will apply except that for employees who retire on or after January 1, 2007, who have access to other coverage through their spouse, the City will increase its subsidy from zero to a percentage based on years of service with the City of Asheville according to the following table.

YEARS OF SERVICE with COA	PERCENT OF SUBSIDY (Not of Premium)
25 or more	100% of subsidy
20 but less than 25	80% of subsidy
15 but less than 20	65% of subsidy
10 but less than 15	55% of subsidy
5 but less than 10	50% of subsidy
Less than 5	No subsidy

For future employees, with a date of hire on or after January 1, 2007, who retire from the City under the Local Governmental Employees Retirement System, whether through full service retirement, early retirement or disability retirement, the percent of the subsidy for any employee, with or without coverage available through their spouse, will be based on years of service with the City of Asheville, using the same chart. As is the case currently, employees with coverage available through Medicare, Medicaid or their own subsequent employment will continue to be permitted to remain under the plan, but at completely unsubsidized rates.

She said that the input received from 48 current employees were all favorable for Option 5.

Considerations:

On the positive side, the proposed resolution eliminates the perceived inequity for current employees who retire on or after January 1, 2007, with 25 years of service or more with the City of Asheville. It also reduces the inequity for current employees who retire on or after January 1, 2007, with at least five but fewer than 25 years of service with the City of Asheville. As this is an improvement to the current provisions, there should be no "conditions of employment" issues.

Also on the positive side, the proposed resolution with respect to employees with a date of hire on or after January 1, 2007, will have the long term effect of reducing retiree health costs by approximately 20% as those employees reach retirement. The new system will provide a fair and defensible plan based on the amount of time the employee provided services to the City of Asheville and its citizens.

On the negative side, the proposed resolution could increase health care costs by up to $24,000 per year, cumulative to as much as $240,000 per year based on current dollars, depending on the number of employees who have access to coverage through a spouse who decide to keep coverage through the City, until such time as all current employees retire and reach age 65.

City staff recommends that City Council approve a resolution establishing eligibility and cost for retiree health benefits under the City of Asheville self-insured health plan for employees hired on or after January 1, 2007, and to adopt changes in subsidy rates for employees hired on or before December 31, 2006, who upon retirement have access to coverage through their spouse.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-190. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 133

D. MOTION TO WAIVE THE PARKING FEES FOR THE FILMING OF "DON'T FADE AWAY"

Councilwoman Cape, member of the Film Commission, said that at the worksession held on October 17, 2006, discussion occurred about providing an economic development incentive to a film production company due to begin filming in downtown Asheville. At that meeting, the majority of Council supported adding an item to the October 24, 2006, agenda waiving parking meter fees in specific downtown locations for 10 days of filming.

The Line Producer of "Don't Fade Away" explained why they are asking for the waiving of the parking fees.

Mr. Fred English questioned with City of Asheville taxpayers will get if they waive the parking fees.

Councilman Mumpower felt that this is not an incentive, but a bonus and it comes out of the taxpayer pockets. He was glad they were here, but we are already providing them with a lot of amenities that cost money, e.g., streets, lights, police, etc. and he has trouble with adding another bonus to those services we are providing already.

Vice-Mayor Jones confirmed that if we waive the parking fees, that means we are not collecting the parking fees; therefore, that is coming out of the enterprise fund of parking, not coming out of the general taxpayer fund.

Councilman Freeborn noted that the budget for the film is approximately $1.65 Million and they plan on spending roughly $800,000 in our region with an economic impact of $2 Million into our regional economy.

Councilman Newman said that it is his understanding that we have done this before and he hoped Council does move forward in developing a policy for everyone to see in advance. He felt this is a very modest thing a city can do to encourage the film industry to do business in Asheville. However, the downtown business people are concerned when parking is lost. He did want the City to keep the loss of downtown parking spaces to a minimum because taking away a lot of street parking has a very significant impact on the businesses that are open near them.

Councilman Freeborn moved to waive the parking fees, in the amount not to exceed $3,000, for the filming of "Don't Fade Away." This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 6:30 p.m., Mayor Bellamy announced a 30-minute recess in which City Council will be traveling to the funeral home to honor the memory of former Councilman Herbert J. Watts, who recently died. After said recess, City Council will go into closed session and will return to the formal meeting at 7:30 p.m.

At 7:11 p.m., Councilman Mumpower moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:18 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

E. RESOLUTION ADOPTING THE DOWNTOWN PARKING ACTION PLAN INCLUDING THE SCHEDULE AND FUNDING STRATEGY FOR THE PURPOSE OF PROVIDING PUBLIC PARKING

City Engineer Cathy Ball said that this is the consideration of a resolution adopting a downtown parking action plan including the schedule and funding strategy for the purpose of providing public parking as follows:

Item	Description	Schedule	Estimated Total Costs*
1	Evaluate adding levels to Rankin Street Parking Garage	Completed	N/A
2	Evaluate demo and reconstruction of existing parking garages	Completed	N/A
3	Evaluation of parking option in the Battery Park area	Completed	N/A
4	Continue due diligence of proposed parking garage on Haywood Street across from Basilica	By June 2007	$23 M
5	Surface parking on North Lexington	By May 2007	$15,000
6	Surface parking on Cherry Street	By May 2007	$25,000
7	Temporary surface parking on Haywood Street to include the demolition of existing structures	By June 2007	$200,000
8	Public/Private partnership on Cox Avenue to include public parking	By June 2007	$3.5 M
9	Public/Private partnership on Biltmore Avenue to include public parking	By June 2007	$5 M**
10	Park side parking initiative	On-going	$10 M**
11	Continue to evaluation of parking fee impact	On-going	N/A

* Estimated total costs –These costs include previous expenditures and estimated future costs. Due to escalating construction costs these are subject to change.

** These are subject to change depending on financing options such as tax increment financing.

The demand for parking in the downtown sectors of the city continues to grow. Original projections for growth in demand have proved to be too low in the present fiscal year. Parking demand for monthly permitted spaces has reached equilibrium very close to the total sold in fiscal year 2006 in spite of higher rates. Transient parking is increasing at an annualized rate of 10% during this fiscal year. The Civic Center deck, historically one of the least used facilities, has twice experienced a full condition during the month of October. Other than during events where special event fees apply, this has not happened before. Last year during the month of September the Rankin deck, the most popular deck, experienced full conditions for 8 hours. This September the Rankin deck experienced 45 hours of full condition.

Staff has been evaluating several options for increasing parking in downtown. We have evaluated adding floors to the existing parking garages. While Rankin Street Parking Garage was originally designed to be expanded by two levels, the building code requirements for this structure have changed significantly making this option cost prohibitive.

The best option for increasing parking in the current garages is to demolish the existing garages and rebuild. Staff does not recommend this option until additional parking is available due to the loss of parking during demolition and construction.

The proposed parking garage on Haywood Street across from the Basilica may still be a viable option. In order to determine this possibility, staff would need to reengage in negotiations with the Catholic Church and National Church Residents. In addition, part of the due diligence would include working with HUD to evaluate mitigation options for the Battery Park Apartment Residence.

Staff has developed a parking program that identifies several projects to increase parking in downtown Asheville. These projects include:

- Pave and landscape parking lot on the north side of Lexington Avenue.
- Implement monthly parking on Cherry Street.
- Utilize City owned property to leverage parking on Haywood Street. (Explore option of providing temporary surface parking in this area.)
- Formulate public/private partnerships for multiuse parking facility on Biltmore Avenue and Cox Avenue.
- Participate in the development of the park side development plan to include necessary parking for the City/County area.
- Continue to evaluate parking fee structure to determine impact on the system.

We anticipate that the parking fund will contribute approximately $850,000 to a capital reserve fund this fiscal year. This money will allow us to fund the initiatives listed above. We anticipate that most if not all of this money will be used in debt service for new facilities and maintenance improvements to the existing decks.

In Fiscal Year 2009 the City will have paid the debt service for the Rankin and Wall Street Garages. This will allow an additional $630,000 to be available for capital improvement funding.

Pros:

- Will allow staff to begin to move the process of forming partnerships and parking acquisition forward for council's final approval.
- Provide for needed public parking in Downtown Asheville.
- Allow for continued economic sustainability in the area.

Cons:

- Options will require a significant financial commitment. Staff will bring these costs to Council prior to executing any agreements.

Staff recommends approval of a resolution adopting the downtown parking action plan including the schedule and funding strategy for the purpose of providing public parking.

Mr. Bill Maloney, business owner in the Haywood Park Hotel, urged Council to not look at building a parking garage on Haywood Street across from the Basilica, but look at something more creative near-by. He suggested Council enhance the Basilica by converting the City-owned property into a park.

Ms. Julia Brandt said that last year thousands of people signed a petition urging City Council to not build a parking garage across from the Basilica and all the reasons are still valid today. She felt that Council should look at parking on a larger scale rather than lumping all the parking garages together. She suggested the City look at satellite parking and extends the on-street parking meter hours longer than 2 hours. She also suggested the City look at partnering with other businesses downtown to use their existing parking for public use as well.

Mr. Fred English felt that the City had enough parking decks in Asheville and suggested adding a deck or two to the existing decks.

Mr. Roger Smith, resident at the Battery Park Apartments, said that the residents at the Battery Park Apartments are concerned with their health, safety and security if a new deck is built across from the Basilica. He urged Council to not build in that area and suggested a park as well.

Ms. Mary Selby was also concerned about the possibility of building a parking deck in front of the Basilica. She felt that when there is an event at the Civic Center, traffic will be dangerous. She suggested building a parking deck on the edge of Asheville and provide easy transportation to the Grove Arcade, Civic Center, etc. which would help Asheville be walker-friendly.

Mr. Dwight Buckner urged Council to consult with the Downtown Commission and ask for assistance with an overall development parking plan.

Councilwoman Cape wanted to remove the City continuing their due diligence of the proposed parking garage on Haywood Street across from the Basilica from the Downtown Parking Action Plan. She did support the idea of an overall development parking plan. She felt the City should look at creative options that we have available that are non-standard, i.e., building parking decks on top of the interstate.

Councilman Newman felt that in front of the Basilica is a problem site. He wondered about what public parking opportunities there were to partner with Buncombe County, since they are in the process of building a deck near the Health Department and also parking on Cox Avenue.

Ms. Ball responded to Councilman Newman about the pros and cons of stripping the surface parking on Cherry Street, noting that there hasn't been a project budget set up for that yet.

Councilman Freeborn also supported a comprehensive parking plan. He too felt the City should remove the proposed parking garage across from the Basilica. He suggested a community charette to ask people what they would like on that particular piece of property.

Ms. Ball responded to Councilwoman Cape about the temporary surface parking on Haywood Street, including the demolition of existing structures.

Vice-Mayor Jones recommended deleting the proposed parking garage across from the Basilica too. She suggested adopting the Downtown Parking Action Plan (minus the parking garage on Haywood Street) in addition to adding another initiative to the Plan - begin a comprehensive transportation demand study for downtown. She was ready to start working on the other opportunities in the Plan at the same time endorsing the idea of the comprehensive plan.

Ms. Ball responded to various questions/comments from Councilman Mumpower regarding the proposed parking garage across from the Basilica, some being, but are not limited to: what the City has spent to date on this site; the risk factors of the Basilica; where is our primary need for parking in downtown; did the City made a commitment to the Grove Arcade to provide parking; what is the percentage of people who drive vs. walk; when was the last time the City developed a comprehensive parking plan; explanation of our parking fund; does demolition of an existing building or new construction create more of a risk factor; can a parking garage be demolished without explosives; and is there any realistic property in that vicinity for a parking garage.

Councilman Mumpower could not support deleting the proposed parking deck across from the Basilica because that is where the need is, that is where the research shows where we need one, and that is where the opportunity is.

Councilman Davis personally would not like to see the parking garage across from the Basilica, but felt we should keep it in the plan because to remove it may limit the future growth of the City. He noted that in Greenville, S.C., they have adequate parking which is camouflaged. He felt we may be a little past the comprehensive plan at this point because we are not developing an entire city, but felt it was very important to consider the Downtown Commission, Downtown Association and stakeholders in whatever is done with the parking.

Ms. Ball responded to Councilman Davis about the land near the Civic Center on Rankin Street and the possibility of working with Progress Energy on the land their transformer station sits on.

Mayor Bellamy agreed that we need some additional parking downtown, and supported looking at public/private partnerships. She would not support another study in that staff has looked at where we need parking and we need it throughout downtown. She suggested looking into partnership opportunities for (1) the land behind the Sheriff's Department; (2) the land on Carter Street; and (3) the parking lot at the Senior Opportunity Center. She wanted to work with whoever owns the Haywood Park Hotel and ask them what their future plans are and that the City is willing to come to the table to talk about parking. She did not support a park across from the Basilica in that the land is too valuable. If no parking deck is to be built on that property, then we should sell the land and use the money to buy another piece of property on which to build a parking deck.

In response to Councilman Mumpower, Ms. Ball said that if the City buys the property independently and does the design work, it would take approximately 18 months to 2 years to begin construction.

Councilwoman Cape said that downtown is not just Haywood Street anymore and our vision of downtown and where we look for parking has to expand as well. In talking with the officials in Greenville, S.C., they said they made a specific effort to locate their parking so people would have to walk by buildings and stores to get to their destinations. We need to have a

willingness to have creative distances for people to travel. She suggested adding to the Downtown Parking Action Plan another initiative - What is the aggressive way to look for who might be willing to sell the City some property. She wanted to know if the City has been exploring the Rankin/Lexington Street area. She also wondered if we have developed relationships with the larger grocery stores at the edge of town for park and rides.

Upon inquiry of Mayor Bellamy, Ms. Ball said that because of the parking needs in downtown Asheville surrounding neighborhoods are being impacted.

When Mayor Bellamy asked what kind of direction staff needed to move forward, Ms. Ball suggested staff be directed to aggressively pursue a partnerships or agreement that would allow the City to begin construction within a year.

Councilman Newman suggested City Council formally ask Buncombe County to join us in looking at parking needs; and to encourage them to fast track some of their potential projects, i.e. Cox Avenue, noting that the City has resources that are set aside for parking that can be used for the City to build their own parking facilities or to provide infrastructure, or other things to enable others to lead on parking or to partner with the City.

Upon inquiry of Councilman Mumpower, Ms. Ball said that she would rely on Council's policy direction concerning re-negotiation with the Church regarding the additional property needed for a proposed parking garage across from the Basilica.

It was the consensus of Council to direct staff to revise the Downtown Parking Action Plan, taking into consideration Council's comments, and come back with a revised Plan for a formal vote.

F. ORDINANCE NO. 3400 - BUDGET AMENDMENT TO FUND STAFF ADDITIONS AND REORGANIZATIONS IN THE PLANNING & BUILDING SAFETY DEPARTMENTS THAT WILL ENHANCE DEVELOPMENT INSPECTION, PLANS REVIEW, CODE ENFORCEMENT AND LONG-RANGE PLANNING EFFORTS EFFECTIVE JANUARY 1, 2007

City Manager Jackson said that this is the consideration of a budget amendment, in the amount of $132,996, to fund January 1, 2007, staff additions and reorganizations in the Planning & Building Safety Departments that will enhance development inspection, plans review, code enforcement, and long-range planning efforts.

City Council recently requested a recommendation about staffing in the Planning and Development Department to achieve the following goals:

- Better manage and track zoning violations, fines, etc.
- Perform zoning field inspections throughout the construction process
- Devote more resources for long range planning

To achieve the goals laid out by City Council, the Planning Department proposes adding three additional positions: a Zoning Enforcement Officer, a Planning & Zoning Technician, and an Urban Planner. The Planning Department will also reorganize and upgrade several existing staff positions. With a January 1, 2007, planned implementation date, the cost of these additions and upgrades for half the fiscal year is $168,019.

In addition to the development review needs in the Planning Department, Building Safety staff has also identified the need to add a Plans Reviewer to focus on small commercial and residential projects. Currently, Building Safety has three commercial plan reviewers and one

residential reviewer. Many small commercial and residential projects could be approved in a very short time if the staff resources existed. Data from the previous three months indicate that we are averaging approximately 16 calendar days to complete plans review for up fits and small remodels in commercial occupancies; this compares to the departmental goal of a 5 calendar day completion time. Turn around time for larger projects would also improve by allowing the other plan reviewers more time for them. The cost of adding this position on January 1, 2007, is $26,175.

The total half-year cost for implementing this development review enhancement proposal on January 1, 2007, is $132,996. (The annualized on-going cost will be approximately $193,500). Finance Department staff recommends that the funding for this service enhancement package come from the additional $346,000 in state utility tax revenue that will be collected in Fiscal Year 2006-07. As indicated in the first quarter financial report, revenue from state utility taxes increased by double digit percentages in the final quarter of Fiscal Year 2005-06 and the first quarter of Fiscal Year 2006-07. Based on this growth, and strong growth in other general fund revenues, staff believes that the $132,996 for this service enhancement can be appropriated without any negative financial impact on the City.

PROS:

- Improvement across a range of development review services

CONS:

- Additional revenue will not go to fund balance

City staff recommends City Council approve the budget amendment to fund staff additions and reorganizations in the Planning & Building Safety Departments that will enhance development inspection, plans review, code enforcement, and long-range planning efforts.

Councilman Mumpower felt that more control requires more staff and more staff requires more tax dollars, which is a vicious cycle he could not support.

Councilman Newman felt that to have effective enforcement of our ordinances and to provide the development community with the staff to move their projects forward he would support the motion.

Councilwoman Cape noted that it's just not enforcement, but the amount of development and projects in the City.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it will not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3400. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no." ordinance Book 23 - page 116

3401

G. ORDINANCE NO. ~~3402~~ - BUDGET AMENDMENT FOR ONE-TIME CAPITAL FUND PROJECTS

City Manager Jackson said that this is the consideration of a budget amendment, in the amount of $2,500,000 to fund high priority capital improvement projects.

As discussed with City Council at the October 17 2006, worksession, staff has identified $2.5 million in one-time funding that is available to augment the capital improvement budget that was approved for Fiscal Year 2006-07. This $2.5 million in funding will come from two sources. At the time of budget adoption, there was approximately $1.5 million in property and sales tax revenue that was not included in the budget. Council directed staff to report back after the first quarter on the possibility of appropriating this funding for capital needs. Based on the City's financial performance through the first quarter, staff is recommending that the additional $1.5 million that was not budgeted in June now be appropriated for high priority capital needs.

In addition, the preliminary year-end audit figures for Fiscal Year 2005-06 show that the City's fund balance will be approximately $23.8 million or 31% of total expenditures. Based on these numbers and staff's projections that fund balance will grow to 34.1% in Fiscal Year 2006-07, staff recommends that Council appropriate an additional $1.0 million from fund balance to help address capital needs; bringing the total available funding to $2.5 million.

Following a prioritization process with the management team, the City Manager is proposing that the projects below receive funding from this $2.5 million:

PROJECTS	Cost
Fire Station 12 - Sand Hill Rd Land	250,000
Civic Center Arena Roof*	900,000
Haw Creek Sidewalks**	370,000
Patton Ave. Sidewalks**	300,000
Fleet Replacement	255,000
Street & Sidewalk Maintenance	200,000
Public Safety Radio Replacements	100,000
Richmond Hill Entrance & Parking Lot	125,000
TOTAL	2,500,000

* Total cost is $1.5 million. $600,000 in funding is already available from prior years' CIP allocation

** The amounts above represent the City's match. The total cost of the projects are: Haw Creek: $700,000; Patton: $450,000

PROS:

- Addresses high priority capital needs that could not be funded when the budget was initially adopted

CONS:

- Additional revenue will not go to fund balance

City staff recommends City Council approve the budget amendment to fund high priority capital needs.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it will not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3401. This motion was seconded by Councilman Freeborn and carried unanimously.

ordinance book 23 - page 110

H. ORDINANCE NO. 3402 - BUDGET AMENDMENT FOR ASHEVILLE TRANSIT FARE STRUCTURE

Transit and Parking Services Manager Bruce Black said that this is the consideration of fare revisions and the provision of evening service for the Asheville Transit System; and the associated budget amendment.

The Asheville Transit System (ATS) is currently operating without charging its customers for use. Council adopted fares as part of the annual budget ordinance which is to become effective November 13, 2006. Council has asked staff to explore the costs, if any, of revising this fare schedule to reduce the approved fares in accordance with a specific proposal. Additionally, a proposal has been made to extend service by one additional hour in the evenings.

The proposed revised fares are lower than the currently approved fares. However, the lower fares are projected to increase ridership beyond the number of trips that are projected to be retained from the fare free promotion, and therefore there will be a slightly increase in revenue over the current budget. When the additional passengers from fare free are considered, the current budgeted fare box revenue is expected to increase by $20,947. If the evening service program is approved, it will add another $1,750 in revenue; producing a total increase in fare box revenue of $22,697.

Due to the increased number of passengers and longer operating hours, staff recommends that enhanced security be maintained for the duration of the year. Also, an additional supervisory position will be needed to help control the system and to better deal with daily operational problems. The fare free period is straining supervisory personnel, and the ability to cope with enhanced ridership for a full year is lacking. The additional passenger loads and longer operating hours are also leading to an increase in maintenance costs. For the remainder of this fiscal year, the total additional cost for the reduced fare program will be $105,000, and the total cost for evening service will be $33,125. Therefore, the total cost of the two programs combined is $138,125.

Since the cost of these two programs ($138,125) exceeds the additional fare box revenue ($22,697) that will be generated, the transfer from the General Fund to the Transit Fund will need to be increased by $115,428 to support the net cost of this proposal. Based on 1st quarter operating results, staff is recommending that the sales tax budget in the General Fund be increased to fund this additional transfer amount.

Pros:

- The revised fares are projected to increase the ridership on the Transit System by up to 60,000 trips above the projected number of trips retained from the fare free promotion. The addition of evening service would add an additional 6,000 trips.

Cons:

- The transit system will experience additional personnel and operations costs in any case. The addition of more passengers as a result of reduced fares and evening service will increase that strain.
- Additional General Fund revenue will not go to fund balance

City staff requests that City Council consider the proposed fare reduction, effective November 13, 2006, as follows: 75-cents cash fare; $1.00 day fare; $7.00 ticket book; $15.00 monthly pass; and $120.00 annual pass.

Ms. Karen Austin, Chair of the Asheville Transit Commission, spoke in support of the proposed fare reduction noting that the proposal will serve the goals they are trying to meet. The Commission voted on this proposal and endorsed changing the price of the monthly passes to $15.00 and that the fare for a single trip be raised to $1.00. They also supported expanding the evening service for one additional hour, which is a viable option for more working people.

When Mr. Fred English asked if there were any calls to the Police Department resulting from problem riders, Mr. Black said that they are in the process of collecting the data on the entire trial period. He said that the interim report did indicate that there were some police calls; however, at the start of the program there was 1 complaint to every 2,000 trips and at the end of September, there was 1 complaint to every 7,000 trips.

Mr. Dwight Buckner endorsed the proposal to extend the bus service one additional hour in the evenings.

City Council then discussed the proposed rates, the subsidy for transit, and the need to have an incentive for regular use of transit.

Councilman Newman moved to approve the following rate structure: $1.00 cash fare per trip with no transfer fees; no day fare; $7.00 ticket book; $15.00 monthly pass; and $120.00 annual pass. This motion was seconded by Councilwoman Cape.

Councilman Newman said that our overarching message is a transit system to both meet the needs of the working poor and for it to function in a way that helps achieve other community goals, like air quality, congestion, and bringing people downtown. As a result of the tremendous rise in the ridership during the Ride For Free Program is makes sense to look at what we can do to encourage people to continue to use transit and that is by adopting a really attractive fare package.

Councilman Freeborn felt the monthly passes can be an incentive for employers to give to their employees to reduce employee parking and free up the spaces for customers.

Councilman Davis felt that the Ride for Free Program should have been completed and evaluated before a new rate structure was proposed; however, he understands the need to improve the transit system for those who really need it. He was concerned though of subsidizing this on the backs of people who have to pay for monthly parking downtown, whether they need to or choose to drive to work.

Upon inquiry of Mayor Bellamy, Councilman Newman felt it would be more appropriate to vote on the proposed rate structure in one motion, rather than vote on each new rate separately.

Councilman Mumpower said that all of Council agrees on the importance of mobility for people, but it's how we provide that mobility and the rate of subsidy. He felt that some of the proposed rates had merit, but to vote on them in one motion, he felt, represented excessive subsidy. In addition, he felt we are proceeding without having the total data within which to analyze the pilot program.

Councilwoman Cape said that we are trying to encourage people to invest with us in our system.

At the explanation by City Attorney Oast that a procedural motion would take precedence over the original motion, Councilman Mumpower moved for a procedural motion to vote on each proposed rate separately.

Councilman Newman then rescinded his original motion.

Councilman Newman moved to establish a $15.00 monthly pass. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to establish a $1.00 cash fare per trip with no transfer fees. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilman Newman moved to establish a $7.00 ticket book. This motion was seconded by Councilman Freeborn and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to establish a $120.00 annual pass. This motion was seconded by Councilman Freeborn.

Mayor Bellamy moved to amend the motion that the annual pass be established at $171.00. This motion was seconded by Councilman Mumpower and failed on a 3-4 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "no."

The original motion made by Councilman Newman and seconded by Councilman Freeborn to establish the annual pass at $120.00 carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Freeborn moved to extend the bus service by one additional hour in the evening. This motion was seconded by Councilwoman Cape and carried unanimously.

After Vice-Mayor Jones moved, and Councilman Freeborn seconded the motion, to adopt the budget amendment for the Asheville Transit fare structure, it was the consensus of Council that the individual votes regarding the rate structure and the one hour of additional bus service in the evening were sufficient actions directing City staff to amend the budget accordingly.

VI. OTHER BUSINESS: Ordinance Book 23 - page 125

Councilman Mumpower shared the Asheville Drug Commission's October poster and thanked the Asheville Citizen-Times for printing the posters.

Vice-Mayor Jones thanked the community and individual organizations for their participation in the effort at Carrier Park to plant 35,000 bulbs in remembrance of children who are neglected and abused across North Carolina. She urged the community to continue support of the WNC Child Abuse Prevention Center.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross invited City Council to speak at a gathering to support those who died or were victimized in the City of Asheville or Buncombe County law enforcement incidents. She noted that the date and time has yet to be set, however, she asked Council to contact her if they were interested in speaking.

Mr. Fred English felt that the U.S. Army Reserve Center should have been allowed to lease the City-owned property on Louisiana Avenue for free. He felt the $112,000 a year lease Council approved not long ago could have been used for training instead. Mayor Bellamy said that she would discuss the re-consideration of this matter being brought back up with the City Manager and the City Attorney. Councilman Mumpower supported that matter being reconsidered.

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods, explained why he felt the September 15, 2006, letter City Attorney Oast sent to Staples, regarding compliance with the Unified Development Ordinance standards, did not mention that the building was out of compliance for setback standards, signage and pedestrian orientation. He felt the language of the letter held no sense of urgency or purposeness. City Manager Jackson said that he would take the comments by Mr. Pelly under advisement and would welcome any feedback from Council if the letter was not consistent with the direction of City Council. Mayor Bellamy noted that the third-party review matter will be coming back to City Council in November.

VIII. ADJOURNMENT:

- Mayor Bellamy adjourned the meeting at 10:02 p.m.

Tarra Lipe
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – November 14, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Co ncilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manage Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. AWARD

Ms. Susan Roderick, representing Quality Forward, presented the City of Asheville and the Transit Commission with the Hall of Fame Award for working together to increase transit ridership through the Ride for Free Program, the beautification of the Transit Center on Coxe Avenue, and adding bus benches and shelters.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "E", "F", and "G" were removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 24, 2006

B. RESOLUTION NO. 06-191 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSTALLATION OF A SIDEWALK ALONG PATTON AVENUE FROM REGENCY PARK BOULEVARD TO LEICESTER HIGHWAY

Summary: The consideration of a resolution authorizing the Mayor to execute a municipal agreement with the N.C. Dept. of Transportation (NCDOT) for installation of sidewalk along Patton Avenue from Regency Park Boulevard to Leicester Highway; and the associated budget amendment, in the amount of $150,000, to accept the funds from the NCDOT.

The NC DOT has agreed to pay the City of Asheville $150,000 toward the installation of sidewalk on the north side of Patton Avenue from Regency Park Boulevard to Leicester Highway. The total cost of the project is $450,000. City Council recently approved the $300,000 City match as part of the $2.5 million mid-year appropriation for high priority capital projects.

Patton Avenue is a high volume corridor that serves as a major transit route. Several pedestrians use this route as is evidenced by the worn paths in the grass. This sidewalk is a high priority on the Pedestrian Thoroughfare Plan. The City is in the process of finalizing the design of the sidewalk. We anticipate beginning construction on the sidewalk in spring 2007.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

Considerations:

- This sidewalk has been identified as a high priority on the Pedestrian Thoroughfare Plan and is located on a major transit route.
- Due to increase in construction costs over the past four years, the cost of the sidewalk has increased significantly.

City staff recommends City Council authorize the Mayor to execute a municipal agreement with the NCDOT for installation of sidewalk along Patton Avenue from Regency Park Boulevard to Leicester Highway and approve the associated budget amendment, in the amount of $150,000, to accept the funds from the NCDOT.

RESOLUTION BOOK NO. 30 - PAGE 136

C. **ORDINANCE NO. 3403 - BUDGET AMENDMENT TO ACCEPT THE N.C. DEPT. OF TRANSPORTATION FUNDS FOR INSTALLATION OF A SIDEWALK ALONG PATTON AVENUE FROM REGENCY PARK BOULEVARD TO LEICESTER HIGHWAY**

Summary: See Consent Agenda Item "B" above.

ORDINANCE BOOK NO. 23 - PAGE 127

D. **RESOLUTION NO. 06-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH FAMPROP, LLC, FOR SHARED USE OF A PARKING LOT AND DRIVEWAY ON CITY-OWNED PROPERTY ON FAIRVIEW ROAD**

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Famprop, LLC, for shared use of a parking lot and driveway on City owned property on Fairview Road.

The City of Asheville owns property in Oakley known as Oakley Murphy Park identified as PINs 9657.06-7385 which parcel is currently zoned RS-8 Residential Single-Family High Density District. The parcels are improved with a Police Resource Center, tennis courts, ball field, parking and driveway. There is parking available for 30+ vehicles. During normal business hours the parking spaces are mostly empty as there is little recreational activity then, while after hours the spaces generally are filled as the recreation facilities are utilized

Famprop has acquired property at 723 Fairview Road adjoining the City's property which it proposes to renovate for office space for Families Together, Inc., a for profit mental health services provider operating in Western North Carolina. Off-street parking for about 25 cars will be required. Famprop has land on which a parking lot could be constructed; however, that part of the land is currently a green area which provides a natural buffer to the adjoining park. Since the parking lot on the City's property is readily accessible to Famprop's property and the lot is largely unused during the times that Families Together would need parking, it is an efficient and environmentally responsible use of existing infrastructure for Families Together to share the City's parking lot.

On October 24, 2006, City Council approved a resolution directing the City Clerk to publish a Notice of Intent with regard to a proposal from Famprop to enter into a license agreement for the use of the parking spaces and driveway on a non-exclusive basis and

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authorizing the City Manager to sign a rezoning application. The City Clerk published a Notice of Intent in connection with the proposed license agreement on October 27, 2006, in the Asheville Citizen-Times.

The license agreement would provide for an annual fee of $3,000 for a term of three (3) years. In order for Famprop to use the parking spaces it will be necessary for the City's parcels to be rezoned Office District.

Pros:

- The City will receive revenue that it does not currently receive.
- Parking spaces that are currently vacant during business hours will be used.
- It is an efficient use of existing infrastructure to satisfy parking standards.
- Green space will be preserved instead of being converted to parking.
- The impact on storm water runoff that would be associated with a new parking lot is eliminated.

Approval of the resolution will authorize the City Manager execute the License Agreement subject to the City's property being rezoned.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute a License Agreement with Famprop, LLC, for shared use of a parking lot and driveway on City owned property on Fairview Road.

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E. RESOLUTION AMENDING THE INTERLOCAL AGREEMENT FOR REGIONAL AIR QUALITY PROGRAM - CLEAN AIR COMMUNITY TRUST

This item was removed from the Consent Agenda for discussion and/or a separate vote.

F. BUDGET AMENDMENT RECOGNIZING THE RECEIPT OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME IN EXCESS OF THE AMOUNT BUDGETED FOR FISCAL YEAR 2006

This item was removed from the Consent Agenda for discussion and/or a separate vote.

G. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE STAFF TO EXPLORE THE FEASIBILITY OF CREATING AN INDEPENDENT AIRPORT AUTHORITY GOVERNANCE STRUCTURE

This item was removed from the Consent Agenda for discussion and/or a separate vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR SEPARATE VOTES

RESOLUTION NO. 06-193 - RESOLUTION AMENDING THE INTERLOCAL AGREEMENT FOR REGIONAL AIR QUALITY PROGRAM - CLEAN AIR COMMUNITY TRUST

Summary: The consideration of a resolution amending interlocal agreement for regional air quality program - clean air community trust

In May of 2000, the City of Asheville and Buncombe County adopted an interlocal agreement to continue participation in a regional air quality program as allowed by State law. The need to do this was created by the withdrawal of Haywood County from the regional agency that had existed for some 30 years. This new agency was approved by the State Environmental Management Commission in July of 2000.

During the years of its existence, the old agency had accumulated a substantial amount of money from permit fees, fines, and other sources. In the agreement establishing the new agency, the Clean Air Community Trust (Trust) was created with the intention that it would be funded from these revenues, and use the money for educational purposes related to reduction of air pollution. The Trust was also to engage in its own fundraising activities, including grants and donations.

At about the same time that the new agency was created, a lawsuit was brought by the county schools and an individual plaintiff against the City, the County and the agency regarding the disposition of those funds. The conclusion of this litigation was that, since the agency's fines were penal in nature, the funds accumulated from collecting those fines were subject to the statutory and constitutional limitation that requires the "clear proceeds" to be paid over to the maintenance of free public schools.

This ruling reduced substantially the money that was available to fund the Trust. Although the Trust has continued to operate, its financial limitations have constrained its activities such that the bulk of its income now must come from fundraising activities. The Trust has been advised that one way to increase its fund raising ability is to expand its governing board membership to allow a broader cross section of the community to participate.

Currently, the Trust board consists of 7 members. Initially, members were to be appointed by the City Council (2) and the County Commissioners (3), with two members selected by the first five. All subsequent appointments are made by the board, but are subject to approval by the Council and Commissioners.

The Trust seeks greater flexibility in structuring itself to generate revenue to fund its activities. However, because the Trust is provided for in the interlocal agreement between the City and County, changing the Trust structure is cumbersome, and involves an amendment to the interlocal agreement, which requires approval by the City Council and County Commissioners.

What the Trust and the Air Quality Agency propose is to amend the interlocal agreement to delete entirely the provisions relating to the Trust. This would have the effect of allowing the Trust to structure itself in the manner that best suits its purposes, without approval by the City and County. Since the Trust may to some extent still be dealing with public money, coming through the Air Quality Agency, it is recommended that the Agency retain some oversight of the Trust with respect to this money, and language to that effect has been included in the amendment. This requirement is essentially the same as for any outside agency that receives public money from the City.

In addition to the provision regarding the Trust, the Agency has requested some minor amendments of a technical nature regarding the hiring and terms of employment of the Agency Director.

There is a requirement in the resolution for an accounting of activities since 2000. Since this is an interlocal agreement involving Buncombe County, similar action by Buncombe County would be required in order for the amendment to be effective.

Considerations:

- The financial situation of the Trust is substantially different from what was contemplated at the time of its creation, and there is substantially less public money available to the Trust.
- The Trust activities now require more fundraising than fund management, and the Trust should be allowed to structure itself as needed to suit its purposes.
- With this added flexibility, the Trust should be better able to pursue its mission.
- The Trust will be required to account for any public money received through the Agency.

If Council desires to make this amendment to the interlocal agreement, adoption of the resolution is recommended.

Councilman Mumpower was concerned that the regional foundation from which this committee was created is no longer in place. He questioned the viability of the committee since this body is not able to fulfill their original mission due to changes beyond their control, mainly the funding resources they were going to have.

Councilman Davis spoke in support of the amendments recognizing that the committee does have a place in the community.

Councilman Freeborn moved for the adoption of Resolution No. 06-193. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 138

ORDINANCE NO. 2104 BUDGET AMENDMENT RECOGNIZING THE RECEIPT OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME IN EXCESS OF THE AMOUNT BUDGETED FOR FISCAL YEAR 2006

Summary: The consideration of a budget amendment recognizing the receipt of Community Development Block Grant (CDBG) program income in excess of the amount budgeted in Fiscal Year 2006.

The City's Budget document and Consolidated Annual Action Plan for Fiscal Year 2006 estimated CDBG program income receipts at $125,000. Because of a high rate of loan pay-offs, $376,099 was actually received, producing a balance of $251,099 in unbudgeted program income.

This budget amendment budgets $160,000 of these additional CDBG funds to the Housing Authority for its Pisgah View Community Services Center, as approved by Council on October 24, 2006, and the remaining $91,099 to contingency.

City staff recommends that Council approve the budget amendment to allocate $160,000 in CDBG program income to the Pisgah View Apartments Community Services Center and $91,099 to Contingency.

Councilman Mumpower felt this budget amendment is a poor investment of precious dollars.

Councilman Freeborn moved for the adoption of Ordinance No. 1[illegible] This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 12[illegible]

RESOLUTION NO. 06-[illegible] - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE STAFF TO EXPLORE THE FEASIBILITY OF CREATING AN INDEPENDENT AIRPORT AUTHORITY GOVERNANCE STRUCTURE

Summary: Said resolution reads "WHEREAS, the Asheville Regional Airport was built by the City of Asheville in 1958 for the benefit of Western North Carolina; and WHEREAS, the Asheville Regional Airport ("Authority") was established in 1979 as a joint governmental agency organized and created by the City of Asheville ("City") and the County of Buncombe ("County"), pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport ("Airport"); and WHEREAS, the Airport is a regional asset for all of Western North Carolina that supports economic development through aviation and non-aviation development and provides critical aviation related services; and WHEREAS, the Authority since its creation has been successful in the development and operation of the Airport; and WHEREAS, the Authority has matured into a fully self-sustaining enterprise requiring no local financial assistance for its operations, maintenance and capital programs; and WHEREAS, the ongoing success of the Airport and Authority requires a governance environment that provides for long-term stability and growth; and WHEREAS, the City, County, and Authority desire to explore the feasibility of creating an independent authority governance structure as authorized in north Carolina law. Now, therefore, be it resolved by the City Council of the City of Asheville that the Asheville City Council expresses its support and desire to have staff of the City of Asheville work with Buncombe County, the Airport Authority, and other appropriate entities to explore the feasibility of creating an independent authority governance structure to own, operate, maintain and develop the Asheville Regional Airport which is a key regional asset to all of Western North Carolina."

Upon inquiry of Councilman Mumpower, City Manager Jackson said that the City, Buncombe County and the Airport Authority will work together to evaluate the pros and cons of forming an independent authority. Some reasons to pursue this include (1) the Airport has grown to the point that it operates largely independently today and there are some aspects of their growing business with the Federal Aviation Administration that would be streamlined by being an independent body; and (2) potentially recover the City's investment of approximately $10 Million (estimate of the acquisition of land to make it possible for the Airport to develop) in the Airport under some reasonable basis of recovery.

Councilman Mumpower felt that the City gave up sewer and we've had water, in many ways, taken away from us. It appears that the things that most cities retain as assets to help define themselves as cities and maintain some control over their destiny, we have a history of handing over to other people.

In response to Councilman Mumpower, City Manager Jackson said that the major benefit that we have in the current arrangement is the direct reporting relationship to Council with the Council appointments to the Airport Authority. The evaluation process would include looking at the best way to continue making appointments and keeping that benefit. He said there are no direct economic benefits to the City under the current arrangement.

Mayor Bellamy explained that the City owns the land the Airport is located on. She was clear that this is not a commitment to move forward, only for us to do due diligence to see is this is the best model in place.

In response to Councilwoman Cape, Airport Director David Edwards said that he didn't think the study would be a major cost estimate for anyone because this is not an unusual governance model and is used elsewhere in the state. He felt that it would be relatively easy to determine some of the property value issues.

Councilman Freeborn, Chair of the Airport Authority, explained that the $10 Million figure is the value in today's dollars of what the City put forward. He said that the Airport Authority unanimously supports the exploration of creating an independent Airport Authority.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that the study will consist of a financial analysis of what has been the equity investments in the Airport; what is the financial feasibility of creating an independent authority and the means to move in that direction; and looking at alternative governance models.

Councilman Davis moved for the adoption of Resolution No. 06-144. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 140

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES LOCATED AT 1875 HENDERSONVILLE ROAD TO AMEND THEIR MASTER PLAN FOR ALLOWANCE OF A THIRD MODIFICATION TO A FRONT SETBACK FOR A PROPOSED OUT-PARCEL BUILDING**

ORDINANCE NO. 345 - ORDINANCE GRANTING AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES LOCATED AT 1875 HENDERSONVILLE ROAD TO AMEND THEIR MASTER PLAN FOR ALLOWANCE OF A THIRD MODIFICATION TO A FRONT SETBACK FOR A PROPOSED OUT-PARCEL BUILDING

Mayor Bellamy said that this public hearing for an amendment to a conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel was originally scheduled on September 12, 2006, but continued several times to this date.

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:22 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of an amendment to the conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel.

He said that the original consideration approved by City Council on January 6, 2006, included a rezoning of a rear parcel to Highway Business to allow for the expansion of the Ingles Market Store (Attachments to City Exhibit 3 - Location Map & Aerial Map). Included with the rezoning was the master plan for the site and the new store. The total square footage for the shopping center was to be expanded by about 40,000 square feet (City Exhibit 4 - Revised Site Plan. During the original review a condition was placed on the project to limit the number of driveways to two drives. These driveways have full movement traffic signals. The developer is requesting a third drive to provide more direct access to the gas station area at the front of the parcel. The driveway will provide additional right-of-way along Hendersonville Road to provide a safe movement into the parking area. The proposal was reviewed by the City Traffic Engineer and was determined to be safe as proposed. The request was considered by the Board of Adjustment to appeal the requirement in the Unified Development Ordinance (UDO) limiting developments to two driveways. The Board of Adjustment approved a UDO variance for the additional driveway at their meeting on May 22, 2006. The plan and configuration for the driveway was reviewed and approved by the N.C. Dept. of Transportation as well. The driveway will have a limited movement for a right-turn-in only. Amending the conditional use permit requires approval by City Council.

The current plan provides about 124,000 square feet of retail space. Construction of the new store and smaller shops is underway now. The latest amendment to the plan is to replace the existing Asian Grill with a new structure labeled 'Shops E' positioned near Hendersonville. The Highway Business District has a 35' front setback from Hendersonville Road (as measured from back curb for streets wider than 45') (Attachments to City Exhibit 3 - Street Side Elevation and Parking Lot Elevation). The building is positioned to relate to the street with sidewalk access from Hendersonville Road to the doors of the building. Ingles is requesting a modification of the front setback by up to 10 feet to improve the relationship of the building to the street. The building provides windows and doorways along both the Hendersonville Road side of the structure and the parking area. The modification request is in keeping with some other new developments in the vicinity of the Ingles (Panera Bread and Gerber Village) which provide a close relationship of the buildings to the street.

As noted on the original staff report, the project will provide a 40' 'no-grade' buffer area at the rear of the store property adjacent to the rear tract and creek. In addition, Ingles will plant an evergreen screen against this 40 foot buffer space and other buffers for adjacent properties. The rear tract zoned Office Business District also provides a self imposed 40' side building setback from neighboring uses for any future development on the site. At the rear of that property a fifty foot wide 'no-clear', 'no-grade' buffer is provided against the single family neighborhood (Attachment to City Exhibit 3 - Tree Plan).

Staff after reviewing the revised plans noted the following minor comments: (1) Two additional street trees are required in front of the gas canopy area near the Mills Gap entrance; and (2) Open space should be specified on the plan (12,400 square feet) and could be made up entirely by the grass area at the front of the store or other areas on the site meeting UDO specifications.

Section 7-16-2(c) of the UDO states that the Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed driveway was reviewed by the N.C. Dept. of Transportation and the City Traffic Engineer without concern with the request. The driveway is not expected to create an endangerment for the community. The remaining site plans and configurations of buildings have also been reviewed by the Technical Review Committee members.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The project area is an existing shopping plaza on a retail corridor. Although some land forms have been changed to provide the new store pad, the existing parking area will provide additional green space and area for tree plantings. Adjacent property owners will be buffered as noted on the plans and the planting list. An emphasis on evergreens in the buffer yards will provide helpful screening.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The redevelopment of the Ingles Plaza is expected to increase the value of adjoining property in the area. The site will be brought up to code for items covered in the UDO. Neighboring properties will be provided with buffer screening as required by the UDO.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The Hendersonville Road area is one of the major shopping and business corridors for the south side of the City. The proposed development and amendments to the plan will be in harmony with the scale, bulk, coverage, density and character of the area. Neighboring properties will be screened as shown on accompanying landscape plans.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The Asheville City Development Plan 2025 recognizes the commercial nature of the corridor. Redevelopment of existing sites and making infill improvements of those sites is recommended. The proposal is in keeping with the official plans adopted by the City. The master plan shows a connecting network of sidewalks and the property is on the Asheville Transit line. A bus shelter will be provided on the site as a location to be mutually agreed to by transit officials and developer.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The corridor is one of the most heavily traveled corridors in the City. The site has good access to a traffic signal and is located on the bus route. All other infrastructure is in place to manage and facilitate the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The third driveway request provides a direct consideration for this standard. The third driveway provides a long deceleration lane to provide safer speeds for making the turn into the development. The traffic is not expected to be worsened by the addition of the third driveway cut. The other impacts of the development were reviewed by an earlier Traffic Impact Analysis (TIA). The plan was modified to reflect the comments from the TIA

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because the driveways have been reviewed for safety and design; the site plan has been redeveloped and will integrate the goals of the UDO, including landscaping, site access and sidewalk connections throughout the site, and landscape buffer yards; the building setback modification for Building E will reinforce a more pedestrian scale redevelopment in the area, and in general this retail use of the site is in keeping with the character of Hendersonville Road.

Considerations:

- An existing shopping plaza is being renovated
- The new development will comply with UDO requirements
- The development is in keeping with the scale and character and uses in the surrounding area
- The modified plans including the third driveway have been reviewed for safety and found to be compliant
- The setback modification request for Shop E will not compromise the character of the surrounding area

Staff recommends approval of the site plan and modifications to the third driveway and buildiing setback be approved with the following conditions: (1) Buffer and parking lot landscaping provided as shown in the plan with the addition of two street trees located near the gas canopy; and (2) Open space will be specified meeting UDO requirements.

Mr. Fred English hoped Council not not support this request until an Ingles is built on Tunnel Road in the old Wal-Mart space.

After rebuttal, Mayor Bellamy closed the public hearing at 5:33 p.m.

Upon inquiry of Councilwoman Cape, Traffic Engineer Anthony Butzek said that there will be a 5-foot sidewalk and a 5-foot buffer along Hendersonville Road.

In response to Councilman Freeborn, Traffic Engineer Anthony Butzek felt that the third driveway on Hendersonville Road was important to the traffic flow on Hendersonville Road.

In response to Councilman Newman, Mr. Glines said that a transit stop will be placed on Hendersonville Road in front of the development.

Councilwoman Cape wanted to make sure that the pedestrian amenities along Hendersonville Road will be functioning doors, storefronts and windows.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3405, granting an amendment to the conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel; subject to the following conditions: (1) Buffer and parking lot landscaping

provided as shown in the plan with the addition of two street trees located near the gas canopy; and (2) Open space will be specified meeting UDO requirements; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building orientation on the site and other site improvements must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department. This motion was seconded by Councilman Newman and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE NATIONAL BANK OF COMMERCE, LOCATED AT 11 CHURCH STREET, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3406 - ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE NATIONAL BANK OF COMMERCE, LOCATED AT 11 CHURCH STREET, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 5:39 p.m.

Historic Resources Commission Director Stacy Merten said that this is the consideration of an ordinance designating the property known as the National Bank of Commerce, located at 11 Church Street, as a local historic landmark. This public hearing was advertised on November 3 and 10, 2006.

The National Bank of Commerce with a period of significance from ca. 1899-1955 is significant historically for its contribution to the business development of downtown Asheville at the turn of the 20th century. The National Bank of Commerce, which became the First National Bank & Trust Company in 1931, was one of a small number of banks to survive the stock market crash of 1929, later merging first with Union National Bank of Charlotte in 1958 to become First Union National Bank of North Carolina and now merged with Wachovia, one of the largest banking institutions in the Country.

The building is also significant architecturally for its association with prominent Asheville architect Ronald Green, who designed many important buildings in the area including the Longchamps Apartments and the Jackson Building. It is also notable as being one of only a few buildings constructed downtown in the neoclassical style.

The building being designated evolved from three separate buildings. The northernmost built ca. 1899, the center built ca. 1901 and the southernmost building ca. 1906. In 1922 the two oldest buildings were joined creating the bank building. The third building was joined to the other in the 1940's. The designation includes all of the lots historically associated with the property (lots 33, 34 & 35).

This building was covered in 1965 and has since been restored back to its 1922 appearance.

The National Bank of Commerce is listed as a contributing structure in the Downtown Area National Register Historic District.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $2,550,900. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be $14,078.42.

The ordinance designates the National Bank of Commerce as a local historic landmark. The designation includes the exterior of the structure the property on which it is located, and the interior features as identified in the ordinance.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Based on the above findings and the analysis provided in the complete copy of the designation report, staff finds this request to be reasonable.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the National Bank of Commerce, located at 11 Church Street, as a local historic landmark. Staff concurs with the recommendation of the Historic Resources Commission for this designation.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Mr. John Dickson, President of Asheville Savings Bank, spoke in support of the designation.

Mayor Bellamy closed the public hearing at 5:46 p.m.

Councilman Mumpower felt that when you take people off the tax rolls, in this case by 50%, that is unfair to the other people who continue to pay taxes. He was also uncomfortable that when people get a significant tax break you take away some of their incentive of their investment in city government and their incentive to participate actively.

Upon inquiry of Councilwoman Cape, Ms. Merten said that the designation does not keep the buildings from being demolished, but can delay demolition for up to a year to allow the local preservation agency to work with owner to find an alternative to preserve it.

In response to Councilman Davis, Ms. Merten said that the landmark status is monitored.

After a short discussion of the process to which designation requests come before City Council, City Attorney Oast said that the process is set out in detail in the N. C. General Statutes and to the extent to which staff can notify Council what is coming forward may be somewhat limited; however, staff will do their best to give Council some advance notice on what is coming forward.

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Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. ~~3407~~ 3406. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 23 - PAGE 134

C. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE RANKIN/BEARDEN HOUSE, LOCATED AT 5 WOODLAWN AVENUE, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. ~~3406~~ 3407 - ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE RANKIN/BEARDEN HOUSE, LOCATED AT 5 WOODLAWN AVENUE, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 6:01 p.m.

~~Historic Resources Commission Director Stacy~~ Merten said that this is the consideration of an ordinance designating the property known as the Rankin/Bearden House, located a 5 Woodlawn Avenue, as a local historic landmark. This public hearing was advertised on November 3 and 10, 2006.

Ms. Merten said that the Rankin/Bearden House, with a period of significance from ca. 1848-1912 is significant culturally as one of the oldest intact frame houses in Asheville and one of the few remaining in Buncombe County. It is also significant for its association with William Dinwiddie Rankin, who was on the Asheville City Council and mayor from 1855-1857; James Eugene Rankin, the eldest son of W. D. Rankin and a prominent Asheville businessman and Civil War veteran; Marcus Josephus Bearden, partner is the Asheville Loan and Construction Company, which was responsible for much of Montford's development; and who in partnership with J.E. Rankin built the first tobacco warehouse in Asheville.

The Rankin-Bearden House is also significant architecturally in that embodies the distinctive characteristics of two important architectural periods, Greek Revival and Victorian Italianate. The house was significantly altered in 1866 when the original kitchen and servant's quarters were joined with the main house and again in 1899 when the chimneys were moved and the Italianate bay was added.

The Rankin/Bearden House is a contributing structure in the Montford Area National Register District.

The ordinance designates the Rankin/Bearden House as a local historic landmark. The designation includes the exterior of the house and the lot on which it is located, the faux-stone wall on the front of the lot and all of the interior features as identified in the ordinance.

When a property is designated as a local historic landmark, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local

significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $505,900. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be $2,792.06.

Based on the above findings and the analysis provided in the complete copy of the designation report, staff finds this request to be reasonable.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating Rankin/Bearden House, as a local historic landmark. Staff concurs with the recommendation of the Historic Resources Commission for this designation.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Mayor Bellamy closed the public hearing at 6:05 p.m.

Upon inquiry of Councilwoman Cape, Ms. Merten explained that the tax reduction can begin regardless of the state of renovation or rehabilitation.

Councilman Mumpower reiterated his concern with the 50% tax break.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3407. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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D. PUBLIC HEARING TO CONSIDER THE REQUEST BY THE ST. DUNSTAN'S COMMUNITY TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTANS' NEIGHBORHOOD

At City staff's request due to a posting error, Vice-Mayor Jones moved to continue this public hearing until November 28, 2006. This motion was seconded by Councilman Davis and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ADDITION OF PROPERTIES ON EAGLE AND MARKET STREETS TO THE LARGER CITY-OWNED PROPERTY INITIATIVE REQUEST FOR QUALIFICATIONS

Planning & Development Director Scott Shuford said that this is the consideration of a resolution to commit federal loan and grant funds for the redevelopment of property on Eagle and Market Streets.

This is a consideration of a request from Eagle Market Streets Development Corporation (EMSDC) that the City obligate $775,369 in CDBG Section 108 loan funds and $340,000 in Economic Development Initiative (EDI) grant funds for the rehabilitation of property at 17-23 Eagle Street (the Collette Building) and 38 South Market Street (the Del Cardo Building).

These funds were budgeted by Council in April 2004 for an earlier EMSDC project that included construction of an infill building behind the Collette and Del Cardo buildings. That project became the subject of a lawsuit, which delayed the project enough to prevent it going forward.

On April 12 this year, the PED Committee requested interested parties to make fresh proposals for redevelopment in the area, and on September 13 EMSDC presented a "Rehab First" proposal to the Committee, in which it would partner with a group of local investors: Jay Stewart, Doug Beatty, and David Moore (SBM) to rehabilitate the Collette and Del Cardo buildings, leaving new infill construction for a later, separate phase.

The Committee reviewed the proposal in depth at its October 11, 2006, meeting and recommended that it should be considered by Council, subject to some technical conditions. Staff, EMSDC, and SBM have since met and revised the organizational structure of the project so that most of the conditions are met.

The City received the $800,000 Section 108 guaranteed loan in August 2003 for the original redevelopment project. Since then, we have repaid to the Treasury a total of $156,135 in interest and principal repayments. We need to use the loan funds in a project which will generate program income for future loan repayments. There is no time limit on use of the funds and HUD will allow transfer to any eligible project that meets its underwriting criteria.

The $340,000 EDI grant must be expended alongside the Section 108 loan, not before, and must be fully expended by September 30, 2007 (non-waivable). Unlike the Section 108 funding, it is not transferable to another project, but we can request a revision which does not substantially weaken the project in terms of the factors on which it was originally rated (need, soundness of approach, leveraged resources, etc).

The two buildings will be renovated to provide a total of 13,000 sf of retail and office space. The total estimated project cost is $2,200,000 or $169 psf, including acquisition, rehabilitation, and soft costs. The project would not be feasible if it depended wholly on loan financing. Key elements in the financing are therefore the EDI grant, the $410,000 in acquisition and other costs already met from CDBG grant funds, and an estimated $500,000 in equity from Historic Rehabilitation Tax Credits. SBM will commit to contributing most of this equity.

EMSDC will retain control of both buildings during the rehabilitation phase, and will employ an experienced development consultant to act as its project manager. At completion, but before occupancy, EMSDC will place the property into a business condominium structure and sell the main floor of the Collette building to SBM for the amount of their tax credit contribution plus an appropriate share of the loan obligation(s). EMSDC will retain ownership of the Del Cardo and the lower level of the Collette.

Staff have closely reviewed the development pro-forma and discussed it with the development partners. Overall, the project appears to be feasible with the proposed financing structure. Risks are identified and discussed below.

1. There is a risk that HUD will not approve use of the EDI grant for the revised project. In that case, the project may not be able to proceed.
2. The timetable may slip, resulting in the loss of any EDI funds not drawn down from the Treasury by September 30, 2007. The timetable is already tight and any delays from now on will add cumulatively to this financial risk. However, the projected cash flow is sufficiently robust to allow some of the EDI grant to be replaced by conventional financing if needed.
3. As yet, there is no detailed plan for the rehab work. The per square foot costs are estimates based on recent costs for other buildings elsewhere. However, an adequate 20% hard cost contingency has been provided.
4. The rent assumptions appear reasonable based on staff knowledge of downtown rents, although no professional market survey has been presented. The 5% vacancy assumption is low, but the robust cash flow provides some safeguard.
5. Considerable pre-development work has still to be accomplished before construction can start. The following tasks must be addressed simultaneously:

   City Tasks
   a. Requesting and obtaining HUD permission for all of the Section 108 and EDI funds to be used on this rehab-only phase of the original project (underway - will take 1-3 months to get a final ruling from HUD);
   b. Updating the Environmental Review
   c. Finalizing the Section 108 loan and EDI grant agreements;

   EMSDC Tasks
   a. Completing architectural plans, cost estimates, and bid documents;
   b. Obtaining Park Service approval of the design – for tax credit purposes
   c. Submitting plans for review by Downtown Commission and S. Pack Square Design Review Committee
   d. Completing legal/organizational work for the tax credits;
   e. Carrying out an appraisal of the property
   f. Obtaining commitments for equity and bank financing;
   g. Bidding and selecting the contractor(s);
   h. Completing relocation of the last tenant in the Collette building.

Pros:

- Will rehabilitate vacant buildings and reduce blight on the Block (the Del Cardo, in particular, is a key structure because of its visibility);
- Will greatly increase economic activity on the Block, including opportunities to re-establish African-American owned businesses such as the Ebony Grill;
- Preserves historically-significant structures (especially the Del Cardo).
- Will make use of the EDI grant, which otherwise will be lost
- Will make use of the Section 108 loan, which is not currently costing anything in net interest but represents an opportunity cost;
- Proposal brings in significant private equity.

Cons:

- Risk of project failure due to cost over-runs, to loss of EDI grant funds after timetable slippage, or to higher than anticipated vacancy rates after completion.
- Consequent risk that part of the Section 108 loan funds will not be repaid, placing the burden of repayment to HUD on the City's CDBG fund.
- Continues a low density development pattern.

Mr. Shuford summarized three possible actions. One would be to approve the rehabilitation project proposed by EMSDC outlined above. Staff's review of the project is that it is doable, has a pro forma that is sound and it complies with the S. Pack Square Redevelopment Plan. The drawbacks to the project would be the limited scope of the project and the very tight schedule necessary to expend the federal funds. Concerns raised are that the project represents a considerable public investment to rehabilitate two low-rise buildings when the rest of downtown is going basically high-rise. So the question is whether the investment will create the necessary incentive for surrounding properties to also redevelop. The second option is to find a way to connect the Eagle-Market Street properties to a larger City-owned property initiative. Council is going through an evaluation of bringing other City-owned properties into the opportunity for redevelopment and through that master developer approach, it may create a situation where these properties will be able to be incorporated into that larger-scale redevelopment possibility and have the potential to affect more properties in The Block with redevelopment. One disadvantage is that the EDI grant will be put in even greater jeopardy than what has been proposed by EMSDC. We can petition HUD for additional time with the EDI grant. He didn't think it would be well-received, but there always is that possibility that we can keep the grant alive and we can reallocate the Section 108 funds to other projects that would comply with the HUB requirements. The last option is an option to take no action and wait for other alternatives to present themselves.

Mr. Darryl Hart, Chairman of the Board of Directors of EMSDC, presented City Council with a letter dated November 14, 2006. He said that they were excited to proceed with the Rehab First Project; however, they do support and welcome their inclusion in the City-owned property RFQ process. They look forward to scheduling a meeting with the Mayor and City Manager to discuss the RFQ process further about how it they will be a part of it.

Mr. Gene Ellison, property owner on The Block, supported the inclusion of his property on Eagle and Market Streets into the RFQ process.

Councilman Davis appreciated the efforts of the EMSDC and the private ownership on The Block.

Councilman Davis moved to include the Eagle and Market Streets property as part of the City's larger RFQ process. He specifically said that this is not to be entangled with the City-owned property, but to be looked at as a part of the on-going process we will begin later this month. This motion was seconded by Vice-Mayor Jones.

Upon inquiry of Councilman Newman about how these properties will interface with the City-owned property located around the City, Mr. Shuford said that the RFQ will be linked to a couple of properties that have a natural connection, but offer the opportunity for developers to submit their qualifications for a range of properties. He understands that Mr. Hart is suggesting that the EMSDC properties be added to that list. They would not be required to be redeveloped as a component of any other City-owned property, but they certainly are very close to other sites that we do expect to have considerable developer interest, primarily the City Hall parking lots. Because of that, should a major project be pursued for the parking lots and hopefully for the

facility along Charlotte Street, we would be in a position to see interest in surrounding properties because of the increase of activity and the economic development that will occur as a result of the development. He feels those properties will benefit from the larger scale development that is likely to occur.

There was a brief discussion initiated by Councilman Newman regarding the monthly amount spent in interest on the loan payments, resulting in the feeling that there should be a drop dead date. If it means losing the EDI grant, then we lose that grant, but we can put the Section 108 money into something that will happen in the near future.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that at the next worksession City staff will seek Council's guidance on the RFQ. Staff will ask for Council's broad parameters on what they want accomplished and staff will go out and see who is interested in being our partner in moving either some or all of the properties forward, and who can potentially bring some solutions to The Block.

In response to Councilwoman Cape, Mr. Shuford said there is a great risk of losing the $340,000 EDI grant. Regarding the Section 108 grant, we will lose whatever interest is paid and we may have the opportunity to allocate that Section 108 money to a different project in different area of town, but the goal would be to use that money and the commitment we made to The Block in The Block.

Councilman Mumpower was concerned that the EMSDC brought forward a proposal and then the City changed the course. Mr. Shuford said that the EMSDC is excited about the inclusion in the City-owned property RFQ and we think this is an opportunity for a successful outcome. He noted that it may be time to revisit the original South Pack Square Redevelopment Plan because conditions in Asheville and the downtown have changed since the Plan was adopted.

Mayor Bellamy said that Mt. Zion wants to help, but did not want to tie their property into anything that might have a negative connotation for the Church. They just want to see what happens. She understands that Council wants a timeline on where we want to go with this issue. She feels that City staff needs to apply for an extension of the EDI grant to see if it's possible to use those funds for this development and not lose our commitment of the Section 108 loan funds for the Eagle-Market Street. She personally feels that the City has received $800,000 of Section 108 loan funds and if we send that money somewhere else, she wants some other loans to come back in that amount for the Eagle-Market Street area, since they were the original community that applied for those funds. She said that Council is supportive of this endeavor whenever it moves forward noting that they will not lose sight of the renovation of The Block.

Councilman Newman explained why he felt that if we put this property into a larger process, he hopes that there is a way we can have some timing cut-off point so that things are not dragging on.

The motion made by Councilman Davis to include the Eagle and Market Streets property as part of the City's larger RFQ process, and seconded by Vice-Mayor Jones, carried unanimously.

At 6:48 p.m., Mayor Bellamy announced that City Council would take a short recess which would include a closed session. Councilman Mumpower then moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) To consult with an attorney employed by

the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Cape and carried unanimously.

At 7:12 p.m., Mayor Bellamy recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting.

B. RESOLUTION NO. 06-195 RESOLUTION AUTHORIZING THE PARKS AND RECREATION DEPARTMENT TO WORK WITH THE WESTERN NORTH CAROLINA DISC GOLF CLUB TO REVIEW THE PLANS OF THE DISC GOLF COURSE UNDER CONSTRUCTION AT RICHMOND HILL PARK

Assistant Superintendent of Recreation Jeff Joyce said that this is the consideration of a resolution authorizing the Parks and Recreation Department to work with the Western North Carolina Disc Golf Club (WNCDGC) to review the plans of the Disc Golf Course under construction at Richmond Hill Park.

On September 12, 2006, City Council unanimously approved having a Disc Golf Course at Richmond Hill Park. Council also voted to remove the ball fields from the original approved plan. In addition, Council directed Parks and Recreation staff to collaborate with the Disc Golf Club to review the plans and to make the Disc Golf Course as environmentally friendly as possible. A meeting was held on September 19, 2006, with staff and James Nichols, course designer, to discuss this process and to develop the timeline for the Council meeting on November 14, 2006.

Staff of the Parks and Recreation Department held two public input sessions concerning the Disc Golf Course. The first meeting was on Sunday, October 8, at Richmond Hill Park to tour the proposed course and to collect input. At the first meeting, 46 suggestions were made, of which close to 90% were incorporated into the newest course revision. These 46 suggestions were reviewed at the second public meeting held on Monday, October 16, 2006. New suggestions were accepted at this meeting. Staff has met with Disc Golf Club members on four occasions on site to make revisions and to try and meet the requests of the public. One of these visits was with Dr. Ed Hauser, a wetlands specialist. Together with staff, James Nichols, and James Wood, Dr. Hauser gave his input on ways to make the course more environmentally friendly. Many of his suggestions have been incorporated into the new design.

The result of the process is the design before Council. This is the fifth revision of the original plan. It should also be noted that there will be operational and maintenance costs associated with the course and other park features as they are developed. Funding for these costs will be incorporated in the Fiscal Year 2007-08 budget process for Council consideration. Costs for the relocation of the course will be absorbed by Parks and Recreation crews, with the assistance of WNCDGC. The material costs are part of the existing budget that has been approved.

Pros:

- Support of the disc golf community (petition with over 800 signatures supporting the course at Richmond Hill)
- WNC Disc Golf Club and City Staff worked hard at making the course as environmental friendly as possible.

- Course to be built at extremely low cost, with many of the materials used from fallen trees on site
- Labor pool from the WNC Disc Golf Club; their desire is to provide most of the work force.
- Disc Golf supporters have compromised several areas to protect the core habitat of the wetland area
- 9 holes moved out of 600'core habitat area

Cons:

- Some citizens simply do not want any development at Richmond Hill Park and to save it as a no-impact park

City staff recommends City Council adopt the resolution authorizing the Parks and Recreation Department to work with the WNCDGC to review the plans of the Disc Golf Course under construction at Richmond Hill Park.

The following individuals spoke in support of the disc golf course at Richmond Hill Park:

Mr. Ryan Pickens, a founder of the WNCDGC
Mr. James Nichols, member of the WNC Disc Golf Club and Disc Golf Course designer at Richmond Hill Park and other disc golf parks around the country
Mr. John Thelen, a founder of the WNCDGC (handed Council newspaper articles outlining his company's projects in the area)
Ms. Meredith Nichols, Chair of the WNCDGC (handed Council petition containing 575 local and tourists who support disc golf at the Richmond Hill Park)
A supporter for the disc golf course
Mr. Mike Brown, Pisgah Area Southern Off-Road Bicycling Association (also request for the development of a trail network at Richmond Hill Park)
Mr. Craig Fender, local business owner and disc golfer
Mr. James Wood (also request to establish an Ecological Advisory Committee; request for conservation easement at Richmond Hill Park; support for trail network; request for restoration of Smith Creek tributary; work with Asheville Botanical Gardens and others for wildlife and bird watching attractions)
Mr. Eric Marks, Asheville resident

Upon inquiry of Councilman Mumpower about the maintenance budget, City Manager Jackson said that we will treat this like any other new facility. The amount will not be significant and we will consider it as part of the overall budget planning. Mr. Joyce also responded that the WNCDGC will also help financially as they have made a tremendous commitment.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-195. This motion was seconded by Councilman Freeborn and carried unanimously.

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C. RESOLUTION NO. 06-196 - RESOLUTION ADOPTING A DOWNTOWN PARKING ACTION PLAN INCLUDING THE SCHEDULE AND FUNDING STRATEGY FOR THE PURPOSE OF PROVIDING PUBLIC PARKING

City Engineer Cathy Ball said that this is the consideration of a resolution adopting a Downtown Parking Action Plan including the schedule and funding strategy for the purpose of providing public parking.

The demand for parking in the downtown sectors of the city continues to grow. Original projections for growth in demand have proved to be too low in the present fiscal year. Parking demand for monthly permitted spaces has reached equilibrium very close to the total sold in fiscal year 2006 in spite of higher rates. From August 14 through September 30 transient parking increased at a rate of 10%. Prior to this period, demand was increasing at an annual rate of 2.9%. The total increase in demand for the four months starting July 1 through October 27th has been 6.1%. The Civic Center deck, historically one of the least used facilities, has twice experienced a full condition during the month of October. Other than during events where special event fees apply, this has not happened before. Last year during the month of September the Rankin deck, the most popular deck, experienced full conditions for 8 hours. This September the Rankin deck experienced 45 hours of full condition.

Staff has been evaluating several options for increasing parking in downtown. We have evaluated adding floors to the existing parking garages. While Rankin Street Parking Garage was originally designed to be expanded by two levels, the building code requirements for this structure have changed significantly making this option cost prohibitive.

The best option for increasing parking in the current garages is to demolish the existing garages and rebuild. Staff does not recommend this option until additional parking is available due to the loss of parking during demolition and construction.

Staff has developed a parking program that identifies several projects to increase parking in Downtown Asheville. Staff has limited the Downtown Action Plan to specific tasks that can be tracked for progress and costs. These projects include:

- Pave and landscape parking lot on the North Lexington Avenue.
- Implement monthly parking on Cherry Street.
- Determine the highest and best use of the property the City owners on Haywood Street. This includes working with the private sector to determine if a partnership can be developed to include public parking. (This process may involve a public charette to gain public input.)
- Formulate public/public/private partnerships for multiuse parking facility on Biltmore Avenue and Cox Avenue.
- Evaluate locating a parking facility on the existing surface parking lot the City owns on Rankin Avenue across from the Civic Center.
- Evaluate opportunity for public parking at or near the Senior Opportunity Center.
- Evaluate opportunity for public parking at the Sheriff's Office/Ann Street.
- Determine feasibility of placing a parking facility on North Carolina right-of-way over I-240.
- Participate in the development of the park side development plan to include necessary parking for the City/County area.

All of these options will be evaluated in conjunction with other Transportation Demand Management (TDM) tools in order to maximize transportation needs and minimize costs and environmental impacts. As part of the TDM evaluation, the staff will look for opportunities to provide park and ride and/or a downtown shuttle system. Additionally, staff will continue to monitor the parking fee structure to comprehensively determine impact on the downtown parking system. Once this Plan has been adopted by City Council, staff will coordinate with the Downtown Commission on the implementation of specific tasks.

We anticipate that the parking fund will contribute approximately $850,000 to a capital reserve fund this fiscal year. This money will allow us to fund the initiatives listed above. We

anticipate that most if not all of this money will be used in debt service for new facilities and maintenance improvements to the existing decks.

In Fiscal Year 2009 the City will have paid the debt service for the Rankin and Wall Street Garages. This will allow an additional $630,000 to be available for capital improvement funding.

Pros:

- Will allow staff to begin to move the process of forming partnerships and parking acquisition forward for council's final approval.
- Provide for needed public parking in Downtown Asheville.
- Allow for continued economic sustainability in the area.

Cons:

- Options will require a significant financial commitment. Staff will bring these costs to Council prior to executing any agreements.

City staff recommends adoption of the resolution adopting the following Downtown Parking Action Plan including the schedule and funding strategy for the purpose of providing public parking:

Item	Description	Schedule	Estimated Total Costs*
1	Evaluate adding levels to Rankin Street Parking Garage	Completed	N/A
2	Evaluate demo and reconstruction of existing parking garages	Completed	N/A
3	Evaluation of parking option in the Battery Park area	Completed	N/A
4	Determine highest and best use of the property the City owns on Haywood Street.	By June 2007	Unknown
5	Surface parking on North Lexington	By May 2007	$15,000
6	Surface parking on Cherry Street	By May 2007	$25,000
7	Evaluate possibility of new parking lot on Rankin Avenue across from the Civic Center	By June 2007	$13 M
8	Parking at or near the Senior Opportunity Center	By June 2007	Unknown
9	Parking at or near the Sheriff's Office/Ann Street	By June 2007	Unknown
10	Determine feasibility of locating parking facility over I-240	By June 2007	Unknown
11	Public/Private partnership on Coxe Avenue to include public parking	By June 2007	$3.5 M
12	Public/Private partnership on Biltmore Avenue to include public parking	By June 2007	$5 M**
13	Park side parking initiative	On-going	$10 M**

* Estimated total costs –These costs include previous expenditures and estimated future costs. Due to escalating construction costs these are subject to change.

** These are subject to change depending on financing options such as tax increment financing. This figure assumes $20,000 per parking space plus 20% contingency.

Mr. Barry Olen, representing the Grove Arcade Public Market Foundation and the Battery Hill Associates, presented City Council with a copy of his presentation. He reviewed with Council the background of downtown parking along with the business features associated with parking. He proposed a shoppers survey and a business survey to find out exactly what the individual needs are. He suggested working with representatives of retail, residential, office, service, etc. through the Asheville Downtown Association and the Grove Arcade Board to add to the survey questions. In conclusion, he reviewed (a) need for additional parking price variation as per convenience; (b) "staged" parking; (c) location of parking garage; (d) possible shuttle from outlying parking garage; (e) retail space as part of garages; and (f) public restrooms.

Dr. Dwight Buckner, President of the Asheville Downtown Association, said that they are planning a parking charette in January of 2007 and hoped the City would participate.

Councilman Freeborn felt that the reality is that we really don't know what our parking needs are since the last time this was reviewed was in 1998. He hoped that the Asheville Downtown Association will work with the TDM Coordinator to aggressively survey employers and shoppers to find out what their real needs are and incorporate that input into this Plan. He also supported the City participating in the parking charette in January.

After a short discussion about the City's plans for the surface parking on Cherry Street, Councilman Newman supported keeping that lot free.

Councilman Mumpower explained why he felt this Plan removes the most viable option for near term relief of our parking problems and that is the parking deck that has been planned for years in front of the Civic Center. He felt it abandons commitments made to business people, the Grove Arcade and others downtown. He felt we are indulging special interests over the community interests. He felt that that with original plan could have been modified. He also felt that we have missed the opportunity to partner with Buncombe County on their two parking initiatives - the proposed parking garage by the Health Department and the proposed parking garage on Coxe Avenue.

Vice-Mayor Jones said that we are actively pursuing working with the County with the idea we are bringing resources to both of their proposed parking garages.

City Engineer Ball said that we are not sure if we can add more public parking on the lot across from the Health Department but we would like to enter into some agreement with Buncombe County to help them manage that and see if it's available for off-hours public parking. However, we are still hopeful we can still add some public parking on that garage. We are still in the very early stages of the proposed parking garage on Coxe Avenue with the opportunity to add public parking.

At the request of Councilwoman Cape, it was the majority of Council's decision to add "Public/Private Partnership on lot next to Health Department to include public parking" as another item to the Downtown Parking Action Plan.

Councilman Davis felt there was a strong indication that the City can partner with Buncombe County for public parking to be included on the proposed garage on Coxe Avenue. He would also support a scaled down version of the original plan for the parking garage in front of the Civic Center.

At the suggestion of Councilwoman Cape, it was the majority of Council's decision to add "Property Scouting for the Future" with an on-going schedule, as another item to the Downtown Parking Action Plan.

Mayor Bellamy said that regarding the parking garage in front of the Civic Center, the reality is that the City doesn't own the key property to build the deck.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-196. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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D. OWENS REPORT UPDATE - PRUDENTIAL SIGN; STAPLES; AND GREENLIFE

Assistant City Manager Jeff Richardson said that the purpose of this report is to update Council concerning staff efforts to address community and Council concerns about the Greenlife, Staples and Prudential developments.

Council received a report from Professor Owens of the Institute of Government and directed staff to contact the affected property owners/businesses about what steps might be taken to address the indicated concerns. The following is the result of those staff efforts for each development:

Prudential Sign – This involved an attached sign on the east-facing façade of the building that did not meet code requirements. The business owner has removed the sign in question, replacing it with a conforming sign on the south-facing façade. The site is now in full compliance.

It was the consensus of Council that no further action would be necessary on this issue.

Staples – Staff made a conference call to Staples executives on September 19, 2006, and discussed options for addressing community concerns. The Staples executives requested an opportunity to internally discuss how they might address these concerns and asked for approximately one month to develop some concepts for consideration. The teleconference was followed up with correspondence from staff. We have not had a response from Staples at this time; however, it is his understanding that Staples corporate headquarters will come back to the City with a more detailed response to the concerns that have been previously noted.

Mr. Mike Lewis stressed for the need of enforcement of the Unified Development Ordinance and asked that in any future correspondence with Staples that it be worded that City Council (not the community) is concerned about possible violations and that the violations need to be rectified within a certain timeframe.

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods, agreed with Mr. Lewis in that any correspondence to Staples needs to be specific and stress the urgency of the situation. They need to be specifically asked to respond to the violation of setbacks, the size of their signs and the pedestrian amenities. He feels it is time that the City issue a Notice of Violation. The notice would clearly define what Staples must do to become compliant with the Unified Development Ordinance (UDO) and it would also stipulate a timeline by which Staples must come into compliance. Another option for City Council is to require Staples to seek a variance from the UDO standards through the Board of Adjustment appeals process. Either way, City Council needs to provide resolution to this issue.

After a short discussion, it was the consensus of Council to have the Mayor write a letter to Staples, with language that this is a City Council concern, inviting them to attend a near certain date Council meeting and be prepared to address the issues raised, e.g., signs, pedestrian amenities to soften the flat wall in some form of green-screening, etc.

Councilman Freeborn was concerned that the building is not Americans with Disabilities Act compliant.

At the suggestion of Councilwoman Cape, Mayor Bellamy said that City Council will hold a closed session next week about what our options are with regard to Staples.

Vice-Mayor Jones felt it was important for the community to know that the letter is not the only communication City staff has had with Staples.

Greenlife - Staff reiterated concerns about the effects of the loading dock on the surrounding Maxwell Street community to both the business owners and the property owners.

Mr. John Swann addressed City Council on the short-range and long-range options to address concerns. He handed Council a copy of the receiving/loading dock reconfiguration options. He asked for some clarification on where Council stands on the options.

Using maps, Mr. Swann explained the options stating that he is interested in solving the concerns. One option would be to leave the configuration as is. The pros would be it would be no cost and no disruption of business. The cons would be that it does not address the issue of truck traffic on Maxwell Street; does not address the issue of buffer zone on Maxwell Street; current configuration is difficult for delivery drivers; and current configuration is not adequate for future business growth.

Another option - Intermediate Option #1 would be to move the loading dock to the east end of the building. The pros would be that it removes tractor-trailer traffic from Maxwell Street; allows for the largest (approximately 23 feet) buffer zone along Maxwell Street; and would not affect house or trees at the corner of Maxwell Street. The cons would be that the existing terrain is extremely steep and would require extensive fill and retaining wall; would require new corridor across entire back of building; would trigger requirement for whole-building sprinkler system; would require relocation of offices and/or refrigeration rack and/or walk-in coolers and/or main electrical service; would obliterate Bordeaux entrance to property; truck access is next to impossible with this configuration; would remove access to lower parking lot; would require removal of outside café seating porch; does not address smaller delivery and service truck traffic on Maxwell Street; substantial disruption of business; does not address future business growth; and cost estimate at $400,000 - $500,000 or more.

Another option - Intermediate Option #2 would be to rezone the residential lot at the corner of Maxwell Street and Greenlife exit, move or demolish the existing house, grade and pave the lot and realign loading dock. The pros would be that it removes tractor-trailer traffic from Maxwell Street and allows for slightly larger (approximately 7 feet) buffer zone along Maxwell Street. The cons would be that it requires rezoning from the City; requires cooperation of landlord; requires moving or demolition of house; requires removal of two large mature trees; some disruption of business; does not address smaller delivery and service truck traffic on Maxwell Street; does not address future business growth; and cost estimated at $75,000 - $100,000.

Another option - Long-Term Option #1 (includes Intermediate Option #2 above) would be to add onto the east side of building (including structured parking), remodel existing café into new loading dock, build loading corridor from new loading dock around coolers to back of building.

The pros would be that it removes tractor-trailer traffic from Maxwell Street; allows for larger buffer zone (approximately 13 feet) along Maxwell Street; may not require removal of large mature trees; and addresses future business growth. The cons would be that it requires zoning from City; requires cooperation of landlord; requires moving or demolition of house; may require cutting down two large mature trees; does not address smaller delivery and service truck traffic on Maxwell Street; considerable disruption of business; and cost estimated at $250,000 - $300,000 (cost estimate is for reconfiguration of loading facility only and does not include cost for store expansion).

Another option - Long-Term Option #2 which is to add onto the east side of the building (including structured parking), include loading dock in new construction. The pros would be that it removes all delivery trucks from Maxwell Street; allows for largest (approximately 23 feet) buffer zone along Maxwell Street; and addresses future business growth. The cons would be that it does not address service truck traffic on Maxwell Street; requires widening and/or realignment of Marcellus Street and/or Bordeaux Street; may not be compatible with new residential condominium construction on Bordeaux Street; would require freight elevator and new corridor along entire back of building; would require relocation of offices and/or refrigeration rack and/or walk-in coolers and/or main electrical service; new loading area would take up valuable space that could be used for employee/customer parking; potential for major disruption of business; and most expensive option - cost estimated at $500,000 - $750,000 or more (cost estimate is for reconfiguration of loading facility only and does not include cost for store expansion).

Ms. Hilary Stewart said that she rents a house directly across from the Greenlife loading dock and garage area on Maxwell Street. She explained the practical non-stop noise, exhaust fumes and even rats. She questioned why the nosey unpleasant part of the store wasn't put on the other side of the building.

Ms. Elsa Stewart, resident on Maxwell Street, said that Greenlife has extremely bright orange lights that angle into their house. In addition, the garbage area attracts rats. She suggested the garbage area be moved to the other side of the building.

Mr. Reid Thompson, resident on Maxwell Street, felt it was time City Council enforced the laws. He showed Council pictures of the lack of Greenlife's vegetative buffer and also pictures of a tractor trailer truck unloading - not in the loading docks - but unloading on Maxwell Street. In addition, he said that since the City moved the "No Parking" sign, his personal vehicle has been ticketed every time he calls about trucks on Maxwell Street.

There was considerable discussion by City Council of the options Mr. Swann presented and each Council member voiced their ideas, concerns and/or preference. Most voiced support for Long-Term Option #2 with some sort of short-term solution for residents on Maxwell Street.

Mr. Swann said that the maps are not drawn to scale or drawn by anyone with expertise. The next step would be further analysis of all these options and then to take the plan to a professional designer to see if the plan is feasible and that in itself will be expensive. He asked for any help the City could give with that, possibly some economic development funding. If Council is interest in Long-Term Option #2, they will need some technical assistance because no one in his organization has the expertise to plan such a project. He felt that in some ways the City has inadvertently gotten Greenlife into this situation because from their point of view, they went through the entire permitting, review and building process and no one raised a question until the business was opened. He would appreciate anything the City can do to help them address this situation.

Councilwoman Cape didn't think that it was important that we micromanage Greenlife's building changes but that we make certain that the UDO requirements of the buffer and traffic off Maxwell Street are upheld.

At the suggestion of Councilman Mumpower, Mr. Swann said that if they will take into consideration of moving the cooler, which will get them closer to the 20-foot buffer.

When Mayor Bellamy said that the Owens Report specifically states that "it appears that truck traffic should not have been allowed to use Maxwell Street," Traffic Engineer Anthony Butzek said that the City can design some type of structural islands to keep trucks off the street.

Councilman Newman feels that if Greenlife is willing to work with the City in good faith and put some resources forward to look at the different options, we should meet them half way and ask the City Manager to look for which option(s) would be the most workable solution

Councilman Davis would like for Mr. Swann to give a little more direction on where he wants to go with his business; and, if we can make it happen, he would be willing to have only our planners work with him.

In response to Councilwoman Cape, Mr. Swann said that few sites in the City are big enough for his business; but the Deal Buick site is not out of the question. However, Greenlife is committed to a long-term lease at the existing site.

At the suggestion of Councilman Freeborn, the majority of Council decided that the next step would be to have Councilman Freeborn and Councilman Newman take a role in this by working with staff, Greenlife and community representatives to get Council's short-term and long-term expectations fully realized and make sure they are in line with reality. The report will be brought back to Council in 30-60 days.

It was the majority of Council's decision to instruct the City Attorney to investigate the issue of issuing tickets to private vehicles on Maxwell Street.

E. STATUS OF ROADWAY IMPROVEMENTS BY TARGET CORPORATION

Traffic Engineer Anthony Butzek said that in 2003, Target was issued a Certificate of Occupancy. They were required to post a bond in the amount of $350,000 to complete roadway improvements determined to be necessary by the completed traffic study. City staff has subsequently been involved in ongoing efforts to encourage Target to complete the necessary improvements. While progress has been slow, Target now appears to be making good faith efforts to complete the required improvements.

Two specific off-site roadway improvements were required to mitigate Target's traffic impact:

1. Installation of a traffic signal at the intersection of River Hills Road and Circuit City/Pier One
2. Addition of a second eastbound left-turn lane on Swannanoa River Road at S. Tunnel Road

1. Traffic Signal

Metal poles and arms were ordered in summer 2006. Construction of the traffic signal began in September 2006. Work is well underway, and metal poles and arms have been installed. Outstanding items include adjustment of improperly installed arms, reinstallation of signals, wiring and activation of the signal, and repaving and restriping of

eastbound River Hills Road approaching the signal. An estimated completion date is being sought.

2. Turn Lane

This portion of the project requires approval of the N.C. Dept. of Transportation (NCDOT) since they maintain Swannanoa River Road, S. Tunnel Road, and Wood Avenue. Target has approval from NCDOT for most of the work, but is still waiting on approval for the necessary modifications to the traffic signal (this approval has to come from Raleigh). Target's contractor was apparently ready to begin work within the past two weeks, but was asked by NCDOT to delay the project until late winter or early spring. The reasons for this included the approaching holiday traffic, and the fact that the work was starting so late in the year due to Target's inability to get final NCDOT approvals. The difficulty of constructing during cold weather was also a consideration. Given the proximity of the holidays and the impact that ongoing construction would have on the associated traffic, staff supports this decision and has requested a start date of approximately March 1. This project is expected to take two to three months to construct.

Based on the current process, it would be reasonable to expect that all work would be completed by the end of May 2007, possibly sooner. Additional information will be provided by staff at the meeting as it becomes available.

In response to Councilman Mumpower about getting improvements completed on a timely basis, Mr. Butzek said that the City staff has already implemented a procedure whereby City staff is more stringent in ensuring that improvements are in place prior to the issuance of a final Certificate of Occupancy.

Upon inquiry of Councilman Mumpower, Mr. Butzek said that it is reasonable to put timetables in place. In terms of the signal, we expect this to be operating before Thanksgiving. With the turn-lane improvements, a March 1, 2007, start date is what the City has requested.

In response to Mayor Bellamy, City Attorney Oast said that we are certainly in a position to state that Target is not in compliance and whatever enforcement that emanates from that we can pursue.

With regard to compliance deadlines, it was the consensus of City Council to instruct the City Attorney to work with Mr. Butzek and Target to come up with an agreement that has real penalties built into it with regard to establishing dates and timelines, with said agreement being voted on by Council on November 28, 2006.

V. NEW BUSINESS:

A. ROCK HILL ROAD SANITARY SEWER REQUEST

City Engineer Cathy Ball said that the purpose of this report is to provide information to City Council on the availability of sanitary sewer on sections of Rock Hill Road as well other areas of the City.

Early this fall, Mr. Author Edington of 236 Rock Hill Road contacted the City requesting information about the location of sanitary sewer adjacent to this residence on Rock Hill Road. Staff informed Mr. Edington that the closest sanitary sewer line to his property was approximately five hundred feet along Rock Hill Road. Mr. Edington's septic system recently failed. He was notified by the N. C. Dept. of Health Services that he could not utilize a septic tank system to dispose of his waste water.

On October 12, 2006, City Council received a petition from Mr. Edington and adjacent residences requesting public sewer service.

After follow up investigation staff was able to determine the following:

- The subject property was annexed into the City in 1983.
- Staff could find no evidence that the City was required to provide public sanitary sewer to properties in this area.
- There are approximately eleven homes in this area that do not have access within 300 feet of their home. (The N.C. Dept. of Health Services requires that homes within 300 feet of a public sanitary sewer system.)
- There are approximately ten areas in the City that contain four or more homes that do not have access within 300 feet to a public sanitary sewer line.
- The current practice of the City of Asheville for annexation areas is to provide public sewer service within 300 feet to all existing homes in the annexed areas.
- Public sewer service is provided by Metropolitan Sewerage District (MSD). As part of the Consolidation Agreement, MSD does not extend sewer service in the district.

The cost to provide public sewer service to all eleven homes in this area is estimated to cost $850,000. These costs include design, permitting, easement acquisition and construction. The cost to provide public sanitary sewer service to 236 Rock Hill Road is approximately $100,000. These costs include design, permitting, construction and resurfacing the street.

The other areas that do not have four or more residences and do not have public sewer service within 300 feet are included in the table below.

Item	Area	Annexed	Number of Residences	Cost to Provide Public Sewer
1	Sourwood Lane	1973	4	$745,000
2	Rock Hill Road	1983	11	$850,000
3	Galloway	1988	6	$415,000
4	Gashes Creek	1973	34	$1,440,000
5	Oak Hill	1960	8	$750,000
6	Spooks Branch	1960	4	$410,000
7	Oteen Church	1973	7	$1,050,000
8	Baker	1960	4	$460,000
9	Beaverbrook	1960	19	$1,140,000
	TOTAL			$7,260,000

If Council authorizes staff to move forward on installing public sewer service in the Rock Hill Road area, the design would need to be completed and permits acquired prior to construction. We estimate that construction could begin in the summer of 2007.

Staff recommends that this request be evaluated as part of the annual budget process due to the financial impacts of this decision.

Ms. Helen Edington, resident on Rock Hill Road, said that their septic tanks are failing and since they are City residents, urged City Council to do something a soon as possible.

Mr. James Grant, property owner in the Rock Hill Road area, sought City Council assistance for the homes in the Rock Hill Road area.

Upon inquiry of Councilman Mumpower, Ms. Ball said it was her understanding that the Health Department will not allow a septic tank at the Edington home because the septic field area has become so saturated that it won't allow discharge and therefore it won't pass the test. There is not another location on their property where they can site the septic field that will pass the Health Department's requirement.

In response to Councilman Mumpower, Ms. Ball said the only options are to provide another septic tank system or to provide public sewer service. The option of public sewer service to where the property owner has more flexibility in being able to pay for it is the option of doing a special assessment, but $850,000 for 11 homes over 5 years is still a lot of money for the homeowners. Also, some smaller apartment complexes have a septic pool if you can find a location.

Councilman Freeborn was familiar with two types of septic systems, one of which is for land that doesn't percolate. That may be a short-term solution. But, ultimately, these are City residents and we should help. If a special assessment process is used, he would support allowing them to pay over 20-30 years.

Vice-Mayor Jones said that situations like this will be coming forward and perhaps the City, MSD and the affected residents can meet to see how we can plan for this in the future.

Mr. Tom Hardy, representing MSD, reiterated that as part of the 1990 Consolidation Agreement, MSD does not extend sewer service in the district. He recommended doing a little more in depth research on these sites with the Health Department and prioritize and see how bad the sites are, like if the sites are failing. There are other options to on-site systems and you will need to find out what the Health Department will allow in terms of alternate on-site technologies. That may be where we can save some money. If we find that we can't do that and we have to go to public sewer, we will be glad to market our resources as far as engineering and design and that sort of thing to help out. We could do that a lot more efficient than a consultant because we do a lot of rehab and we have engineers in house. Before a budget is estimated, you should survey it, lay it out and then get a tight budget estimate for at least this hot spot. But first, the Health Department should determine how many of the 11 are hot spots and are there on-site systems that could serve that purpose.

Vice-Mayor Jones thanked Mr. Hardy for his offer of technical assistance.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that City staff will be reviewing with Council next week some annexation policies.

In response to Mayor Bellamy, City Attorney Oast explained what services the City provides when an area is annexed.

Upon inquiry of Councilwoman Cape, Ms. Ball said that none of these areas qualify for Community Development Block Grant funds.

Understanding the urgency, it was the consensus of Council to instruct the City Manager to work with MSD and look at all available options and then report back to Council with cost estimates on each option and time frames to make each of those happen on December 12, 2006, with the overall plan for the boarder problems, but report back to Council on November 28, 2006, with a specific plan for the Rock Hill Road immediate problem.

Ms. Ball said that in the meantime, given the urgency of the situation, we may try to see if there is some way to pump the system on a regular basis in order to meet the Health Department Codes so they wouldn't necessarily be in violation. We would have to work with the Health

Department to see how quickly that would have to be done to meet their requirements until some other measures are put in place. In addition, City staff will try to get all the people out there to meet together and look at other opportunities. If there is another way to do a different kind of septic system that would work, we would probably try to do that since that would happen quicker than putting in a new sewer line.

B. LEGISLATIVE PROGRAM FOR 2007 SESSION OF THE N.C. GENERAL ASSEMBLY AND THE FISCAL YEAR 2008 FEDERAL PRIORITIES STATE AND FEDERAL LEGISLATIVE AGENDA

City Attorney Oast said that that the purpose of this agenda item is: (1) To review significant legislation of interest to municipalities from the 2006 "short" session of the N C. General Assembly; (2) to review the outcome of Council's legislative requests from 2006; and (3) to give the Council an opportunity to begin discussion of issues it may wish to include in a Legislative Agenda for the 2007 Session of the North Carolina General Assembly, and for federal priorities for the upcoming 110th Congress.

In recent conversations the Council has expressed an interest in beginning its development of a legislative program earlier than it has in past years. In recent years, the Council has begun these discussions no sooner than in January or February.

The North Carolina League of Municipalities (NCLM) recently held its Annual Convention in Greensboro.

The following is the new potential legislative initiatives that Council members have noted as of interest. For the Federal Legislative Agenda (1) Illegal Immigration - Support for national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens; (2) Social Security Office Location - Support changes to require that Social Security offices be located on public transportation routes so that all citizens have access to the services provided by the agency; (3) North Carolina Health Choices Initiatives - Support federal legislation securing the necessary funds to continue to insure our children in North Carolina by supporting Senate Bill S. 3913 (Keeping Children Covered Act of 2006); and (4) Minimum Wage - Support raising the federal minimum wage. For the State Legislative Agenda (1) Safety for Children in Public Parks - Support legislation that strengthens the laws regarding the sex offenders and public protection registration programs to protect children in public parks (2) Illegal Immigration - Support for national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens; (3) Chimney Rock - Support creation of Chimney Rock as a new State Park; and (4) Real Estate Transfer Tax - Support North Carolina General Assembly legislative action for an act to authorize Buncombe County to levy an excise tax on instruments conveying real property in Buncombe County.

Initiatives identified by Council currently on the 2006 Legislative Agenda include (1) Criminal Justice System Reform - Support continued legislative review and action as necessary to address criminal justice system funding issues, particularly as they affect Asheville; and (2) Repeal Sullivan Acts - Support repeal of the Sullivan Acts II and III.

Council has an opportunity to (1) identify potential new initiatives; (2) select initiatives for inclusion in a state and federal legislative agenda; and (3) consider how to communicate with our legislative delegation.

Because the 2007 session is a long session, the legislature is not as restricted as in the short session as to the items it may consider. The deadlines for submission of local bills to Bill Drafting, and for introduction in one of the two houses of the General Assembly are typically

established during the first week of the session. However, it is not too early to begin discussions with the members of our delegation, before they go down to Raleigh. Some of this discussion can occur at the meetings of the Chamber of Commerce Legislative Task Force, which both Council and City staff regularly attend. The City's legislative program will be reviewed at an upcoming meeting of the Task Force.

City staff recommends that Council discuss its interest in Legislative initiatives for the upcoming session of the North Carolina General Assembly, as well as federal funding priorities for Fiscal Year 2008-09 and what further steps it may wish to take to develop a state and federal legislative program.

On April 25, 2006, the City Council adopted Resolution No. 06-91, and transmitted it to the members of the General Assembly whose district includes Asheville. The following actions were requested and taken:

1. **Request**: Amendment of the 1993 local act affecting utility franchise taxes paid by CP&L (now progress Energy) and PSNC to include settlement of the litigation arising from the annexation of Progress Energy's Lake Julian facility.

   Action: Amendment adopted as submitted.

2. **Request**: Legislative annexation of general properties south of town (at the request of the property owners).

   Action: Annexed as requested.

3. **Request**: Consideration of legislation to establish a funding source for the Asheville Civic Center.

   Action: No action taken, but a response came from Senator Nesbitt indicating that legislative action would not be appropriate until there had been some preliminary discussion with the delegation, and until the City had resolved its position on the matter.

4. **Request**: Repeal of the Sullivan Acts.

   Action: No action taken.

The remaining items in Resolution No. 06-91 were not specific to Asheville:

5. **Request**: Review level of funding to the criminal justice system.

   Action: In the law amending the 2006, the following additional positions were authorized and funded:

   a. District Court Judge seats increased from 7 to 8.

   b. Assistant District Attorney positions increased from 11 to 13.

   c. Cap on number of magistrates (previously 15) was removed.

6. **Request**: Support Land for Tomorrow initiative for referendum on issue of State funding ($1 billion) for public lands. Also supported by the Chamber's Legislative Task Force.

   Action: No action taken.

7. **Request**: Oppose efforts to dilute local amendment over cable TV franchise.

   Action: A law of statewide application was adopted. Although the law dilutes local authority significantly, some local government concerns were recognized and incorporated into the law prior to adoption. A more detailed report will be provided to Council at a later time.

8. **Request**: Support an increase in the minimum wage to $7.00/hour.

   Action: The minimum wage was increased to $6.15/hour, effective January 1, 2007.

We are continuing to gather information about Council's other legislative concerns, and will report our findings.

With regard to the general state legislation of interest items, because 2006 was a "short" session, the potential for major legislative action for affected cities was somewhat limited. Following is a listing of some general laws of interest. Some items are covered in the memorandum dealing with Council's legislative requests.

1. Amendments to "Bill Lee" act. This law enables local governments to identify zones within their jurisdictions, that because of depressed economic conditions, are eligible for tax credits. The law was amended to narrow the criteria for qualification, but expands the businesses eligible for credit.

2. Eminent domain powers. In response to the Kelo v. New London decision from the U.S. Supreme Court, legislation was adopted that narrows the purposes for which local governments in North Carolina can use the power of eminent domain.

3. As reported to Council earlier, local governments were authorized to permit their law enforcement officers to perform the functions of an immigration officer pursuant to a Memorandum of Understanding with a federal agency.

4. Stormwater – Some changes of a technical nature were made to the 2004 law to conform its provisions with regulations adopted by the Environmental Management Commission.

There was other legislation of interest to municipalities; the list set out above is necessarily selective, based on matters that have a direct and potentially significant impact on cities, or with respect to which Council has expressed an interest.

City Attorney Oast urged Council to come to him or Economic Development Director Sam Powers with any requests for legislation. He also suggested that Council begin contacting our legislators now.

C. PRIORITIES FOR FUNDING UNDER THE SURFACE TRANSPORTATION PROGRAM - DIRECT ATTRIBUTABLE PROGRAM (STP-DA)

Metropolitan Planning Organization (MPO) Coordinator Dan Baechtold said that this is consideration of support for using federal Surface Transportation Program – Direct Attributable (STP-DA) money to fund small transportation projects with high priority at the local level. The Metropolitan Planning Organization is in the beginning stages of discussions about programming these funds. The MPO has put out a preliminary "call for projects."

STP-DA – This term refers to a federal funding source for transportation projects. The acronym stands for Surface Transportation Program – Direct Attributable. The term "Direct

Attributable" refers to the fact that this is the portion of federal STP funds that are allocated directly to our area, and the amount of the funds can be attributed to the population of our urbanized area.

The Asheville Urbanized area receives about $2.7 million per year in STP-DA funds. The Asheville urbanized area includes portions of Buncombe, Henderson, and Haywood Counties. The membership of the French Broad River MPO is made up of all the local governments in the three counties.

The MPO has the option to choose how these funds will be programmed. Through its committees (the Transportation Advisory Committee and Technical Coordinating Committee), the French Broad River MPO could select which projects will be constructed with STP-DA funds. The STP-DA funds can be spent on most types of capital improvements for transportation. Some examples include: road widening, intersection improvements, sidewalks, greenways, bicycle lanes, streetscape and landscaping improvements, crosswalks, and transit capital projects such as purchasing buses, shelters, or benches. The funds can be spent on all aspects of the project including design and the purchase of right of way.

The French Broad River MPO is currently seeking input from local governments to determine high priority local projects that would be good candidates for these funds. The MPO will then enter into discussions with NCDOT to determine a process for programming the funds in the Transportation Improvement Program (TIP).

At a later date, the MPO will put out a more formal call for projects and determine a method for equitably distributing the funds throughout the region. For this preliminary call for projects, City staff has identified a list of local transportation needs that are either under-funded or have no funding source. This list is in draft form, but will be used as a starting point for discussions at the MPO level.

PROS:

- This funding source provides an opportunity to accomplish small transportation projects in a variety of categories.
- There are many documented local transportation needs that are under-funded.
- STP-DA funds are flexible and can be used for road improvements, sidewalks, bicycle projects, greenways, crosswalks, landscaping, and transit improvements.
- The funding can be used for all aspects of the project including design and purchase of right of way.
- In the past, the regional MPO process for prioritizing projects has been cooperative and successful.

CONS

- This is not new or additional funding. The money is currently committed to other projects in our region. The MPO will need to work with the NCDOT to make adjustments to the TIP to make these funds available for locally selected projects.
- Projects that are locally selected and paid for with STP-DA funds will require a twenty percent (20%) local match.
- The City will be responsible for all aspects of project management, including purchase of right of way, design, and construction. Project management can be complicated and time-consuming and will require additional staff resources.
- Equitable distribution of the funds will require regional cooperation.

City staff requests Council support the process at the MPO level to program STP-DA funding on the high-priority local projects list developed by staff.

Mayor Bellamy said that she has received a request from a state representative for Council's support on this initiative; however, he does want the MPO to allow the N.C. Dept. of Transportation to define where the money will come from, as opposed to the MPO.

It was the consensus of Council to support the process at the MPO level to program STP-DA funding on the high-priority local projects list developed by staff.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 6 - November 2, 2006: G. Bryon Zimmerman (Parks & Recreation), Rhea Cravens (Water), Lee Shepard (Streets), Tom Fisher (Streets), Kara Hastings (Sanitation), James Gregory (Streets) and Edna Stancil (Streets).

The following claims were received during the period of November 3 - 9, 2006: Cue'N Spirits (Water), Kevin Hackett (Parks & Recreation), Marquel Fisher (Sanitation), Belinda Blankenship (Police), Juanita Medford (Sanitation) and Christina Leif (Engineering).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to Council about the quality of life and the need for quality public education. He said that recently he has received reliable reports that some City departments are not conforming to the requirements of Section 6.2 of ISO 9000 I for quality personnel practices in general and may, in some cases, be in violation of the provisions of Title VI of the 1964 Civil Rights Act. Mayor Bellamy instructed the City Manager to investigate the allegations cited by Mr. Hampton.

At 10:30 p.m., Councilman Freeborn moved to continue the closed session. This motion was seconded by Councilman Davis and carried unanimously.

At 11:00 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:00 p.m.

Kesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – November 21, 2006 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

GROVE ARCADE UPDATE

Ms. Ruth T. Summers, Executive Director of the Grove Arcade Public Market Foundation, updated City Council on the Grove Arcade Public Market. She said that concerted efforts have been made by the Foundation and staff to evaluate tenant mix and to seek out and attract sustainable businesses that enhance the Grove Arcade and its tenants. She explained that the successes which include the retail floor is 96% leased, 10 new businesses opened; 5 businesses have expanded; and only one retail space is vacant (682 square feet). She then explained the tenant mix in the Grove Arcade consists of fresh food; prepared food & restaurants; service providers; specialty stores; and arts & crafts. She said the Grove Arcade exemplifies the entrepreneurial spirit and unique homegrown business model.

She explained they are continuing to face the challenges of addressing inherited financial problems by: (1) streamlined management; and (2) reduced receivables and administration costs. To move forward they have (1) restructured foundation board and added new members; and (2) redefined mission statement and adopted the following to guide our actions - "To effectively operate a premier destination in downtown Asheville, filled with successful businesses and educational programs that reflect our mountain heritage and cosmopolitan taste". They are a community gathering space and they have also become a venue for neighborhood events.

Ms. Summers responded to various questions/comments from Council, some being, but are not limited to: how many residential units and office space is vacant on the second floor; how was the new mission statement created; is the Grove Arcade looking at the public component and reaching out for events; are the tenants happy with the new direction away from more of the agricultural field to food and specialty shops; and is a public market feasible in the Grove Arcade.

In response to Councilman Mumpower, Ms. Summers explained that the lack of parking does have an economic impact on the success of not only the Grove Arcade but all downtown businesses. She wondered if Council could work with the federal government to open up the federal building parking lot because the federal court people are using the Wall Street Parking Garage and there are many times the garage is full and not available for transient parking. She also mentioned the difficulty of finding the existing parking garages. In addition, she said that the Grove Arcade is in the process of compiling information to present to the City in the future about the restructuring of the Certificates of Participation Loan for a longer period of time.

In response to Mayor Bellamy, the Grove Arcade Board of Trustees would like to participate with the City and possibly the Chamber of Commerce in surveying downtown merchants about parking in the downtown.

On behalf of City Council, Mayor Bellamy thanked Ms. Summers for the informative update and expressed the asset the Grove Arcade is to Asheville and Western North Carolina.

POLICE ADVISORY REPORT

Mr. Tim Flora, Chair of the Citizens/Police Advisory Committee, said that in January of 2006, and in conjunction with the rollout of new districts created by the Asheville Police Department to enhance its policing effectiveness, the Citizens/Police Advisory Committee decided to sponsor a series of five community meetings to give residents the opportunity to (1) meet the police officers responsible for patrolling their neighborhoods; (2) participate in a discussion of the public safety concerns of their community; and (3) share ideas on how the police and the community - working together - can address those concerns.

A community meeting was held in one of the five represented areas of the City each month starting in March, 2006. These meetings were promoted via the local print and broadcast media as well as through neighborhood associations, targeted mailings, and area postings. An agenda was specifically designed to enhance the flow of community in both directions. As a result of these meetings, a 14-page report was compiled listing both the top issues identified in each respective area and the community's suggestions for addressing these issues.

In North Asheville, traffic safety, vehicle/home beak-ins and vandalism/graffiti issues were identified. In West Asheville, traffic safety, vehicle/home beak-ins, drugs and Hispanic-related issues were identified. In South Asheville, traffic safety, vandalism/graffiti and drugs were issues identified. In East Asheville, traffic safety, drugs and illegal aliens were issues identified. And, in Central Asheville, drugs, repeat offenders, homelessness and gangs were issues identified. Traffic safety and drugs were the two major issues in all communities.

The following is a sampling of the solutions provided by the community on mitigating the top concerns: Traffic Safety - cameras at stop lights, particularly the most troublesome areas; increased ticketing for illegal parking; more use of electronic speed boards; and print traffic citations in the newspaper. Drugs - more officers dedicated to illegal drug enforcement; use closed-circuit TV cameras in troubled areas; increase prevention initiatives; and more prosecution of drug dealers. Vandalism/Graffiti - requirement to remove all graffiti immediately after event; and provide a public wall where it would be legal to paint. Vehicle/Home Break-Ins - increase police communications with pawn/second-hand shops; and establish more community watch groups/neighborhood associations.

In response to Councilman Mumpower, Mr. Flora said that the Asheville Police Department is already responding to some of these issues and he would be happy to come back to Council in the next couple of months to talk about turning this information into action.

Police Chief Bill Hogan said that Captain Benson has met with the appropriate Police personnel and asked for specific strategies on what they were going to do in the different districts to respond specifically to these issues. They will be coming back with plans and accomplishments.

It was the consensus of Council to ask Mr. Flora and/or Police Chief Hogan to come back to Council in the January or February to hear further updates on the progress made to date. Mayor Bellamy felt it would be good to hear intermediate updates from the Public Safety Committee as well.

PUBLIC SAFETY PARTNERSHIPS

Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville (HACA), said that the Asheville Housing Authority, in its on-going efforts to continue its partnership with the Asheville Police Department, has continued to evaluate its public safety needs at its various housing locations throughout the City.

At its November 2006 meeting, the City Council Public Safety Committee heard a presentation from the Asheville Housing Authority regarding its on-going efforts to bolster public safety throughout areas of concern within the Asheville Housing Authority properties. To that end, the Authority is prepared to move forward with additional coordinated efforts aimed at increasing public safety throughout these properties.

The purpose is to develop and implement short- and long-term security strategies to impact high crime areas within the HACA developments. The Asheville Police Department (APD) call for service statistics from 10-1-05 through 10-1-06 indicate that there were 2,312 calls from Pisgah View Apartments, 1,277 calls from Lee Walker Heights, 1,200 calls from Deaverview, 1,078 calls from Livingston/Erskine/Walton combined, and 967 calls from Hillcrest, with lower numbers from other developments.

The following is their plan: (1) Pisgah View: HACA Safety Team will focus additional overnight resources to disrupt illegal drug and alcohol markets. Primary strategy in Pisgah View will be multiple patrols in the short term, with implementation of cameras and gates over the next six months; (2) Hillcrest: HACA Safety Team will focus additional overnight resources to disrupt illegal drug and alcohol markets. Primary strategy in Hillcrest will be to staff the gatehouse and check identification of all persons entering the development during high crime hours; (3) Deaverview: Resident officer is making a difference; HACA Safety Team will continue to monitor conditions; (4) Lee Walker Heights: HACA will ask APD to mirror HACA Safety Team efforts in developments above by staffing the entrance to Lee Walker during peak hours; (5) Livingston/Erskine/Walton: HACA will ask APD to mirror HACA Safety Team efforts in developments above by increasing patrols in this area; (6) HACA Safety Team and APD will continue periodic patrols of other HACA developments, adjusting these plans as necessary; (7) HACA will support an APD request for additional City funding to match HACA Safety Team funding if deemed necessary by APD leadership; and (8) HACA leadership will work on infrastructure needs including (a) acquiring four radios compatible with APD system; (b) upgrading street lights at Pisgah View Apartments and Hillcrest; (c) installation of cameras at Pisgah View Apartments; and (d) implementation and funding of gate plan at Pisgah View Apartments.

Councilman Mumpower, Chair of the Public Safety Committee reported on the 2007 Public Safety for Public Housing Partnership Initiative – Renewing Our Efforts. Public housing continues to be ground zero for much of the open drug trafficking and related criminal activities that occur in our communities. Under the leadership of our Chief Hogan and the efforts of the Asheville Police Department, good progress has been made over the past year and a half, but there is a need for persistent diligence and new initiatives to counter the adaptation and enthusiasm of those who use public housing as a playground for illegal activity.

Our 2007 plan centers on the implementation of 4 distinct creative crime prevention initiatives in 4 separate pubic housing developments. The impact of each initiative will be tracked and at the end of a reasonable period of implementation, we will evaluate the effectiveness of these interventions. Efforts will then be made to expand the most workable options to other public housing development and high crime neighborhoods.

Components

Initiative 1	Gated community	Establish a gated community that is better able to filter out non-residents who affect the safety of the development. This initiative would be supported by APD but implemented through the Housing Authority.
Initiative 2	Beat police on the street	Establish 24 hour beat police presence dedicated to monitoring and supporting crime prevention in a specific public housing development.
Initiative 3	"I" Can Do It Program	An extension of the High Point "hug a thug" program, this approach centers on *investigation*, involvement of *influentials*, and *intervention* with street dealers. It would require a partnership between APD, DA's office, housing authority, neighborhood churches, residents, family members and other concerned individuals.
Initiative 4	Dedicated Drug Suppression	High intensity attention provided by the APD Drug Suppression Team with a dedication to creating a "zero tolerance" environment for drug trafficking of any form in the identified public housing development.

This would need to be a team effort involving a wide array of community minded people, organizations, government entities, churches, neighborhoods and others with an eye on the impact and harm of drugs in our community.

To hold the line and limit the harms of drugs in our communities we must demonstrate a higher level of creativity, enthusiasm, intentionality, and persistency that those who traffic in drugs. This initiative is about proactive community action, cooperative effort, and dedication to the importance of public safety. These are just for creative opportunities – there are more and better ideas out there for us to discover and bring to life. That's the real opportunity and need – to renew our efforts to assure public safety in public housing.

In tandem, the Asheville Police Department has been and will continue to analyze additional strategies to better provide more effective public safety at these properties.

The Public Safety Committee asked that the Council endorse Asheville Police Department in its efforts as it continues to analyze and evaluate public housing public safety strategies in coordination with the Asheville Housing Authority's on-going efforts.

Mr. Bell responded to various questions/comments from Council regarding efforts to assure public safety in public housing, noting that the residents and neighborhoods want to be involved in positive solutions.

In response to Vice-Mayor Jones, Mr. Bell asked that the Meals on Wheels Office contact him regarding delivering hot meals to residents in public housing.

Police Chief Hogan said that they are looking at the High Point model which studies the social network of neighborhoods. The point is you are not going to stop people from dealing drugs but what you can do is break the marketing system that occurs at the street level drug-dealing. What that does is takes the violence out of the neighborhoods and basically by following

their model, it actually collapses that market and it doesn't come back. He will also be looking at other alternatives and will report back to Council in 60-90 days with a complete analysis.

It was the consensus of Council to endorse Asheville Police Department in its efforts as it continues to analyze and evaluate public housing public safety strategies in coordination with the Asheville Housing Authority's on-going efforts. In addition, it was the consensus of Council to ask the Police Chief to report back to Council within 60-90 days with his complete analysis.

THE EXPLODING CRISIS OF CHILD PORNOGRAPHY AND INTERNET PREDATORS

Mr. Grier Weeks, Executive Director of the National Association to Protect Children, first explained what child pornography is, noting that the three types of child pornography crimes consist of (1) production/manufactures; (2) distribution; and (3) possession. In a 2005 study funded by Congress - Child-Pornography Possessors Arrested - Internet-Related Crimes; Findings from the National Juvenile Online Victimization Study, it showed (1) 83% had images of children 6-12 years old; 39% had images of children 3-5 years old; and 19% had images of children younger than 3 years of age. Said study had 80% images of children of sexual penetration; and 21% had images of children subjected to "bondage, rape or torture. Most of these were ... gagged, bound, blindfolded or otherwise enduring sadistic sex."
The study revealed that 1% limit their collections solely to images that researchers termed "soft-core" ("nude or semi-nude minors").

Law enforcement says that victims are getting younger; many are babies or toddlers; abuse is getting more violent and sadistic; and live "pay for view" and streaming videos.

In said study, it showed that who possesses child pornography that 55% were known to be direct threats; and 40% were known to have directly sexually abused a child. The crisis is big - there are over 100,000 websites; over 3.5 million images identified; estimated 20,000 new images each week; and federal and state law enforcement completely overwhelmed, outnumbered and outspent.

In the peer-to-peer trafficking study of worst images revealed that in North Carolina there are over 65,000 IP addresses.

He explained that every North Carolina child online is at risk; children are quickly enticed online; predators are "cataloguing" children; and the state Internet Crimes Against Children (ICAC) Task Force agents are overwhelmed, leaving children unprotected as a result.

He then explained the weak laws in North Carolina.

Law enforcement is overwhelmed - cases are triaged (major commercial rings, identifiable children believe to be in immediate danger); vast majority of cases cannot be investigated; very few victims identified and rescued; and high profile undercover operations typically net dozens, less than 200.

He explained the federal spending priorities for Fiscal Year 2005-06, with only $14.5 Million being allocated for the Internet Crimes Against Children Task Force Program (50 states).

He suggested the following ways Asheville can help: (1) Fund a dedicated child exploitation investigator with APD with salary and benefits of approximately $8,000 ($4k afterwards), 3,000 for laptop, desktop and peripherals and $1,000 for software. This would be an enormous potential to assist and improve other sexual abuse investigations; (2) Become a model ICAC Task Force Partner, which could consist of (a) creating a dedicated APD position; (b) joining the NC ICAC Task Force; (c) have a strong commitment to training (d) have a strong

partner in ICAC data network; (e) cross-training, cooperation with child abuse investigations; and (f) show leadership nationally; (3) Call on state legislature to take action/support Representative Goforth and delegation for stronger penalties, model laws, more funding for ICACs and more funding for forensic labs; (4) Provide leadership and invest in state, regional or local forensic capacity because the great single bottleneck is 8 month waits are common and there is no one solution but more capacity is urgently needed; and (5) Fund educational programs for parents in community and schools about online child safety: (a) 1,000's of Asheville children online are at risk; (b) parents have very limited knowledge of dangers and safeguards; (c) weakest parental link endangers kids; (d) sporadic efforts to education; and (e) return on investment would be high.

On behalf of City Council, Mayor Bellamy thanked Mr. Weeks for the opportunity for this Council to lend its support to help our children be safe and by being a part of this initiative.

In response to Councilman Mumpower, Mr. Weeks said that even though Buncombe County does have a person who does these types of investigations now, he would request that the City of Asheville dedicate an officer because two full-time people could save a lot of children.

Vice-Mayor Jones urged parents to continually stress to children to call 911 and ask for help if anyone is harmful to them.

Mr. Weeks responded to Councilman Mumpower regarding how much are child pornography is related to other crimes.

In response to Councilwoman Cape on how the City can play a role in helping parents become educated, it was the consensus of Council to charge City Manager Jackson, Police Chief Hogan and Community Relations Director Lauren Bradley to take on this task, by perhaps a link on the City's website, information on how blocks can be placed on a computer and an informative program on the government channel.

It was the consensus of Council to (1) ask Police Chief Hogan to look at this issue and come back with recommendations of how those recommendations could be folded into our budget process and report back to Council in 60-90 days, or sooner if possible; (2) add the issues outlined by Mr. Weeks requesting legislative support on Council's legislative agenda; and (3) explore regional and Buncombe County partnerships.

At 4:31 p.m., Mayor Bellamy announced a short recess.

STRATEGIC PLAN ACCOMPLISHMENTS

Ms. Lauren Bradley, Community Relations Director, said that on January 12, 2006, City Council hosted a *Goals for Asheville* forum where citizens were invited to participate in focus groups to develop consensus on their top three community priorities. City Council reviewed the citizen input collected at the forum at Council's January 20-21, 2006 retreat. During the retreat, Council worked to incorporate the community's feedback into the City's Strategic Vision and Goals document, which was officially updated in February.

Throughout the year, City Council has received periodic updates on progress related to City Council's goals.

She explained that the goals for the Asheville forum's top community priorities: were (1) Development & Growth; (2) Employment, local businesses & economic development; (3) Natural environment & Public/Alternative Transportation; (4) Public Safety & Drug Issues; (5) Affordable Housing; and (6) Public Education & Youth.

Council's seven priority areas were (1) Economic Development, Job & Business Growth; (2) Growth, Development & Land Use; (3) Community Building; (4) Housing Opportunities; (5) Natural and Built Environment; (6) Partnerships to Improve Critical Services and Infrastructure; and (7) Sense of Place, Heritage & Arts.

She reviewed accomplishments in the area of critical services and infrastructure: (1) Civic Center roof, street and sidewalk construction, public safety communication enhancements and fleet replacement; (2) $2.5 million investment in critical capital needs; (3) Added five new 30-foot low floor buses, improving access for elderly and handicapped riders; (4) Began implementation of a strategic capital improvement plan for the water system; and (5) Received positive results from the American Waterworks Association QualServe peer assessment of the city's water system (designed to help water utilities achieve superior performance).

In the area of growth and development, we (1) Extended services into the extraterritorial jurisdiction (2) Conducted stakeholder processes for: Shiloh Neighborhood Plan, Merrimon Avenue Corridor Study, and Haywood Road Corridor Study; and (3) Bringing forward freestanding amendments and comprehensive revision of Unified Development Ordinance: Steep Slope, Enforcement, and Landscaping.

More accomplishments in the Housing Opportunities field consist of (1) Significant progress on the 10 Year Plan to End Homelessness; and (2) Application of CDBG, HOME and HTF funds to the Woodfin and Griffin Apartments. An accomplishment in the Economic Development field includes the Request for Proposals for City-owned property. In addition, an accomplishment in the Natural & Built Environment includes (1) John B. Lewis Soccer Complex; (2) Covington Clubhouse at Aston Park Tennis Facility; and (3) Hall Fletcher Park in West Asheville.

A sample of ongoing initiatives include (1) Construction of downtown public restrooms; (2) Comprehensive wayfinding program; (3) Wilma Dykeman Riverway Plan; (4) Ongoing participation in the HUB project; (5) Sustainable Advisory Committee on Energy & the Environment; (6) Regional partnership to address flood issues; and (7) Addition of planning staff to enhance enforcement and long-term planning initiatives.

She said that as key programs and initiatives continue to progress, it is recommended that Council use this summary as well as any additional updates to continue to update the Strategic Vision and Goals document during the City Council retreat in early 2007.

Ms. Bradley and Planning & Development Director Scott Shuford responded to various questions/comments from Council, some being, but are not limited to: how is this information being distributed to the community; what is the timeline on the steep slope ordinance and the ordinance regarding point incentives; and will the Unified Development Ordinance amendments be brought to Council in a whole package or piece-meal.

At 4:56 p.m., Mayor Bellamy announced that City Council would take a short recess which would include a closed session. Councilman Mumpower then moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Cape and carried unanimously.

At 5:35 p.m., Mayor Bellamy recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance (UDO) amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on November 28, 2006. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Homestays UDO Amendment

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for "homestays" in single family residential zoning districts.

This code amendment provides for "homestays" (currently known as "bed and breakfast homestays") in single family residential zoning districts as uses by right subject to special requirements. Since the initiation of proactive enforcement on illegal short-term (less than 30 days) rentals in various Asheville neighborhoods, staff has been meeting with a focus group of realtors, B&B owners, Tourism Development Authority staff, and Coalition of Asheville Neighborhood (CAN) members to discuss areas for compromise. One area of apparent agreement is the provision of homestays as uses by right subject to special requirements in single family residential zoning districts. Bed and breakfast homestays are currently allowed as uses by right subject to special requirements in multi-family zoning districts.

A bed and breakfast homestay is defined as: a private, owner-occupied residence with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. This definition would be applied to "homestays".

Section 7-16-1 provides the conditions under which uses by right subject to special requirements can be established. Bed and breakfast homestays must meet the following requirements:

- Current use districts: RM-6, RM-8, RM-16.
- No displays of goods, products, services, or other advertising shall be visible from outside the building.
- Shall be carried on by a resident of the property.
- A maximum of one full-time equivalent (one FTE) non-resident of the dwelling may be employed.
- On premise retail sales shall not be a component of the bed and breakfast homestay.
- A maximum of 25 percent of the gross floor area of the dwelling unit may be used for the bed and breakfast homestay. For the purpose of calculating the area of the structure devoted to the bed and breakfast use, only the floor areas of the bedroom and bathroom areas used by the bed and breakfast guests shall be considered in such calculations.
- No activities other than lodging, a morning meal, and an evening and/or afternoon refreshment shall be provided.
- Activities shall be provided for overnight guests only.
- Off-street parking shall be provided as required by subsection 7-11-1(c) of this chapter. Parking shall be located on the same lot on which the bed and breakfast homestay is

located, at the rear of the lot and screened with vegetation from adjacent properties and from the street.

- No accessory structures shall be used to accommodate guests.
- The owner shall reside in the principal structure.
- The length of stay of guests shall not exceed 14 days.
- No home of less than 2,500 heated square feet shall be used for a bed and breakfast homestay.
- Signage shall be limited to a single sign, not to exceed four square feet, attached to the home.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- Bed and breakfast homestays shall be located a minimum of 500 feet from other bed and breakfast homestays and bed and breakfast inns. In calculating the 500 foot distance between bed and breakfast establishments, measurements shall be taken from the closest property line of the lot of the existing bed and breakfast establishment to the closest property line of the lot of the proposed bed and breakfast homestay. Existing, legally established bed and breakfast homestays that do not meet this separation requirement of 500 feet are permitted to expand to the maximum limits allowed under this chapter, al long as all applicable development standards are met.

This amendment allows the added flexibility for these extremely restricted uses to be accommodated in all residential districts. Additionally, the length of stay is proposed to change from 14 to 30 days and a prohibition on external signage in single family residential districts is proposed to increase neighborhood compatibility.

A suggestion was made by a citizen to increase the distance between homestay uses to 1,000 feet. He used a map that illustrates the effect of various separation distances. A request from Rebecca Manning has also been received for additional short-term rental uses in residential districts.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Factors for Consideration:

- This would allow an Edwin Avenue property previously denied by City Council to likely qualify as a homestay.
- The City's rich architectural heritage can be shared with more visitors.
- There are many neighborhoods and properties that can benefit from the positive effects of these uses, just as Montford has.
- The regulatory limitations on these uses mitigate their impacts.
- There would be an opportunity for persons negatively affected by the City's short-term rental enforcement efforts to legitimately establish a homestay use.

On October 4, 2006, the Planning and Zoning Commission recommended partial approval of the proposed code amendment by a vote of 6-1 (Ms. Weeks opposed). The Commission was concerned about the expansion of "commercial" uses like homestays into single family districts so their recommendation was to delete the portions of the ordinance dealing with expansion of the uses and retain the change in nomenclature. One version of the ordinance represents the ordinance recommended by the Commission. The other version is the ordinance change originally prepared by City staff. City staff also requests that Council provide direction to staff concerning whether additional efforts should be undertaken to "legalize" short-term rental of properties in residential areas.

Councilwoman Cape was generally supportive of homestays in our community when they are regulated appropriately. She feels this is a viable economic opportunity for people to stay in their homes with our aging population and rise in taxes.

Mr. Shuford responded to various questions/comments from Council throughout their discussion about the 2,500 square foot requirement for a home to be a homestay and the 500 feet separation from one homestay to the other.

In response to questions from Council, City Manager Jackson said that the benefit of having this controversial UDO amendment before Council at this worksession is not to encourage a debate, but to ask questions for clarification on the amendment.

Mr. Shuford then responded to various questions, some being, but are not limited to: what is the economic impact on the property owner; will the owner have to pay room tax; and are there alternative ways to get at the spacing requirement goal not to have the residential neighborhood overwhelmed by these issues.

After a brief discussion about the necessity of worksessions, it was the consensus of Council to instruct the City Clerk to bring forward a resolution on November 28, 2006, changing the 2007 City Council meeting schedule to hold three formal meetings a month (the second, third and fourth Tuesdays of each month) at 5:00 p.m. in the Council Chamber (thus deleting the third Tuesday worksession).

Mayor Bellamy asked that the record show that City Council received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda.

REQUEST FOR QUALIFICATIONS OF DISPOSITION OF CITY-OWNED PROPERTY IN THE DOWNTOWN AREA

Planning & Development Director Scott Shuford said that this is the second phase offering of City-owned property for redevelopment.

Staff is prepared to proceed with the preparation of a Request for Qualifications (RFQ) for additional City-owned property. Prior to moving forward, we are requesting policy direction from Council so that we can structure an RFQ that will meet your expectations.

There are four key issues that require Council concurrence and direction. These are:

- Whether Council is in agreement with the staff proposal to structure an RFQ that includes some properties as linked and other properties that may be separately proposed for development.
- Whether Council is in agreement with the staff proposal to include other properties not under direct City control in the RFQ.
- Whether Council is in agreement with the staff proposal as to which properties should be included in the RFQ.
- Whether Council is interested in a 'directive' RFQ or whether it agrees with the staff proposal to not limit the creativity of the proposers through a more open-ended RFQ while still ensuring that key city goals are met.

With regard to 'linking' properties, staff notes that the 'prize' property is the so-called "Parkside" site to the immediate south of City Hall. There has been considerable developer interest in this site. Staff proposes to leverage this interest to facilitate the development of other nearby City-owned property with workforce-housing. We would require responders to commit to developing the City-owned property on the west side of Charlotte Street, at a minimum, as a

condition of being able to acquire development rights to the "Parkside" site. Other properties in this proposed RFQ may be proposed for separate development, exclusive of developer interest in "Parkside."

With regard to which properties are proposed for inclusion in the RFQ, staff has suggested the following list of properties:

- "Parkside"
- Property located on the east and west sides of Charlotte Street
- Rankin parking garage site
- Civic Center parking garage site
- 29 Haywood Street
- Civic Center site
- Properties acquired to site the Battery Park parking garage west of the Civic Center
- Transit Center site on Coxe Avenue
- Parks and Recreation maintenance facility site on Hilliard
- Transit offices/maintenance facility in the WECAN neighborhood

He reviewed in more detail the City-Owned property to be considered for RFQ as follows:

	Identification	Address	Acres	Tax Value	Description
1	Parkside	Marjorie Street	2.47	$3,862,400	Parking Lots South of City Hall
2	William Wolcott Bldg.	161 S. Charlotte St.	2.73	2,730,000	Public Works building & parking
3	Public Works Compound	171 S. Charlotte St.	4.55	2,502500	Building, sheds, storage
4	Fleet Management	173 S. Charlotte St.	2.17	2,170,000	Building & parking
5	Water Maintenance	S. Charlotte St.	3.76	6,928,200	Two Buildings & parking
6	ABC Store	179 Biltmore Ave.	0.84	840,000	Store building & parking
7	Service Station	45 McCormick Pl.	0.46	496,500	Service Station facilities
		Sub-Total	**16.98**	**19,529,600**	
8	Office of Econ. Dev.	29 Haywood St.	0.18	685,400	Building/Hallway to Parking garage
9	Rankin Street Garage	4042 College Street	0.92	8,420,700	Parking deck
		Sub-Total	**1.1**	**9,106100**	
10	Civic Center	87 Haywood St.	3	22,741,300	Civic Center & Thomas Wolfe Aud.
11	Parking Lot	52 Rankin St.	0.64	785,000	Surface parking
12	Civic Center Garage	68 Rankin St.	0.95	5,708,000	Parking deck
13	Handy Park	68 Haywood St.	0.25	807,300	Parking Building
14	Flying Frog	76 Haywood St.	0.3	806,100	Building & Parking
15	33 Page	33 Page Avenue	0.11	961,200	Building
16	Parking Lot	Page Avenue	0.11	510,000	Parking lot
		Sub-Total	**5.36**	**32,318,900**	
17	Park Maintenance	Hilliard Avenue	2.35	57,300 235,000*	Maintenance building & storage
18	Transit Center	360 Haywood St.	3.51	101,300 351,000*	Building & parking
		Total	**29.3**	**61,113,200**	
				61,540,600*	

* Estimated land value

With regard to including non-City-owned properties in the RFQ, potential RFQ responders may be interested in expanding the scope of their responses to include sites not

owned by the City. For example, the Hayes-Hopson building owned by Stewart Coleman, the property owned by Buncombe County between City-County Plaza and Marjorie Street, and the Harrison family property may be appropriate to include due to their proximity to Parkside properties. At the November 14, 2006, Council meeting, the Eagle Market Street Corporation expressed interest in this approach as well. The RFQ could be structured to invite potential responders to indicate how they might optionally assemble various non-City properties into a development plan.

Finally, with regard to whether the RFQ should be "directive" vs. open-ended, staff notes that, while City Council may be very interested in having an affordable housing component, additional public parking, or a new performing arts center, precisely where (or on which properties) these uses should be located may be better determined by RFQ responders than by the City. To pre-plan the location of certain uses will limit responder creativity. Instead, staff proposes to structure the RFQ so that the following goals previously identified by City Council are clearly known and that responders clearly understand that their opportunity to obtain City-owned property for development is dependent on their prior experience and success in meeting similar goals in other situations.

- Provision of workforce housing
- Potential to promote new or revitalized entertainment venues
- Consistency with City plans or policies, including Smart Growth and environmentally-friendly/green building development practices
- Place-making design that complements our unique Downtown business and residential communities and takes constructive public input into consideration
- Provision of strategically-sited public parking
- Ability to accommodate all modes of transportation
- Potential for significant tax base enhancement

He went into detail for the pros and cons. The pros being (1) the RFQ has the potential to achieve significant results in Council identified goals in housing, public venues, public parking, density, and infill development; (2) the RFQ has the potential to generate interest on a national level by firms with portfolios that include experience in very large scale, mixed use projects; (3) land assembly can be the most prohibitive component of urban development projects, and the offering of City-owned property reduces risk of the developer and should promote increased response; (4) the RFQ process offers the ability for national firms to team local firms in the design, development, and construction phases; and (5) linking the Parkside and S. Charlotte sites provides an opportunity to develop along the new Pack Square Park, along The Block, and along S. Charlotte Street. The cons include (1) redevelopment of city-owned properties will require complex facility master planning to determine relocation/consolidation of existing public facilities on redevelopment sites; (2) there is no assurance that respondents will possess the financial capabilities, qualifications, and experience required for the projects; and (3) linking the Parkside and S. Charlotte Street sites may limit qualified respondents due to the large scale nature of the project.

Once staff has received direction from Council on these four areas, the City Manager will negotiate a contract with a firm having experience in developing complicated RFQs for assistance in the design and distribution of the RFQ and assistance in evaluating the responders' qualifications.

Staff requests Council provide direction on the four identified critical RFQ components and authorize the City Manager to retain consultant assistance in the design and distribution of the RFQ and the evaluation of the RFQ responses.

He asked for Council's guidance on whether you want staff to link the Parkside and S. Charlotte Street properties together or whether you want more information on that; whether you are content with the list of properties put on the table; whether you want to look at the possibility of including some non city-owned properties in the RFQ; and whether you want to have an open-ended RFQ, which staff is recommending. He said that staff is suggesting we get a consultant to help us phrase the RFQ to make sure that we are going to get respondents that have experience in workforce housing, green building, etc., so that it increases the likelihood of those goals being met.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: what is the current value of the facilities we are currently using in relation to what we are going to get back in terms of selling them off and the tax value; and what is the proximate land and building value of the Public Works Facility when it was built and what is the value at today's dollars.

Councilman Newman felt that regarding linking properties, we should encourage that but not require it. We need to keep our options open. He didn't see any downside to putting all the properties on the RFQ; however, the Civic Center and the two parking decks would be a low priority because we are not trying to lose parking. He hoped we would focus on the large tracks that are clearly underutilized, like the Park Maintenance facility on Hilliard Avenue. He feels that is very valuable property and we could probably find a better place for that facility. Also, the Housing Authority has property adjacent to this land and he encouraged us to talk with the Housing Authority and if they are interested, potentially having some of their property marketed in the RFQ with ours as well. He would support being flexible in the RFQ to achieve as many Council goals on the properties as we can.

City Manager Jackson said that regarding the Civic Center, staff will come back at Council's December 12 meeting to discuss the Capital Improvement Program and the direction for the Civic Center. At that time Council can discuss whether those properties should be included in the RFQ. In the meantime we can engage someone to craft the RFQ and then get direction on where you want to go with the Civic Center.

Councilman Mumpower had a problem with properties that we are currently using for services (e.g., S. Charlotte Street property and the Park Maintenance facility) and was curious to where we would relocate these facilities. We have talked about the value of the proximity services and having them clustered to the core of the City and how it saves money and accomplishes other things for us. Also, RFQ's and RFP's cost people a lot of money and we need to be sensitive about that. He was particularly disturbed about the William F. Wolcott Jr. Building at 161 S. Charlotte Street and wondered if we are taking something off the table that really has a lot of value to us. He questioned a facility that new being torn down. Personally, he is comfortable exploring and experimenting with vacant property, but not currently used property.

Upon inquiry of Councilman Freebom, Mr. Shuford said that we are not developing a plan to relocate existing uses until we find that Council has interest in putting those properties out there. We did some initial exploration about some possible sites, but nothing in any formal or comprehensive way. There is an opportunity to relocate these maintenance facilities into a single location and we might want to do that eventually because there are economies to be had there and an opportunity to capitalize on the value of the land.

In response to Councilman Freebom, Mr. Shuford said that the West End/Clingman Avenue Neighborhood would like for the transit offices to be relocated. The neighborhood is willing to tolerate a more dense development there. The site has outstanding views and has the potential to be an attractive multi-family site and the site is large enough to generate a project that would be a source of neighborhood pride.

Councilman Freeborn felt we should include all the properties in the RFQ along with Council's goals and then see what we get back.

It was the consensus of Council to add the transit station on Coxe Avenue to the table of City-owned property to be included in the RFQ.

Vice-Mayor Jones agreed with not requiring linkages, but encouraging them. She was not interested in having the parking garages included in the RFQ. Regarding the transit station on Coxe Avenue, she felt it was built not long ago and we have already had to transition the people who use it once already. She felt this was a bold initiative and endorsed the goals, particularly for workforce housing and the potential for tax base enhancement.

Councilwoman Cape also was not interested in including the parking decks in the RFQ. She wondered if it's best for staff to look at where is this consolidation land, what would that cost us, what would that look like, and what is its real solid on the ground value before we commit to getting rid of these existing facilities. It might cost us a lot more to get what we need than we would realize.

Councilman Davis said that the Civic Center and the parking decks are functioning well and we are not eager to sell, but we owe it to ourselves to be open to a better use or function of those things. We don't want to take away from the parking decks, but there may be an opportunity for some mixed-use to make those decks bigger. He thinks there are a lot of opportunities here to see what interest there is in being a part of our community. He did not support giving away the things we have, but we should look to see what we can do better.

Mayor Bellamy was excited about the Parkside development and how it relates to what can happen in the Eagle/Market Street area. She felt there may be some opportunities on the property across Charlotte Street on Martin Luther King Jr. Drive for infill and/or town houses up Martin Luther King Jr. Drive. She did not have a problem with keeping the ABC store property on the list, however, she wanted the service station property to be taken off the list because it provides gas for our service vehicles and we just brought the new CNG station on line. She also supported taking the parking decks out of the RFQ. She is totally in support of the Handy Park, Flying Frog, 33 Page Avenue and Page Avenue parking lot being included in the RFQ and suggested we work with nearby land-owners to see if we can support their endeavors. She is supportive of the transit offices being located understanding the relocation issues. She doesn't see the transit offices or the Park Maintenance facility on Hilliard Avenue being the highest and best use of those properties. Regarding the Park Maintenance facility on Hilliard Avenue, she said that Assistant City Manager Jeff Richardson is working on an initiative for housing in that immediate area and suggested contacting him on this issue. She also felt that we should talk to the owners of the vacant land next to the transit station on Coxe Avenue about its potential. She felt the transit station would be a complimentary addition to what could be built on that property.

Councilman Newman encouraged Mr. Shuford to talk with the N.C. Dept. of Transportation about getting the right-of-way released near the old Valley Street that is next to the City Employee parking lot.

Mayor Bellamy felt the William F. Wolcott Jr. Building parking lot could serve as a location for a deck to service the Parkside development and parking for City employees. But, she did have concerns whether the Wolcott building was old enough to be torn down. She also felt that the pedestrian bridge across S. Charlotte Street would be better utilized if staff would maintain the property, especially cutting the kudzu back on a regular basis.

Mr. Shuford said that one of the reasons why the William F. Wolcott Jr. Building was chosen to be a permit center is it does offer easy parking, but by the same token that parking is

largely taken up by City employees. In addition, we are not able to accommodate all the staff that needs to be involved in the permit center at that location. He suggested Council adding a goal that there be a way to accommodate the office needs and other needs of the City facilities as apart of the RFQ. We could add that there needs to be a great deal of sensitivity with regard to addressing parking needs, facility relocation and the possibility that we could actually have a consolidated permit center that would accommodate all the City staff.

It was the consensus of Council to add the City's Purchasing Division on Hunt Hill to be included in the RFQ as that is not the highest and best use of that property.

Vice-Mayor Jones said that we have some other properties in our ownership that we could use for relocation, e.g. the Armory property in west Asheville.

City Manager Jackson summarized by (1) eliminating from the RFQ the parking garages; (2) bringing back the Civic Center issue in December for further direction; (3) including the transit station and the Purchasing Division property on Hunt Hill in the RFQ; and (4) regarding the Charlotte Street property to craft the RFQ to say we have some very valuable buildings and facilities that we want to retain but that we are willing to entertain opportunities that are place-making in nature to address the goals in a phenomenal way.

ANNEXATION SERVICES POLICY

City Manager Jackson said that before staff gets into the rationale and the criteria used in putting together an annexation plan, staff would like Council's feedback on the merits with proceeding with the annexation plan.

Planning & Development Director Scott Shuford said that we have already started our initial investigation of areas that would quality for annexation and they are in a variety areas around the periphery of the City. We realize there are opportunities for our annexation laws to change since something is brought up at each session of the General Assembly. We are entering into discussions with the Town of Woodfin and Town of Fletcher about where their boundaries might ultimately be and our boundaries might ultimately be. We have determined that we do not need an agreement with the Town of Weaverville or the Town of Black Mountain because of their distance away from us. We would like to continue the policy established by Council of proceeding with annual annexations over the past seven years, noting that we do them in an incremental way and a fiscally responsible way. He asked if Council would like for them to proceed with an annexation plan for 2007.

Upon inquiry of Councilman Freeborn, Mr. Shuford said the benefits of not annexation in 2007 would be the savings of staff time, emotional response from citizens, and the savings of Council time.

City Manager Jackson said that Council has the following three options - (1) continue to be proactive and thoroughly analyze areas that meet statutory thresholds; (2) scale back the annexation areas for more connectivity; and (3) postpone annexation.

Mr. Shuford said that we have been able to keep taxes at essentially the same level to some extent due to annexation and the growth that has occurred in our community. Without those tools we do lose some of the revenue potential we might otherwise get. Council has the option of delaying the effective date of annexation up to 400 days after the annexation ordinance passes, and, there are other options to delay the effective date of annexation to give people more time to adjust. Again, we face challenges on our borders and there may be some state-wide action to tie our hands.

Vice-Mayor Jones supported moving forward in a scaled back version. She felt that annexation done in a fiscally appropriate way is about advocating for the citizens of Asheville. It's about equity and fairness for our citizens.

Councilman Newman said that we have not been aggressive with our annexations and would support moving forward in a scaled back version. He would support having our staff analyze the areas around the City that are rapidly urbanizing and then bring forward the ones that clearly meet the criteria and let Council make their decisions about each one of them on their merits. We are having more and more people living around the City of Asheville coming into the City and using our services and infrastructure and asking them to pay no taxes is unfair to the Asheville resident.

Councilman Mumpower is against involuntary annexation. He feels that it is divisive and creates a number of problems for us. If Council chooses to involuntary annex, he felt we should provide services comprehensively. He would not support any annexations in 2007.

Councilman Davis is a proponent of annexation where it is normal and where urbanization has occurred. With our situation the way it is with the Water Agreement, we should have a tool in the future for voluntary annexations. He would support a scaled back version especially in the areas that have some potential to be precluded from annexation for other reasons. Regarding the other areas that are not in jeopardy, he would support holding off any annexations in 2007.

Councilwoman Cape was concerned about the state-wide legislation restricting cities from having the ability to annex in general. While she is not in support of actively pursuing annexation in all areas, we need to be careful that we don't lose the opportunity at all.

Mayor Bellamy supported the scaled back version because Council has a lot to accomplish in 2007.

Mr. Shuford said there may be some mutual exclusivity about what direction we have been given. Councilman Davis mentioned that there may be some areas that if we don't act in the relatively near future, they could be potentially precluded from our ability to annex. And to some extent, having some good healthy annexation agreements is a way to address that in lieu of annexation. We will certainly pursue that as well. Also, by the same token, we may have some areas that aren't necessarily fill-in that would be in jeopardy of not being able to be annexed for other reasons.

Mr. Shuford responded to Councilman Mumpower about why our state legislators are contemplating doing away with forced annexation.

Mayor Bellamy felt it was important for our legislators to understand the need for Asheville to have true control of our water system with regard to annexation.

It was the majority of Council's decision to proceed with the annexation on a scaled down version.

Mr. Shuford said that regarding Council direction regarding certain annexation policies prior to developing the next proposed annexation phase, the provision of sewer services is one that staff will bring back to Council at a future date because a policy change would have to be in effect for 180 days for water and sewer policy changes and so this would not affect anything staff will bring forward to Council in 2007. Regarding the acceptance of private streets and private sidewalks, he suspects we will not be in a situation where those would be of a concern in the

2007annexation. Regarding the annexation of manufacturing uses, staff will avoid using manufacturing uses to the extent as possible based on prior Council direction.

Vice-Mayor Jones was explicit that she did not want to annex any manufacturing uses.

Regarding the manufacturing facilities, Councilman Newman felt that adding additional financial burdens to manufacturing facilities is valid, but we have manufacturing facilities in the City and they pay twice the amount of what other manufacturing facilities pay. If we follow these policies year after year of not growing naturally as growth and development occurs, the path we will be on is high taxes and lousy services. He wondered if there may be some proactive ways for our City to grow and still support these economic engines.

Mr. Shuford said that clearly if manufacturing facilities are brought into the City they have the ability for lower insurance premiums. In addition, our Economic Development Director is in the process of developing some economic development incentives for businesses in our City.

Councilman Davis felt that we need to be careful in thinking about manufacturing facilities when there are many small businesses in the City as well.

Councilman Mumpower spoke against annexation of manufacturing businesses.

BOARDS AND COMMISSIONS:

After a short discussion, it was the consensus of Council to instruct the City Clerk to (1) prepare the proper paperwork to reappoint Kenneth Kaplan to serve an additional 3-year term, term to expire November 13, 2009, or until his successor has been appointed; and (2) re-advertise for the other appointment with a January 2007 deadline (since Ms. Holmes-Young has served two full successive terms).

Regarding the vacancies on the Educational Access Channel Commission, Vice-Mayor Jones, Chair of the Boards & Commissions Committee, explained that Mr. Tim Amos, Chair of the Educational Access Channel Commission, sent a letter to City Council on September 18, 2006, outlining their reasons recommending that City Council abolish the Educational Access Channel Commission because it has served its useful purpose. In the letter, he said they have completed their initial implementation and oversight of the city- and county-wide educational access channel. They have secured non-city funding for the at least near term needs of the channel, and have established a collaborative oversight consortium of educational institutions to ensure its future. Also, the community has benefited from the successful operation of the Educational Access Channel for several years now which has yielded nothing but positive feedback from viewers and stakeholders. As a result, there has been little or no action required by the Commission for quite some time. For these reasons, they recommended that the City Council abolish the Educational Access Channel Commission. Vice-Mayor Jones said that she has talked to Mr. Amos at length about this. It was the consensus of Council to (1) invite Mr. Amos to an upcoming Council meeting to present his request; and (2) instruct the City Attorney to prepare a resolution dissolving the Educational Access Channel Commission to be considered at the time Mr. Amos makes his presentation.

After City Attorney Oast explained the role of the Board of Directors for Victoria of Asheville, it was the consensus of Council to have the City Clerk prepare the proper paperwork to reappoint Assistant City Manager Jeff Richardson, Chief Financial Officer Ben Durant and City Attorney Oast to each serve an additional three year term respectively to the Victoria of Asheville Board of Directors, terms to expire November 29, 2009, or until their successors have been appointed.

After a brief discussion about the mission of the Film Commission, it was the consensus of Council to invite a representative of the Film Commission to an upcoming Council meeting to discuss their goals and ways Council can help strengthen the Commission, and then proceed with making appointments to that Commission, if appropriate.

It was the consensus of Council to have the City Clerk arrange the following interviews for vacancies on the Sustainable Advisory Committee on Energy and the Environment: Sylvia Farrington, Jane Mathews, Jonathan Barnes and Lach Zemp. After a short discussion on the different ways to ensure that Progress Energy has a seat on the Committee, it was the consensus of Council to restructure the membership so that one of the "designated" energy management seats be re-designated for the Progress Energy Regional Vice President (or other appropriate official) or his/her designee.

At 8:37 p.m., Councilman Freeborn moved to continue the closed session. This motion was seconded by Councilman Newman and carried unanimously.

At 9:20 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:20 p.m.

Keesha Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – November 28, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Trayvon Clark, Eighth Grade student at Asheville Middle School, led City Council in the Pledge of Allegiance

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

A. HARVEST HOUSE RECOGNITION AS A NC SENIOR CENTER OF EXCELLENCE

Mayor Bellamy recognized Mr. Joe Connolly, Director of the Land-of-Sky Area Agency on Aging, who presented the NC Senior Center of Excellence Award to Ms. Dee Black, Director of the Harvest House; and Ms. Amy Rickman, Program Supervisor.

B. RECOGNITION OF MR. JEFFREY GREEN, PUBLISHER OF THE ASHEVILLE CITIZEN-TIMES

Mayor Bellamy welcomed Mr. Jeffrey Green, Publisher of the Asheville Citizen-Times, and his family to the City of Asheville.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda "O" was removed from consideration by City Council.

At the request of Councilman Mumpower, Consent Agenda Items "D", "E", and "Q" were pulled from the Consent Agenda for further discussion and/or a separate vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 14, 2006, AND THE WORKSESSION HELD ON NOVEMBER 21 2006

B. RESOLUTION NO. 06-87 - RESOLUTION ESTABLISHING FAIR MARKET VALUE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON STATE STREET

Summary: The consideration of a resolution establishing fair market value and directing the City Clerk to advertise an offer of purchase for upset bids regarding property on State Street.

A bid has been received from Steven & Suzanne Williams in the amount of $15,000 for the purchase of land on State Street.

The land on State Street was acquired by the City by Commissioner's Deed dated June 29, 1932. There are discrepancies in the chain of title and title would have to be conveyed by non-warranty deed. The lot is 0.18 acre± and is parallelogram shaped. It has a moderate slope upward from the street. It is zoned RM-8 Residential Multi-Family Medium Density District, and it is suitable as a home site. The bid from Mr. & Mrs. Williams is in the amount of $15,000. Although the tax appraisal is $20,200, staff considers the offer to be realistic considering the impaired title. The Williams bid includes encumbering the property with a sewer easement to service the lot at the rear of the City's lot where the Williams plan to construct 4 to 5 units of infill housing on Pineview Street.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- It will facilitate the development of 4 to 5 units of infill housing.

Cons: There is no negative impact.

Economic Development staff recommends adoption of a resolution establishing fair market value and directing the City Clerk to advertise an offer of purchase for upset bids regarding property on State Street.

RESOLUTION BOOK NO. 30 - PAGE 145

C. RESOLUTION NO. 06-[illegible] - RESOLUTION ESTABLISHING FAIR MARKET VALUE AND AUTORIZING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON DR. MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution establishing fair market value and authorizing the City Clerk to advertise an offer of purchase for upset bids regarding property on Dr. Martin Luther King Jr. Drive.

A bid has been received from Ms. Elizabeth White in the amount of $7,350 for the purchase of land on Dr. Martin Luther King Jr. Drive.

The subject parcel is a proposed 0.08 acre cut-out portion of PIN 9648.07-58-1660 which is a 1.6 acre parcel that runs along Dr, Martin Luther King Jr. Drive and is part of the property where Water Maintenance is located. The subject parcel is triangular shaped and has a gentle slope upward from the street. It is zoned Regional Business District as is the adjoining property. The proposed parcel encompasses an area that Ms. White, who owns and resides on adjoining property, fenced in several years ago by mistake and has since used and maintained. The proposed purchase is to rectify the error by paying the City due compensation for the property.

The bid from Ms. White is in the amount of $7,350. The value of the parcel was extrapolated from the tax assessment for adjoining land in the amount of $28,500 for 0.31 acre which translates to a per acre value of $91,935. The bid amount represents .08 of that amount rounded to $7,350. Staff considers the offer to be realistic and the proposal to combine the subject parcel with Ms. White's parcel appropriate.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will enable the purchaser to rectify an error in a mutually beneficial manner.

Cons: There is no negative impact.

Economic Development staff recommends adoption of the resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on Dr. Martin Luther King Jr. Drive.

RESOLUTION BOOK NO. 30 - PAGE 146

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DALTON'S HEATING, AIR CONDITIONING AND CONTROLS INC. FOR THE REMOVAL AND DISPOSAL OF THE OLD CHILLER AND INSTALLATION OF A NEW CHILLER AT THE PUBLIC WORKS FACILITY LOCATED AT 161 S. CHARLOTTE STREET

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BROWN & CALDWELL FOR BIDDING AND CONSTRUCTION FOR WATER TREATMENT PLAN UPGRADES AT THE NORTH FORK AND BEE TREE WATER PLANTS

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

F. ORDINANCE NO. 3982 BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT

Summary: The consideration of a budget amendment, in the amount of $5,251, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected $5,251 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the police (patrol) safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police officers

Con: None noted.

City staff recommends City Council adopt the budget amendment, in the amount of $5,251, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

ORDINANCE BOOK NO. 23 - PAGE 139

G. RESOLUTION NO. 06-101 - RESOLUTION ADOPTING THE 2007 SCHEDULED CITY COUNCIL MEETINGS

Summary: The following schedule of the meetings of the Asheville City Council for 2007 be, and the same is, hereby established as follows:

City Council Formal Meetings
5:00 pm
2nd, 3rd and 4th Tuesdays of each month
Council Chamber – 2nd Floor
City Hall Building, Asheville, NC

City Council Community Meetings
7:00 pm
5th Tuesday of any month
Meeting places to be announced

Due to holidays, the following meetings are hereby cancelled: Tuesday December 18, 2007; and Tuesday, December 25, 2007.

RESOLUTION BOOK NO. 30 - PAGE 149

H. RESOLUTION NO. 06-202 - RESOLUTION AUTHORIZING PINE PROPERTIES INC. TO CONVEY 128 MCENTIRE ROAD IN RUTHERFORDTON, N.C., TO LEON D. AND ANGELINE J. MAST FOR THE SUM OF $370,000

Summary: The consideration of a resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

No bid was received after advertisement for upset bids for the purchase of real property at 128 McEntire Road. This property was bequeathed to the City by Jake Rusher. It is an irregular shaped parcel comprising 23.79 acres±. It is improved with a three bedroom log house, a barn, several outbuildings and fencing. It is located in a rural area of Rutherford County. The offer from Leon D. and Angeline J. Mast is in the amount of $370,000. The offer was submitted through the listing agent, Scott Jackson of Odean Keever & Associates. The property was listed at $389,500 based on a market analysis at the time of listing. The real estate commission on the sale will amount to 6% or $22,200.

The Masts previously offered $370,000 for the property and after being advertised, an upset bid was received from Brad Ford in the amount of $398,800. Mr. Ford's offer endured advertisement and was approved by Council. A sale contract was executed, but subsequently Mr. Ford was unable to obtain financing and the sale contract was terminated. In accordance with the contract Mr. Ford's bid deposit was returned.

The Masts upon being made aware the property was again available submitted their bid again in the amount of $370,000. Pines Properties, Inc. advertised for upset bids pursuant to the bid from the Masts. The advertisement was published on November 17, 2006, and no upset bid was received.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- The sale will generate revenue from the disposition of an un-needed asset.
- It will return property not needed for public use to private ownership.
- It will transfer responsibility for maintenance to the private sector.

Cons: There is no negative impact.

The proceeds from the sale of this parcel based upon the Will of Jake Rusher. The funds will be used for recreation purposes. First, they will be used to enhance the Jake Rusher Park and second, they will be used for payment to skate park. The balance of any funds from his estate will then be deposited into a capital fund to be used for future recreation development or land acquisition as deemed appropriate by Council.

Economic Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road to Leon D. and Angeline J. Mast.

RESOLUTION BOOK NO. 30 - PAGE 150

I. **RESOLUTION NO. 06-43 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DPI CONSTRUCTION INC. FOR THE PROJECT KNOWN AS THE AVON ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with DPI Construction, Inc., in the amount of $274,645.25, for the project known as Avon Road Sidewalk and Drainage Improvements.

In October 2006, City Council approved an additional $370,000 in the Capital Improvement Budget to construct sidewalk on New Haw Creek Road and Avon Road. City staff requested an extension from the N.C. Dept. of Transportation (NCDOT) for the Encroachment Agreement on New Haw Creek Road sidewalk, which expired in October 2006. Prior to approving the extension, NCDOT is requiring some significant changes to the design of the project. We anticipate this change and approval to take an additional two to three months.

In order to keep the project moving, City staff decided to break the project into two separate contracts, one for Avon Road and the other for New Haw Creek Road. We received informal bids on Friday, November 17, 2006, for Avon Road Sidewalk and Drainage Improvements. Three bids were received from Rock Grading & Paving, Inc., Tennoca Construction Company and DPI Construction, Inc. in the amounts of $346,380.00, $352,645.00 and $274,645.25, respectively. After a thorough review of the bid documents by the Engineering Department, DPI Construction, Inc., was found to be the lowest responsible bidder with a total bid of $ 274,645.25.

This project consists of the installation of approximately 1,215 linear feet of 6-foot wide concrete monolithic sidewalk and nearly 1,200 linear feet of 18-inch diameter stormwater pipe and other related appurtenances.

DPI Construction, Inc. is the grading and utility construction division of McCarroll Construction, Inc., a local general contractor with experience in site development projects. McCarroll Construction has also performed projects with similar scope for other municipalities in the past in a satisfactory manner.

Pros:

- The execution of this contract will allow the City of Asheville Transportation and Engineering Department to continue upgrading the pedestrian and stormwater infrastructure of the City.
- The bid amount of $ 274,645.25 for the construction of the Avon Road Sidewalk and Drainage Improvements is equitable and reflects the very lowest cost the City received during the two bidding processes.
- Construction of this sidewalk will enhance pedestrian safety and provide sidewalk connectivity to key area services such as the Haw Creek Area Library and Haw Creek Park.
- Construction of the proposed drainage improvements will enhance conveyance of stormwater run-off along this particular street, improving vehicular safety

Cons

- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land and traffic pattern disturbances along the proposed construction corridor.

Staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with DPI Construction Inc., in the amount of $274,645.25, for the project known as Avon Road Sidewalk and Drainage Improvements.

RESOLUTION BOOK NO. 30 - PAGE 151

J. RESOLUTION NO. 06-184 - RESOLUTION AUTHORIZING VERONA DRIVE, SPRINGMILL DRIVE AND TIVOLI ROAD IN WEST ASHEVILLE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing Verona Drive, Springmill Drive and Tivoli Road in West Asheville to become publicly maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Verona Drive, Springmill Drive and Tivoli Road are developer-constructed streets that have an average paved width of 24 feet and a length of 0.04, 0.06, 0.05 miles, respectively. Engineering Department staff inspected these streets and found them to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Verona Drive, Springmill Drive and Tivoli Road will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council adopt a resolution authorizing Verona Drive, Springmill Drive and Tivoli Road in West Asheville to become publicly maintained streets.

RESOLUTION BOOK NO. 30 - PAGE 152

K. RESOLUTION NO. 06-25 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH MCGILL ASSOCIATES FOR THE DINGLE CREEK STORMWATER ENGINEERING ANALYSIS

Summary: The consideration of a resolution authorizing the City Manger to sign a contract with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of $321,000; and the associated budget amendment, in the amount of $88,000, to complete this work.

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate $2 million of expected revenue, $200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected McGill Associates to perform this work.

In 2005, the City of Asheville received a grant from the Clean Water Management Trust Fund in the amount of $133,000 to assist in completing the Stormwater Engineering Analysis for the Dingle Creek Watershed. Staff budgeted an additional match for the grant of $100,000. The total cost of the work is $321,000. Staff is requesting a budget amendment in the amount of $88,000 to complete this work. This money would come from the Stormwater Utility Fund Balance.

On November 17, 2006, the Flood Damage Reduction Task Force met and recommended approval of this contract by consensus.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

What is a Stormwater Engineering Analysis? A stormwater engineering analysis is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the analysis, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analyze the capacity of the system. The model will indicate which pipes, ditches and/or streams need repaired and in what priority. The analysis also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this analysis include the following:

- Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- Prioritizing the storm drainage needs within the watershed;
- Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this analysis include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,

4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future.

Pros:

- Completing the engineering analysis will allow us to make better decisions on how to prioritize capital improvement projects.
- Data from this analysis will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Cons:

- The cost associated with completing the work is significant. The Engineering Analysis must be completed by engineers that specialize in hydrology and hydraulics.

Staff recommends adoption of a resolution authorizing the City Manger to sign a contract with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of $321,000; and the associated budget amendment, in the amount of $88,000, to complete this work.

RESOLUTION BOOK NO. 30 - PAGE 154

L. ORDINANCE NO. 3184 - BUDGET AMENDMENT FOR THE DINGLE CREEK STORMWATER ENGINEERING ANALYSIS

Summary: See Consent Agenda Item "K" above.

ORDINANCE BOOK NO. 23 - PAGE 141

M. RESOLUTION NO. 06-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN & CALDWELL FOR THE UPPER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Upper Ross Creek Watershed Stormwater Engineering Analysis in the amount of $200,000; and the associated budget amendment, in the amount of $50,000, to complete this work.

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate $2 million of expected revenue, $200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected Brown and Caldwell to perform this work.

The total cost of the work is $200,000. Staff is requesting a budget amendment in the amount of $50,000 to compliment the $150,000 already budgeted to complete this work. This money would come from the Stormwater Utility Fund Balance.

Ross Creek is listed on the State 303 D list as an impaired stream. This means that this stream has been identified as having poor water quality.

On November 17, 2006, the Flood Damage Reduction Task Force met and recommended approval of this contract by consensus.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

What is a Stormwater Engineering Analysis? A stormwater engineering analysis is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the analysis, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analyze the capacity of the system. The model will indicate which pipes, ditches and/or streams need repair and in what priority. The analysis also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this analysis include the following:

- Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- Prioritizing the storm drainage needs within the watershed;
- Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this analysis include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,
4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future.

Pros:

- Completing the Engineering Analysis will allow us to make better decisions on how to prioritize capital improvement projects.

- Data from this analysis will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Cons:

- The cost associated with completing the work is significant. The Engineering Analysis must be completed by engineers that specialize in hydrology and hydraulics.

Staff recommends adoption of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Upper Ross Creek Watershed Stormwater Engineering Analysis in the amount of $200,000; and the associated budget amendment, in the amount of $50,000, to complete this work.

RESOLUTION BOOK NO. 30 - PAGE 155

N. ORDINANCE NO. 3410 - BUDGET AMENDMENT FOR THE UPPER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS

Summary: See Consent Agenda Item "M" above.

ORDINANCE BOOK NO. 23 - PAGE 143

O. BUDGET AMENDMENT FOR THE LEGAL DEPARTMENT TO INCREASE LEGAL SERVICES LINE ITEM

This item was removed from consideration by City Council.

P. RESOLUTION NO. 06-207 - RESOLUTION AUTHORIZING THE CHANGE IN WATER POLICIES TO REFLECT CHANGES IN THE NUMBER OF DAYS FROM 8 TO 15 BEFORE AN ACCOUNT IS ELIGIBLE FOR CUT-OFF FOR NON-PAYMENT; PAYMENT PLAN ARRANGEMENTS; AND ALL REFERENCES OF REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE & HENDERSON BE AMENDED TO READ "THE CITY OF ASHEVILLE"

Summary: The consideration of a resolution authorizing the change in Water Policies to reflect changes in the number of days before an account is eligible for cut-off for non-payment; payment plan arrangements; and all references of Regional Water Authority of Asheville, Buncombe and Henderson amended to read The City of Asheville.

Staff has been verifying current water policies ensuring all references to the Regional Water Authority of Asheville, Buncombe and Henderson were replaced with the City of Asheville as appropriate and the water policies did not conflict with the City Engineering Standards Manual, state mandated programs such as backflow and cross-connection. Staff through a cross-departmental team evaluated current billing and cut-off for non-payment policies.

A team made up of Water Resources, Engineering, City Administration and Finance Department's staff has reviewed current water billing policies. Staff has analyzed the advantages and disadvantages of changing current billing and cut-off for non-payment policies and any impact suggested changes will have on the water fund. Staff compared current billing and cut-off practices with ten public utilities and four private utilities.

PROS: These water policy changes reflect increased level of customer service by extending the utility bill grace period to a minimum of 15 days after the due day and administrative changes of the City of Asheville as the water provider replacing the Regional Water Authority references.

CONS: The change in the grace period from 8 days to 15 days could cause minor fluctuations in water fund revenue being generated by customers waiting until the end of the grace period to pay their bill.

Staff recommends City Council adopt the resolution authorizing the change in Water Policies to reflect changes in the number of days before an account is eligible for cut-off for non-payment from 8 to 15 days; allowing more payment plan arrangements; and all references of Regional Water Authority of Asheville, Buncombe and Henderson amended to read The City of Asheville.

RESOLUTION BOOK NO. 30 - PAGE 156

Q. MOTION TO REVIEW LEASE OF CITY-OWNED PROPERTY AT 224 LOUISIANA AVENUE TO US ARMY CORPS OF ENGINEERS

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR FURTHER DISCUSSION AND/OR A SEPARATE VOTE

RESOLUTION NO. 06-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DALTON'S HEATING, AIR CONDITIONING AND CONTROLS INC. FOR THE REMOVAL AND DISPOSAL OF THE OLD CHILLER AND INSTALLATION OF A NEW CHILLER AT THE PUBLIC WORKS FACILITY LOCATED AT 161 S. CHARLOTTE STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dalton's Heating, Air Conditioning and Controls Inc. for the removal and disposal of the old chiller and installation of a new chiller at the Public Works Facility, 161 South Charlotte Street.

The chiller at the Public Works Facility is approximately 15 years old and has reached the end of its functional life. The past few years numerous breakdowns have occurred resulting in a large amount of parts replacement, maintenance and repair time by the Parks and Recreation Department maintenance personnel. Funds are budgeted in the Public Work's 2006 – 2007 capital budget.

The Parks and Recreation Department received 3 bids as follows:

Dalton's Heating, Air Conditioning and Control	$54,590.00
R & W Inc.	$54,716.00
McNutt Services Group	$54,899.00

Dalton's Heating, Air Conditioning and Control was the lowest responsible bidder at the cost of bidder at the cost of $54,590.00.

Pros:

- Chiller repair costs will be reduced
- Improved reliability
- Lees maintenance personnel time for repair

Cons:

- Costly repairs will continue.
- Breakdowns will occur at an increased frequency.

The Public Works Department recommends City Council adopt the resolution authorizing the City Manager to enter into a contract with Dalton's Heating, Air Conditioning and Controls Inc. for the removal and disposal of the old chiller and installation of a new chiller at the Public Works Facility, 161 South Charlotte Street.

Councilman Mumpower expressed concern about the City including existing utilized City properties in a Request for Qualifications (RFQ) to offer City-owned property for redevelopment. And, since this property is in that RFQ, he was also concerned about spending $50,000 in a facility that will possibly be sold.

Councilman Newman felt that we need to take care of our facilities.

Councilman Davis said that with the RFQ we are asking the development community to look at the City's properties to see if there is a better use for our land.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-[illegible]. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 147

RESOLUTION NO. 06-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BROWN & CALDWELL FOR BIDDING AND CONSTRUCTION FOR WATER TREATMENT PLAN UPGRADES AT THE NORTH FORK AND BEE TREE WATER PLANTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services contract with Brown & Caldwell.

The Water Resources Department requires a professional engineering firm to handle the project management and bid and construction phase of the water treatment plant upgrades. Engineering design for the North Fork and Bee Tree water treatment plant upgrades has previously been prepared through another engineering contract with the engineering firm of Brown & Caldwell. Only one firm responded to the Request for Qualifications. Staff contacted numerous firms to find out why no one else submitted proposals and each firm stated that they would not submit proposals for design work their firm did not prepare. The design work was at a cost of over $1,000,000. Brown & Caldwell submitted a proposal and due to their previous design work and good standing with the City and department on previous engineering projects this firm was selected to continue this project. Part of this project includes looking at green power (hydroelectric) for the two plants. This is an opportunity for the City to pursue energy savings and ensuring future storm events do not restrict the flow of water from the treatment plants due to

downed power lines. Excess power would be sold to Progress Energy. Total cost is not to exceed $1,548,871, which is allocated in the current Fiscal Year 2006-07 budget.

Pros:

- This project will enhance the water system and ensure we continue to meet all federal and state mandated clean water regulations.
- Funds are allocated in the current year budget.

Cons: There is no negative impact.

City staff recommends City Council adopt the resolution authorizing the City Manager to enter into a professional services contract with Brown & Caldwell.

Councilman Mumpower moved for the adoption of Resolution No. 06-244. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 148

MOTION TO REVIEW LEASE OF CITY-OWNED PROPERTY AT 224 LOUISIANA AVENUE TO US ARMY CORPS OF ENGINEERS

Summary: The consideration of review of a lease of City-owned real property at 224 Louisiana Avenue to the US Army Corps of Engineers.

Members of City Council have expressed interest in alternative vehicles for the lease between the City of Asheville and the United States of America Army Corps of Engineers for the property at 224 Louisiana Ave which is the Army Reserve Center. The site is an 8.857 acre tract on the west side of Louisiana Ave about 200' from its intersection with Patton Avenue.

The lease was approved on October 10, 2006, for a three year term of July 1, 2006-June 30, 2009, at an annual rate of $112,000 with no escalation clause.

A possible option for offering to renegotiate the current lease that could be explored would be to establish the lease at a beginning rate based on the previous lease which expired in June 2006 at an annual rate of $60,000. The City could offer to base the rate at the $60,000 with an annual adjustment based on the Consumer Price Index (CPI) of the most recent year of the lease. For example, the CPI for 2005 was 3.4%. The CPI is used by many government agencies to base cost of living adjustment payments.

Pros:

- Provide an opportunity for collaboration and partnership with the US Army Corps of Engineers and the local Army Reserve Center.

Cons:

- Loss of Revenue and lease terms below market rate.

City staff requests City Council provides direction to staff to offer the US Army Corps of Engineers to renegotiate the current lease for 224 Louisiana Avenue.

Mr. Fred English questioned why this item was on the Consent Agenda and not a public hearing.

Mr. Walter Plaue felt that this lease should not focus on costs, but should reflect the City's support toward our service members.

Councilman Newman said we need to be fair to the people who lease facilities from the City and also fair to the owners of the facilities - which are the taxpayers. When building and/or land leases expire, we need to ask some of our partners to contribute a little more. As we move forward, we need to make sure that we are getting the highest and best use out of our land and think through what we want to see in the future for that piece of property.

Councilman Mumpower moved to renegotiate the current 3-year lease at $60,000 with an annual adjustment based on the CPI. This motion was seconded by Vice-Mayor Jones and carried unanimously.

The following comment was heard by City Council after action had already taken place. Mr. Jim Reeves presented Council with an alternative proposal for the Army Reserve Center. He suggested Council leave the lease at the market rate and use a percentage of it for testing returning vets for depleted uranium poisoning. He presented Council information relative to exposure to depleted uranium.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE

ORDINANCE NO. 346 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE

Mayor Bellamy opened the public hearing at 5:28 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 1741 Hendersonville Road from RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Zoning for Weirbridge Village. This public hearing was advertised on November 14 and 24, 2006.

Ms. Cogburn said that the Weirbridge Village project supports the following goals of the City's Comprehensive Plan: (1) The goal of pursuing compatible infill development; (2) The goal of permitting and encouraging transit supportive density along and adjacent to major corridors and at logical transit nodes; (3) The goal of developing and using BMPs (rain gardens) to address the effect of development on stormwater runoff and water quality; (4) The goal of providing affordable housing; and (5) The goal of promoting the use of green building techniques.

The subject property, 20.66 acres, is located within the City limits, at the corner of Hendersonville Road and Racquet Club Road. The property currently contains a few homes and accessory buildings, but otherwise is undeveloped. Surrounding properties are both residential and commercial. To the north is the Racquet Club (a recreational facility) and the Racquet Club Village condominiums. Applebee's restaurant is on the northwestern corner of Racquet Club and Hendersonville Roads. Across Hendersonville Road are apartments and commercial properties. To the south, a low density multi-family development (Crowfields Condominiums) abuts the development and to the east another condominium development, South Oaks, is located. The

zoning in the area reflects the development; to the north and east, RM-16 and Highway Business, and to the south and west, RM-6.

The property owners, Sizemore Developers, LLC and Dawgbilt NC, LLC, are requesting that the property be rezoned from RM-6 Residential Multi-Family Low Density District to HB Highway Business District to allow for the development of a 336-unit multi-family development with commercial out-parcels along Hendersonville Road. The multi-family portion of the development is comprised of 16 buildings of 2 types. The developer is proposing a mix of one- two- and three-bedroom units for a total residential density of 20.75 units per acre. Highway Business zoning allows up to 32 units per acre. The commercial portion of the development is shown as traditional suburban commercial out-parcels abutting Hendersonville Road. Instead of separate curb cuts, the developer proposes to access all commercial parcels off a road that runs parallel to Hendersonville Road. Other access to the property is via a new entrance to the property along Hendersonville Road (to the south) and 3 entrances off of Racquet Club Road. The roads are proposed to remain private. A traffic impact analysis has been submitted by the developer. The developer has proposed a connection to Crowfields as a means to facilitate ingress and egress for the Crowfields community. Staff is supportive of this traffic management measure; however, it will require approval by the Crowfields Association. Staff will require a road stub-out at the site of the possible connection if the connection to Crowfields is not accepted.

The developer has submitted a proposal for the development of the commercial parcels that indicates there may be as many as 5 out-parcels but perhaps fewer than the illustrated 4. They propose restrictions that no commercial parcel will be greater than 3.5 acres (the entire commercial development area is approximately 5 acres in size). They also propose maximum gross floor areas for the buildings, limitations on uses, and signage restrictions. Restrictions on this portion of the development should be made a part of any approval on this conditional zoning request.

The residential portion of the development is comprised of 16 buildings covering approximately 16.19 acres of land. 112 one-bedroom units, 176 two-bedroom units and 48 three-bedroom units are shown. The developer is going for LEED certification with this project. Over half of the 647 parking spaces provided are garage spaces (388) leaving 259 surface parking spaces. The residential buildings are comprised of three stories with a garage level underneath. The developer is proposing that approximately 5% (17 units) in the project will be affordable, with an additional 5% considered by the developer to be "workforce" housing units.

The developer is proposing improvements to Racquet Club Road as part of the development. The proposal is to turn it into a landscaped boulevard with parking on the Weirbridge Village side of the street. With the widening of Racquet Club Road, the developer is indicating a need to reduce the front setback from 35 feet to 12.5 feet. With the sidewalk provisions, orientation of the buildings and parking along Racquet Club, staff does feel like this qualifies for a pedestrian oriented development and would recommend as part of this approval that the pedestrian oriented development design and reduced setback along Racquet Club Road be accepted from 35 feet to 12.5 feet.

Type-C buffers will be required on the southern side of the property adjacent to Crowfields and the western side adjacent to South Oaks.

Stormwater management has been a major issue in the past in this area where a number of creeks converge. The subject property contains two drainage channels and one creek. The developer is proposing to pipe Turtle Creek where it crosses the property but is showing open space area (with one road interruption) around the drainage on the western side of the property. The developers propose to incorporate rain gardens throughout the development for stormwater management.

At a meeting on October 16, 2006, the Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. The developer has resubmitted since that time, addressing a number of conditions.

The Planning and Zoning Commission, at a meeting on November 1, 2006, reviewed the application and made a positive recommendation (6-1) for approval of this request subject to the conditions placed on the development by the TRC and subject to the following additional condition: (1) That the developer would work with staff to provide limitations on the commercial development that would be presented to Council as part of any approval of the proposal.

Prior to and at the Planning and Zoning Commission meeting, staff and the Commission received significant public comment on this project. Outside of the meeting staff has received 7 letters or calls in support of the project and over 15 letters or comments in opposition (citing density, height, traffic, and stormwater runoff as the major concerns). There were a significant number of speakers at the Planning and Zoning Commission meeting, most citing the aforementioned concerns about the project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The developer is working with the N.C. Dept. of Transportation (NCDOT) to obtain a light at the intersection of Racquet Club and Hendersonville Roads to facilitate ingress and egress for this and surrounding developments. The project, if approved, must meet the technical standards set forth in the City's UDO and Standards and Specifications Manual.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The developer has proposed piping one stream along Hendersonville Road (will necessitate permitting by the Army Corps of Engineers) and proposes to leave open a drainage channel on the property. The developer is proposing the use of rain gardens for stormwater management throughout the residential portion of the project. The site, while over 2220 feet in elevation is not subject to the hillside ordinance because the average natural slope on the property is approximately 9%. Hillside requirements begin at a 15% slope.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The use of the property immediately surrounding the site is multi-family residential and commercial, as is proposed for this property. The residential density, however, is greater than most of the surrounding residential developments.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

As stated above, the residential density proposed on this site is greater than the surrounding residential developments. The commercial out-parcels proposed would be similar to much of the suburban commercial strip development that is found along Hendersonville Road at present.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The proposed use supports the 2025 goals as follows: (a) Permits and encourages transit supportive densities along and adjacent to major corridors and at logical transit nodes; (b) Pursues infill development; (c) Develops and uses BMPs to address the effect of development on stormwater runoff and water quality; (d) Provides affordable housing; and (e) Utilizes greenbuilding techniques.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The proposed use is located along a major (five lane) thoroughfare in the City. Transit is available along this corridor and the developer proposes a transit shelter as part of the project. Other infrastructure is in place to support this development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The developer has submitted a traffic impact analysis that is being analyzed by the City's Engineering Department.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The proposed development is in keeping with the mix of uses found along Hendersonville Road.
- The residential density proposed is greater than that found in the surrounding area.
- The developer has provided access largely through internal circulation on private roads and is working with NCDOT to obtain a traffic light at the Racquet Club Road intersection to facilitate traffic ingress and egress.

A review of the subject proposal indicates that the proposed development continues the existing suburban style development pattern along Hendersonville Road. This style includes relatively low density commercial development along the road frontage in the form of single-use out-parcels and transitions to multifamily development at the part of the site not directly fronting on Hendersonville Road. Access control is provided through internal driveway access to all development, including the commercial out-parcels. Some City affordable housing, interparcel connectivity and green development goals are met by the proposed development. More "urban" development alternatives were explored with the developer to cluster development and reserve larger areas of green space (e.g., Biltmore Park, Gerber) but these were not pursued for a variety of reasons, primarily due to marketing and compatibility concerns. Much of the existing "character" of the site, including the mature vegetation will be lost with this proposed development pattern. Since the size and generally-undeveloped nature of the site is currently unique along the corridor, there has been public concern.

Staff finds that the proposed development is generally compatible with the surrounding development pattern and reflects a suburban style characteristic to much of the Hendersonville Road corridor. The development would contribute to meeting certain City goals and is not anticipated to create infrastructure or service impacts that cannot be mitigated by the on-and off-site improvements agreed to by the applicant. As a consequence, staff recommends approval of the proposed conditional zoning request subject to a variety of conditions provided below.

Recommended Special Conditions:

- Greater detail must be provided on the operation of the rain gardens and the establishment of a maintenance agreement concerning the rain gardens will be required.
- Because of flooding on adjacent properties due to urban stormwater run-off, stormwater management controls must be provided to control peak flows, which exceed those as required by the City of Asheville UDO. (25 year storm recommended).
- The proposed signal on Racquet Club Road must be installed prior to any certificate of occupancies being issued.
- A pedestrian signal shall be provided at the existing traffic signal, if not already included in the NCDOT pedestrian signal plan.
- Commercial uses must be further defined and architectural restrictions further delineated.
- A connection shall be made to the Crowfields Condominium property, if permitted; if not permitted, a road stub-out shall be provided for any future possible connection.
- A certain percentage of the units should be affordable and meet the City's requirements for affordability. This number (probably 5%) is being discussed with the developer who is committed to some affordable units.
- Type-C buffer adjacent to both the properties
- The pedestrian oriented design component along Racquet Club Road, which would allow for the reduction of the setback to 12.5 feet

Ms. Cogburn said that the developer has agreed with complying with all of the conditions.

Standard Conditions:

- The project shall comply with all conditions outlined in the TRC staff report.
- All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets.
- All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
- The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department.
- At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits.

Mr. W. Louis Bissette Jr., attorney for the petitioner, felt that after Council hears the presentation, they will agree that Weirbridge Village can be a model for Asheville's smart growth policies. The project is innovative in many areas. The developer will spend approximately $5 Million on improvements to Racquet Club Road; the 25-year stormwater system; the LEED certified building design; the affordable and workforce housing units; and the new traffic signals, along with the Crowfields access easement, turn lanes and deceleration lanes. Smart growth and reasonable density in relatively flat areas, such as this, means less sprawl on our ridge tops and a better quality of life for our citizens. This project will produce an annual tax net gain of $594,594 for the City, as calculated in a letter from Mr. Tom Tveidt, Director of Asheville Metro Business Research Center. He provided Council with several letters of support from neighboring developments.

Mr. Clay Mooney, landscape architect with Design Associates, addressed the design of the stormwater system which, through the use of rain gardens throughout the site and other structural designs, will meet the 25 year storm event standards, not the City required 10 year storm event standards. As far as they know, no developer in Asheville has ever been asked to do that. The result, however, will be less stormwater impact downstream than exists today with the pasture land.

Mr. Gerald Green, with Greenplan, discussed density. The Highway Business District being requested permits a density of up to 32 units per acre and they are proposing 20.75 units per acre. This site is the appropriate location for dense residential development due to its amenities and attributes, some being, it is located on a major transportation corridor; it is located on a major transportation route (they are proposing a bus shelter as part of the development); it is located in close proximity to shopping, services and employment opportunities; it will be connected to adjacent property with the system of sidewalks along Racquet Club Road, Hendersonville Road, and internally to the site; pedestrian cross walks and signals will be provided at the intersection of Turtle Creek Road and Hendersonville Road and also at the intersection of Hendersonville Road and Racquet Club Road to provide safe pedestrian access to the major commercial and residential areas across Hendersonville Road; and enhanced access points with traffic signals for safe traffic management. Steps were taken in the planning of the project to ensure protection of site amenities, including siting of buildings to preserve existing trees, design of buildings to minimize grading, and underground parking to minimize impervious surfaces and to preserve green space. He said over 27% of the site will be preserved as open space. As Asheville continues to grow we must look at density in a different way in order to provide the housing and services for current and future residents. Rather than judging density in numbers they identified the impacts of the density and addressed those.

Mr. Ken Putnam, traffic engineer with Mattern & Craig, addressed the traffic concerns. He said the NCDOT is currently installing a synchronized traffic signal system along Hendersonville Road to improve traffic flow. In order to minimize the potential impact from the proposed development, the developer will provide the following enhancements, subject to review and approval by the City and the NCDOT: (1) limit the direct access onto Hendersonville Road to only one access point; (2) provide secondary access points along Racquet Club Road; (3) provide a right turn deceleration lane along the southbound approach of Hendersonville Road at Racquet Club Road and also at the main access point; (4) provide three egress lanes or existing lanes onto Hendersonville Road at Racquet Club Road and also at the main access point; (5) install a new traffic signal including the pedestrian device at Racquet Club Road; (6) revise the existing traffic signal including pedestrian devices, if needed, at Turtle Creek Drive; and (7) serve the commercial out-parcels internally with no direct access onto Hendersonville Road. In addition to the proposed development, the new traffic signal at Racquet Club Road would benefit seven distinct neighborhoods.

Mr. Rusty Pulliam, developer, spoke about his vision for the commercial part of the development and the voluntary restrictions which he is willing to place on this part of the project. He said the restrictions are (1) the number of commercial parcels will be limited to a maximum of five; (2) the size of any one commercial parcel will be limited to a maximum of 3.5 acres; (3) no big box retail stores will be permitted; (4) deed restrictions will be placed on the property to prohibit night clubs, bars, adult uses and dance clubs; (5) architectural standards will be placed on the design of the commercial buildings to require them to mirror the residential architecture of the Weirbridge Village residential condominium buildings located behind the commercial property. The exterior materials used on the commercial structures shall be the same as those used on the residential structures; (6) exterior lighting will be restricted to the same lighting fixtures and low impact lights as used in the residential condominiums behind the commercial property; (7) landscaping will meet with City of Asheville standards and be approved by the owner; and (8) no 24-hour uses, other than bank ATM's and pharmacies, will be permitted. In addition, additional

restrictions include (1) the size of any one commercial building will be limited to a maximum of 25,000 square feet of gross floor area; (2) the height of all commercial buildings will be limited to a maximum of 30 feet (two stories); (3) signage for the commercial development shall be limited to: (a) one development identification sign that will be architecturally compatible with the overall design of the development; (b) one monument style tenant identification sign per street frontage (maximum of 2 signs) with a size not to exceed 50 sq. feet per face and a height not to exceed 8 feet shall be permitted for each commercial building. The monument identification signs shall be architecturally compatible with the overall design of the development; and (c) one attached tenant identification sign shall be permitted for each commercial tenant. The maximum size for any one attached tenant identification signs shall not exceed 50 sq. feet per face and may be internally or externally lit; (4) outside speaker systems shall be limited to a low volume speaker for the bank drive through teller(s) and pharmacy drive through(s). The hours of operation of the bank teller speaker systems shall be limited to 8:30 a.m. - 6:00 p.m. Monday -Friday and 9:00 a.m. - Noon on Saturdays. The hours of operation of the pharmacy drive through speaker system shall not be limited; (5) no outdoor storage of merchandise, equipment, or other items shall be permitted; and (6) commercial uses shall be limited to financial institutions; pharmacies; restaurants; professional offices; retail sales; bakeries; barber shops and salons; bookstores; clinics, medical; delicatessens; florists, gift shops; grocery stores; and health and fitness facilities. He said that they will grant a permanent easement for Crowfields at no cost.

Mr. Chip Cassinger, developer, described the green-building construction techniques which will be utilized to make this project a national LEED certified model for multi-unit residential buildings. He also discussed the planned inclusion of 34 affordable housing and workforce housing units in Weirbridge Village, noting that all their units will be handicapped accessible. Regarding height, the City measures height from finished floor to top of the third floor, and their 3-story garden style buildings measure approximately 33 feet. The footprint on the ground does not exceed 10,000 sq. feet, which is a comparable footprint with Crowfields. He said that 60% of the parking is underneath.

Mr. Mack Cox, President of the Executive Committee of Crowfields Condominium Association, gave a brief history of Mr. Pulliam's development when it was originally proposed in February of 2006. He proposed to build 80 town homes on the back 10 acres and a commercial development on the front 10 acres. He also offered Crowfields access to a traffic light on his property if Crowfields would give him one acre of their prime frontage for his commercial use. The Crowfields Board of Directors overwhelming rejected the proposal. In July of 2006, Mr. Pulliam then proposed what is before Council today. He said new developments should not exceed zoning which is greater than existing surrounding neighborhoods. Crowfields is zoned RM-6 and the surrounding developments are zoned no greater than RM-16. He felt the density was too much and there were too many conditions yet to be resolved.

Mr. Bob Malkin said that the opposition is not opposed to development of the site, but how the site is being developed. He said that based on the developer's plan, 161 mature trees will be bull-dozed down, leaving maybe 10 trees left on the site. After the trees are cut, then the developer will grade the site flat. He questioned what would happen if the developer could not follow through with his plans after cutting down 161 trees and grading the land. He said that there is not enough parking on the site, so 35 cars will have to park on Racquet Club Road. He showed photos of other properties where this developer has ravaged the land noting that he has no environmental conscience. He then explained how the buildings will be 60 feet tall and will be incompatible to other area developments.

Mr. Paul Bidwell, attorney for Crowfields Condominium Association, explained that the developer's plan shows a 46 foot height which does not appear to include the garage or the roof peak. He said this plan is not compatible with the surrounding neighborhood nor is it smart growth. He felt the plan benefits only the developer and he could see no reason why the

developer couldn't develop the property in half the size. This project is not the right plan for this property, as the land deserves less development. He said that zoning is a promise to the community, noting that it can change, but it is some protection for the people who live in the area. He said there is no good reason to change the zoning to such a high density. He urged Council to ask the developer to come back with a more appropriately-sized development which is more compatible with the neighborhood. He urged Council not to approve the development plan at the expense of the quality of life for the people in the neighborhood.

The following individuals spoke against the conditional zoning for several reasons, some being, but are not limited to: density is too high for the property; height of the buildings are too high; no location set aside for children to play in; City should honor the zoning status of properties; and the commercial property fronting Hendersonville Road will be strip development:

Mr. Joe Brady, Asheville resident
Crowfields resident
Mr. Maloy Rash, Crowfields resident
Mr. Michael West, Crowfields resident
Ms. Anne Campbell, Crowfields resident
Mr. Stuart Wilson, Devonshire resident
Ms. Barber Melton, Vice-President of Coalition of Asheville Neighborhoods
Mr. Robert Philip, Crowfields resident

The following individuals spoke in support of the conditional zoning for several reasons, some being, but are not limited to: needed traffic improvements to Racquet Club Road; development will increase adjoining property values; developer has proven record of following through with development plans; property warrants the higher density; good traffic management plan for Crowfields; developer will provide external natural buffer screening and shrubs along the southern Weirbridge Village boundary with Crowfields; developer will provide a 25-year stormwater system; 5,807 people will be affected by the improvements to Racquet Club Road; project supports City's smart growth policies; plan is for infill development, which slows down urban sprawl; the plan of commercial use in the front and residential in the rear is similar to what is already in place on Hendersonville Road; and plan calls for underground parking:

Mr. John Crook, South Oaks resident
Mr. Buster Brown, developer
Mr. Miller Williams, former resident of Crowfields
Ms. Susan Roderick
Mr. Robert Fitch, Crowfields resident
Mr. Will Morris, co-owner of one of the units in Crowfields
Mr. Laneal Vaughn, owner of the Asheville Racquet Club
Mr. Neal Hanks, resident in Biltmore Park Subdivision
Mr. Otto Claude Smith, Crowfields resident
Mr. Robert Cox, Racquet Club Road resident
Mr. Charles Frederick, Regional President for Southern Community Bank & Trust

Mayor Bellamy closed the public hearing at 7:32 p.m.

Throughout discussion, Mr. Shuford responded to various questions and/or comments from Council, some being, but are not limited to: what was the reasoning behind why the Planning & Zoning Commission member voted against the development; when was the property zoned RM-6; why was the property zoned RM-6; what is the tax appraisal for the property; are working farms taxed at a much lower rate; and how will the Dingle Creek Stormwater Analysis affect this area.

Councilman Mumpower felt there were many persuasive arguments for this development plan, but was concerned with why we have zoning if we are willing to make abrupt leaps in density this dramatically.

Councilwoman Cape said that the 2025 Plan (compiled by the community in 2002) identifies several items as positive ways for us to build in our community, which this project adheres to, e.g., smart growth, infill development, transit orientation, green-building, etc. The footprint of the proposed buildings are essentially the same size as the Crowfields buildings, but instead of housing six families, they are housing 20 families in high energy efficient homes. She did question why one building couldn't be deleted in place of more open space, but overall she commended the developer for the plan.

Councilman Freeborn felt that it doesn't make sense to continue medium to low density development on Hendersonville Road. Even though the developer doesn't anticipate this being a family-oriented development, he suggested a playground facility be placed on the property. Another suggestion would be to include a $120 annual transit pass to the rent or to the condo association fee, which would go a long way in reducing the number of cars on Hendersonville Road.

In response to Vice-Mayor Jones' concern about screening, Mr. Mooney said they will have a 25-foot buffer and the final locations of plant materials will be adjusted by an on-site visit with a member of the Planning staff and the landscape architect. The purpose of that is to try to concentrate those materials where they have the most need. They will try to do a replication of what is existing on the Crowfields side.

Upon inquiry of Vice-Mayor Jones, Ms. Cogburn said that technical height in the UDO is approximately 38 feet and is measured from the primary entrance (in terms of fire access) to the ceiling of the highest livable space. It is true that if you stand at the garage level on the lower side and look to the very top of the roof, you are getting close to 60 feet, but 60 feet is the height that is allowed in the Highway Business District.

When Vice-Mayor Jones asked about enforcement, Planning & Development Director Scott Shuford said that one enforcement technique if a violation should occur is that we do not issue a Certificate of Occupancy. City Council has authorized an additional person to his staff and that person will be able to make sure the conditions established are known up front by the developer and the contractor, and will meet with them on-site throughout the construction process.

Upon inquiry of Councilman Davis about maintenance of the rain gardens, Mr. Chad Pierce in the City's Engineering Department, explained that after the rain gardens are installed, we will require an inspection and a recorded maintenance agreement, one provision which is an annual report. If the system is not working properly and the homeowners do not fix it, then the City has the option to go in, make the correction, and then put a lien on the property.

Councilwoman Cape wanted to make sure that the LEED aspects of this project are real and want to make sure they are part of the conditions of this project.

Councilman Newman asked if there is a technology that we can use prior to approving projects that tells how much more capacity the roads can bear before they become a low level standard. City Traffic Engineer Anthony Butzek responded that we can utilize traffic modeling to make some predictions. In addition, we can look at best management practices from other cities regarding development along certain corridors, e.g., improving pedestrian access, transit and bicycle access.

There was discussion regarding a condition requiring the buildings be LEED certified before being issued a Certificate of Occupancy. Mr. Shuford understood the LEED certification process contains a component that you have to demonstrate that you are achieving certain things and the only way to do that is to get the buildings occupied. Mr. Cassinger explained that after the project is completed, the National LEED Council reviews the entire project. He suggested allowing the TRC to verify the number of points met in order to achieve the LEED certification. City Attorney Oast suggested the condition be that prior to the issuance of final site approval that the developer demonstrate to the TRC sufficient LEED elements associated with the site plan to achieve a minimum level of 30 points, understanding that the LEED certification cannot be obtained until after the project is built. Councilman Newman said that as the points are calculated that we do it in a very conservative way.

Mr. Mooney responded to Mayor Bellamy regarding the erosion control measures taking place during construction, the percentage of the site being preserved as open space, and the minimum parking requirements.

In response to Mayor Bellamy, Mr. Shuford said that if the developers do something above the underlying RM-6 zoning, they will have to come back to City Council. If the conditional zoning is not acted on in a timely fashion, the property reverts to its original zoning.

Councilman Newman moved for the adoption of Ordinance No. 3411, to conditionally zone property located at 1741 Hendersonville Road from RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Zoning for Weirbridge Village, subject to the following conditions: (1) The project shall comply with all conditions placed on the development by the TRC; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (5) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (6) Greater detail must be provided on the operation of the rain gardens and the establishment of a maintenance agreement concerning the rain gardens will be required; (7) Because of flooding on adjacent properties due to urban stormwater run-off, stormwater management controls must be provided to control peak flows, which exceed those as required by the City of Asheville UDO. (25 year storm recommended); (8) The proposed signal on Racquet Club Road must be installed prior to any certificate of occupancies being issued; (9) A pedestrian signal shall be provided at the existing traffic signal, if not already included in the NCDOT pedestrian signal plan; (10) Commercial uses must be further defined and architectural restrictions further delineated; (11) A connection shall be made to the Crowfields Condominium property, if permitted; if not permitted, a road stub-out shall be provided for any future possible connection; (12) A certain percentage of the units should be affordable and meet the City's requirements for affordability. This number (probably 5%) is being discussed with the developer who is committed to some affordable units; (13) That the developer would work with City staff to provide limitations on the commercial development with said commercial development restrictions being a part of any approval of the proposal; (14) Type-C buffer adjacent to both the properties; and that (15) the pedestrian oriented design component along Racquet Club Road, which would allow for the reduction of the setback to 12.5 feet be accepted; and (16) Prior to the issuance of final site approval that the developer demonstrate to the TRC sufficient LEED elements associated with the site plan for the residential component of the project to achieve a minimum level of 30 points, understanding that the LEED certification cannot be obtained until after the project is built. This motion was seconded by Councilman Freeborn.

Councilwoman Cape asked if there was a condition that could be crafted to eliminate speculative grading if the developer does not move forward with the plan or cannot obtain financing for the project. City Attorney said that Council can incorporate certain requirements into the conditional zoning ordinance, noting that any condition has to be agreed to by the developer. He suggested a condition that no grading permits be issued until we receive some indication that construction financing has been committed to. Mr. Pulliam agreed with that condition.

Councilman Newman and Councilman Freeborn agreed to include in their original motion a condition that no grading permits be issued until we receive some indication that construction financing has been committed to.

Councilman Mumpower felt that this is a good project; however, his decision falls on whether zoning is real or not and until then, it is our responsibility to error in fairness of practicalities.

The motion made by Councilman Newman and seconded by Councilman Freeborn (including the condition regarding financing) carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 9:01 p.m., Mayor Bellamy called for a short recess.

At 9:20 p.m., Councilman Mumpower moved to excuse Councilman Freeborn from the rest of the meeting due to illness. This motion was seconded by Vice-Mayor Jones and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3412 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

Mayor Bellamy opened the public hearing at 9:20 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for "homestays" (currently known as "bed and breakfast homestays") in single-family residential zoning districts. This public hearing was advertised on November 17 and 24, 2006.

This code amendment provides for "homestays" (currently known as "bed and breakfast homestays") in single family residential zoning districts as uses by right subject to special requirements. Since the initiation of proactive enforcement on illegal short-term (less than 30 days) rentals in various Asheville neighborhoods, staff has been meeting with a focus group of realtors, B&B owners, Tourism Development Authority staff, and Coalition of Asheville Neighborhood (CAN) members to discuss areas for compromise. One area of apparent agreement is the provision of homestays as uses by right subject to special requirements in single family residential zoning districts. Bed and breakfast homestays are currently allowed as uses by right subject to special requirements in multifamily zoning districts.

A bed and breakfast homestay is defined as: a private, owner-occupied residence with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. This definition would be applied to "homestays".

Section 7-16-1 provides the conditions under which uses by right subject to special requirements can be established. Bed and breakfast homestays must meet the following requirements:

- Current use districts: RM-6, RM-8, RM-16.
- No displays of goods, products, services, or other advertising shall be visible from outside the building.
- Shall be carried on by a resident of the property.
- A maximum of one full-time equivalent (one FTE) non-resident of the dwelling may be employed.
- On premise retail sales shall not be a component of the bed and breakfast homestay.
- A maximum of 25 percent of the gross floor area of the dwelling unit may be used for the bed and breakfast homestay. For the purpose of calculating the area of the structure devoted to the bed and breakfast use, only the floor areas of the bedroom and bathroom areas used by the bed and breakfast guests shall be considered in such calculations.
- No activities other than lodging, a morning meal, and an evening and/or afternoon refreshment shall be provided.
- Activities shall be provided for overnight guests only.
- Off-street parking shall be provided as required by subsection 7-11-1(c) of this chapter. Parking shall be located on the same lot on which the bed and breakfast homestay is located, at the rear of the lot and screened with vegetation from adjacent properties and from the street.
- No accessory structures shall be used to accommodate guests.
- The owner shall reside in the principal structure.
- The length of stay of guests shall not exceed 14 days.
- No home of less than 2,500 heated square feet shall be used for a bed and breakfast homestay.
- Signage shall be limited to a single sign, not to exceed four square feet, attached to the home.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- Bed and breakfast homestays shall be located a minimum of 500 feet from other bed and breakfast homestays and bed and breakfast inns. In calculating the 500 foot distance between bed and breakfast establishments, measurements shall be taken from the closest property line of the lot of the existing bed and breakfast establishment to the closest property line of the lot of the proposed bed and breakfast homestay. Existing, legally established bed and breakfast homestays that do not meet this separation requirement of 500 feet are permitted to expand to the maximum limits allowed under this chapter, al long as all applicable development standards are met.

This amendment allows the added flexibility for these extremely restricted uses to be accommodated in <u>all</u> residential districts. Additionally, the length of stay is proposed to change from 14 to 30 days and a prohibition on external signage in single family residential districts is proposed to increase neighborhood compatibility.

A suggestion was made by a citizen to increase the distance between homestay uses to 1,000 feet. A request has also been received for additional short-term rental uses in residential districts.

The amendment has been routed to Coalition of Asheville Neighborhoods (CAN), CREIA, and Council of Independent Business Owners for review and comment.

Pros:

- The City's rich architectural heritage can be shared with more visitors.
- There are many neighborhoods and properties that can benefit from the positive effects of these uses, just as Montford has.
- The regulatory limitations on these uses mitigate their impacts.
- There would be an opportunity for persons negatively affected by the City's short-term rental enforcement efforts to legitimately establish a homestay use.

Cons:

- This would allow an Edwin Avenue property previously denied by City Council to likely qualify as a homestay.
- An additional nonresidential/commercial use would be allowed in single family zoning districts.

On October 4, 2006, the Planning and Zoning Commission recommended partial approval of the proposed code amendment by a vote of 6-1 (Weeks opposed). The Commission was concerned about the expansion of "commercial" uses like homestays into single family districts so their recommendation was to delete the portions of the ordinance dealing with expansion of the uses and retain the change in nomenclature. One proposed ordinance represents the ordinance recommended by the Commission. Another version of the ordinance is the ordinance change originally prepared by City staff. City staff also requests that Council provide direction to staff concerning whether additional efforts should be undertaken to "legalize" short-term rental of properties in residential areas.

In summary, Mr. Shuford asked Council for direction on the following: (1) change the name of "bed and breakfast homestay" to "homestays; (2) increase the allowable length of stay from 14 days to 30 days; (3) extend homestay uses into the RS districts (if so, staff recommends that a prohibition on signage be included); and (4) provide for some relaxation of the 500 foot separation requirement, for example: where homestays are located in physically-discrete neighborhoods without common street connections or neighborhoods separated by major roads, water bodies, railroad rights-of-way or other significant physical barriers, the planning and development director may waive the separation requirement for homestay uses in such circumstances.

Ms. Barber Melton, Vice-President of CAN, explained how their vote was to support the amendment, but only two votes separated the final vote. Spacing was important in addition to the commercial intrusion into residential neighborhoods.

Ms. Elizabeth Ann Wyndelts spoke in favor of the ordinance. She did feel that parking should be addressed in that she felt there should be no on-street parking allowed.

Mayor Bellamy closed the public hearing at 9:30 p.m.

Councilman Davis could not be supportive of this amendment in that he feels it was crafted as an effort to work around the reasons why a bed & breakfast was denied on Edwin Place about a year ago. In addition, he was concerned about the Planning & Zoning Commission discussion which ultimately they only approved the name change.

Councilman Newman said that Council didn't have an overall policy last year when the matter on Edwin was considered, but now we have a policy.

After Mr. Shuford replied to Councilwoman Cape how the 2500 square foot home standard was arrived at, she explained how we should be looking for different ways for people to make a living in our community and this amendment provides that option for people to supplement their income in their own home. In addition, she was interested in having the 2500 square foot limit be evaluated because it seems prejudicial for those who do not live in large homes.

Councilman Mumpower said that we are talking about a regulated activity when there are all kinds of things that can go on in someone's home that we have no way of regulating at all. This regulated activity would provide some opportunity for people to make some money, for people to come to Asheville, and in a sense expand our housing stock. He questioned why we would want to have a 500 feet separation and why cap the square footage requirement. As long as it's regulated activity, people are a lot better off in the neighborhood with something that we can control.

Vice-Mayor Jones moved to adopt Ordinance No. 3412, to (1) change the name of "bed and breakfast homestay" to "homestays; (2) increase the allowable length of stay from 14 days to 30 days; (3) and extend homestay uses into the residential-single family districts, with a prohibition on signage. This motion was seconded by Councilwoman Cape.

Mayor Bellamy felt that the vote from the Planning & Zoning Commission is rare and explained her reasoning why perhaps the ordinance is not as thought out as some of the other wording amendments.

At the suggestion of Councilman Newman, it was the majority of Council's decision to support City staff in developing a vacation rental policy in the context of owner-occupied homes, similar to this policy.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape carried on a 4-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

City Attorney Oast said that because the ordinance failed to reach the 2/3 vote of the full Council, it is required to come back to Council for a second vote at their next formal meeting.

ORDINANCE BOOK NO. 23 - PAGE 149

C. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

RESOLUTION NO. 06-208 RESOLUTION RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

Mayor Bellamy said that on May 23, 2006, the petitioners requested this public hearing be continued to July 25, 2006, in order to address street signage. That request was granted. On July 7, 2006, the petitioner requested the public hearing be continued to September 12, 2006. That request was granted as well. In addition, on September 12, 2006, the petitioners requested the public hearing be continued to November 28, 2006, in order to address the cost of highway signs in their budget. That request was granted.

Mayor Bellamy opened the public hearing at 10:02 p.m.

Ms. Abby Moore, Emergency Address Coordinator, said that this is the consideration of a resolution renaming the existing street of "Holiday Inn Drive," located off Highway 240 East, to "Resort Drive." This public hearing was advertised on May 12 and 19, 2006.

The owners of Crowne Resort have petitioned the City of Asheville to rename "Holiday Inn Drive" to "Resort Drive." City staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. The adoption of the new street name is to enhance emergency response to the citizens and for easy of use for the owners of Crowne Resort. The cost will be borne by the developer.

Pros:

- The street will be utilized to access the existing business and infrastructure to the Crowne Resort.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.
- All cost related to renaming of street will be borne by the applicant.
- Elimination of corporate names for street name assignment due to change in corporation name changes.

Cons:

- There are no negative effects of for assignment of "Resort Drive" to this existing road.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the city's strategic operation plan. This action complies with the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council adopt a resolution renaming the existing street of "Holiday Inn Drive," located off Interstate 240 East, to "Resort Drive."

Mayor Bellamy closed the public hearing at 10:03 p.m.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 06-208. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 157

D. PUBLIC HEARING TO CONSIDER A REQUEST BY THE ST. DUNSTAN'S COMMUNITY TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

ORDINANCE NO. 3413- ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy opened the public hearing at 10:04 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to create an historic preservation overlay district for the St. Dunstan's neighborhood. This public hearing was advertised on November 14 and 21, 2006.

Ms. Merten said that the Historic Preservation Section of the *Asheville City Development Plan 2025 (ACDP 2025)* encourages neighborhood livability and maintenance of property values through the restoration and rehabilitation of existing and future historic district. The establishment of a new local historic district will provide a mechanism for design review of new construction and will insure that new development is compatible with the existing historic character and density of the neighborhood which will help to protect the quality of life for neighborhood residents as well as protect the value of property.

She said that a zoning study for the St Dunstan's neighborhood was initiated several years ago to down zone the neighborhood from RS-8 to RS-4 The Planning staff did not recommend in favor of the rezoning, primarily due to the fact that the rezoning would result in a large number of non-conforming properties with regard to lot size and building setbacks.

She said that the St. Dunstan's neighborhood has been working with the Historic Resources Commission (HRC) over the past 18 months to develop an inventory of the community's historic resources and to document the history of the community as required by state law in order to prepare a report on the historic significance of the community. We have also worked with the State Historic Preservation Office to establish the period of significance and establish the appropriate district boundaries. The neighborhood would like to include a number of non-contributing properties that are located at the edges of the district, so that these structures will also have to undergo design review for any future alterations.

The report finds that the neighborhood, which is located south of downtown Asheville on a promontory overlooking the Swannanoa River, represents a relatively intact example of architectural styles prevalent during Asheville's economic expansion in the early 20th century. The architecture of the buildings within the small enclave is unique in that it represents a variety of styles, materials and construction methods from the period of significance. One of the most interesting and unique features of the residential area is a stone wall constructed of huge cut boulders that define the circular tip of the hill overlooking Biltmore Village. The area is locally significant under National Register criteria C.

The HRC staff has worked with the neighborhood to draft guidelines for the district. These will be adopted by the HRC once the district receives final approval by City Council. All future alterations and new construction will then be subject to design review by the HRC. Density concerns may be addressed through the guidelines.

Pro: Design review will protect the neighborhood from incompatible modifications to existing historic structures and infill development.

Con: Local designation will add another layer of review to the development process.

Based on the above findings and the analysis provided in the report, staff recommends in favor of the local historic designation of the St. Dunstan's Neighborhood.

Ms. Merten said that since the Planning & Zoning Commission meeting, owners of Lots 183 and 188 has requested not to be included in the designation. As these specific properties are non-contributing and they are on the edge of the district, staff has no problem in recommending they not be included. In addition, the owner at 13 St. Dunstan's Circle asked that her property be excluded from the district; however, Ms. Merten could not support that request as her property is in the middle of the district.

Ms. Vicki Schomer, owner of the bed & breakfast on St. Dunstan's Circle, could not support this designation in that the overlay will make it practically impossible to make any energy efficient retrofits to homes.

Ms. Sharon Tabor, former owner of 25 St. Dunstan's Circle, spoke in favor of the designation in that the guidelines were established by the neighborhood and they have been available for the community to review since April of 2006. We did allow for energy efficient windows and a tremendous effort has been made in the construction business in the last 20 years to develop doors, windows, etc. that are energy efficient.

Mr. Mike Byer, St. Dunstan's area resident, spoke in support of the overlay district.

Mayor Bellamy closed the public hearing at 10:11 p.m.

Upon inquiry of Councilwoman Cape about solar panels, Ms. Merten said that the Montford guidelines state that solar panels are allowed but they cannot be visible to the street. She said that the concept of preservation is about preserving old buildings. One of the biggest concerns is windows and we do allow storm windows, so there are other ways to achieve energy efficiency.

In response to Councilman Newman about including solar panels in these guidelines, Ms. Merten said that these guidelines are developed, but not yet adopted by the HRC, so that is something that can be considered. In fact, if approved by Council, she plans to have another community meeting and specifically review the important issues. She said that another issue they could work on is to distinguish between historic buildings and new construction. New construction could certainly meet all green building standards. We are talking about just the historic building themselves and many changes can be made in the interior.

Councilwoman Cape suggested, and the majority of Council agreed, that the guidelines include an option for energy technologies on homes to make them more livable and more energy efficient.

Vice-Mayor Jones said that in the future, she would like to discuss amending the other three local districts guidelines to include the option for energy technologies on homes as well.

Mayor Bellamy suggested Ms. Merten review the Charleston, S.C., and Savannah, Georgia, models on how they balance preservation and environmental issues.

Councilman Mumpower felt that we should create elite communities very carefully and feels it is a mistake under most circumstances. He felt that Asheville is fortunate to have adequate natural and economic motivations to preserve historic properties without government intervention.

When Councilman Newman stated that he would be more informed if he saw a copy of the draft guidelines, Ms. Merten had no problem in sharing those guidelines noting that they are modeled closely after the Montford guidelines.

Upon inquiry of Councilman Davis, Ms. Merten said that landmark designations and historic preservation overlay districts are two mutually exclusive processes.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3413, establishing an historic overlay zoning district for the St. Dunstan's neighborhood. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Councilman Newman and Councilman Mumpower voting "no."

City Attorney Oast said that because the ordinance failed to reach the 2/3 vote of the full Council, it is required to come back to Council for a second vote at their next formal meeting.

ORDINANCE BOOK NO. 23 - PAGE 152

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF SOUTHRIDGE SHOPPING CENTER TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3414 - ORDINANCE TO INITIALLY ZONE THE SOUTHRIDGE SHOPPING CENTER TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 10:29 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone the Southridge Shopping Center to Highway Business District. This public hearing was advertised on November 14 and 21, 2006.

The North Carolina General Assembly, in 2005, approved legislation adding properties on Airport Road to the corporate limits of the City of Asheville. This bill was enacted at the request of Southridge Associates, LLC, developers of the shopping area and out-parcels at the intersection of Airport Road and Rockwood Road. The effective date of annexation for two of these parcels was October 31, 2005. The effective date for the remaining four parcels is October 31, 2006. These parcels are currently under the zoning jurisdiction of Buncombe County and are zoned "Employment" under the Limestone Township Ordinance. The four parcels that are the subject of this initial zoning total 47.36 acres in size.

Other properties in the Airport Road area that are within the City's jurisdiction (such as the Holiday Inn Hotel and Carabba's Restaurant) are zoned Highway Business District. Staff proposes the same zoning for these properties.

At a meeting on October 16, 2006, the City's Technical Review Committee voted unanimously to recommend approval of this initial zoning. At their meeting on November 1, 2006, the Planning and Zoning Commission recommended approval of this initial zoning. No one commented on the proposal at either meeting. There have been telephone inquiries, but no comments on this proposal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and current land use and the City's Comprehensive Plan.
- Some could be concerned with additional Highway Business zoning along Airport Road.

The Planning and Development staff recommends approval of this initial zoning.

Mayor Bellamy closed the public hearing at 10:30 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3414. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 155

F. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT ONE VOLVO DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INDUSTRIAL DISTRICT/ CONDITIONAL ZONING

ORDINANCE NO. 3415 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT ONE VOLVE DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INDUSTRIAL DISTRICT/ CONDITIONAL ZONING

Mayor Bellamy opened the public hearing at 10:31 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at One Volvo Drive from RS-2 Residential Single-Family High Density District to Industrial District/Conditional Zoning. This public hearing was advertised on November 14 and 21, 2006.

Ms. Cogburn said that the subject property is part of the existing campus associated with the Volvo Construction Equipment operations on Hendersonville Road. Presently, the property can only be accessed from the Volvo site, however, the proposal is that a new gated road would be developed connecting this portion of the Volvo campus with Long Shoals Road. Volvo has been in discussions with N.C. Dept. of Transportation (NCDOT) concerning this connection which would be serviced with a traffic light. The property can be viewed off of Lance Lane and Atkins Street. The surrounding properties to the north, east and south are primarily residential in nature and in zoning. To the south and west there is the existing Volvo facility and vacant land owned by Progress Energy as part of their Lake Julian property.

Two parcels totaling 3.7 acres are the subject of this conditional zoning request. The applicant wishes to rezone this portion of their property from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning for the purpose of expanding their operation; specifically to allow for the outdoor storage of manufactured construction equipment. The property is currently vacant. The need for this space (for this purpose) is precipitated by operations expansions underway at the Volvo facility and by the requirements of the Foreign Trade Zone status of the operation there.

In addition to the road connection to Long Shoals, the applicant plans to clear and grade a portion of the property to create the aforementioned secure graveled storage area for finished product. The applicant is showing a sixty (60)-foot undisturbed area on three sides of the property at present but will work with the City as the project progresses to ensure a Type D buffer in these areas with as much undisturbed area as is possible. The applicant has met with the surrounding property owners to inform the residents of their plans.

At their meeting on November 6, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with

conditions) that the project be forwarded to the Planning and Zoning Commission. The Committee added the following conditions: (1) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; and (2) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal.

At a meeting on November 16, 2006, the Asheville Planning and Zoning Commission reviewed the conditional zoning request and recommended approval (5-0) with the conditions as set forth by the Technical Review Committee. No one (except Volvo representatives) spoke at the meeting. Staff received one comment prior to the meeting from a neighboring resident concerned about the impact of the development on wildlife and a letter of support for the project from the Asheville Area Chamber of Commerce.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The project, if approved, must meet the technical standards set forth in the City's UDO. The existing site plan shows compliance with most applicable development standards and the applicant will continue working with the City staff on full compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed road location is designed to avoid detrimental impacts to the Lake Julian area and the applicant proposes to disturb the natural vegetated state of the property as little as is possible.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The adjoining properties already co-exist with the Volvo operation. While this is an expansion of their operation, it is a low impact expansion and the adjacent residential properties will be heavily buffered from this impact.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   As previously stated, this area is already an area of Asheville and Buncombe County that experiences a mix of residential and industrial and public utility operations. There is no additional building proposed as part of this expansion.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The proposed development of this land conforms to the economic development goals of both the City's comprehensive plan as well as the City's strategic plan. (See specific references above).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

All technical aspects of the project have or can be met by the applicants.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed use will not increase traffic in the area. The applicant will be working with City staff and NCDOT to ensure that no traffic hazards will be created with the addition of the gated connection to Long Shoals Road.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposes and supports the appropriate low impact expansion of an existing major industrial operation.
- The landscape plan shows a significant undisturbed area surrounding the portion of the property on which the operation will take place.
- Some may consider this application a further intrusion of industrial development into a residential area.

Staff recommends approval subject to the conditions placed on the development by the Technical Review Committee including the added conditions: (1) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; (2) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal. (Turnaround provided as well).

The following standard conditions shall also apply:

- Any site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets.
- All major existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
- Actual improvements to the site must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department.
- At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any zoning [or grading, etc....] permits.

Mr. Mike Connor, representing Day Associates, spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 10:36 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3415, to conditionally zone property located at One Volvo Drive from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning, subject to the following conditions: (1) The project shall comply with all conditions placed on the development by the TRC; (2) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; (3) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal. (Turnaround provided as well); (4) Any site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All major existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) Actual improvements to the site must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (7) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any zoning [or grading, etc....] permits. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 23 - PAGE 159

G. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED ON LEXINGTON AVENUE AND UNDER THE I-240 BRIDGE FROM NEIGHBORHOOD CORRIDOR DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3416 - ORDINANCE TO REZONE PROPERTY LOCATED ON LEXINGTON AVENUE AND UNDER THE I-240 BRIDGE FROM NEIGHBORHOOD CORRIDOR DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 10:41 p.m.

Urban Planner Alan Glines said that this is the consideration to rezone property located on Lexington Avenue and under the I-240 Bridge from Neighborhood Corridor District to Central Business District. This public hearing was advertised on November 14 and 21, 2006.

Mr. Glines said that that Strategic Plan mentions parking needs as an item to be addressed in the downtown area and a goal of enhancing core services to promote cleanliness and vibrancy. With City management of this N.C. Dept. of Transportation (NCDOT) property, the site can be cleaned and maintained in better fashion. The area is considered a gateway into the downtown area from points north.

He said that this request is being made by the City of Asheville. The City has and agreement with the NCDOT to take over and manage the parking area under the I-240 bridge. The area has been a 'no-mans land' of sorts for years. Some of the activities occurring there have generated a number of complaints. The City and NCDOT have arrived at an agreement to allow for the City to maintain and manage the area under the bridge. This agreement limits the use of the area to a parking facility and related public facilities such as landscaping, signage, lighting and artwork. To create a conforming parking area, the property needs a rezoning to allow a stand-alone lot.

The Central Business District has been developed strengthen the downtown area as the center of business and culture in the western North Carolina region.

The Neighborhood Corridor District was developed to foster medium density mixed-use development. Stand-alone parking lots are not an allowed use in the district.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The parcel is being taken over by the City of Asheville for management.
- The rezoning would allow uses compatible with the Central Business District which forms the southern end of the property and its identity.
- Use of the property will comply with City regulations and requirements.
- The Central Business District recognizes the need for support services and facilities to enhance the vitality of the downtown area.

The Planning and Zoning Commission at their November 1, 2006, meeting voted to recommend approval of the rezoning request from NCD to CBD. Staff concurs with this recommendation.

Mayor Bellamy closed the public hearing at 10:43 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Mayor Bellamy asked that Councilman Newman, member on the Transportation Advisory Committee, see how we can work with the N.C. Dept. of Transportation on more creative uses of their rights-of-way and vacant land.

Councilwoman Cape moved for the adoption of Ordinance No. 3416, and find that the request is reasonable based on information provided in the staff report. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 164

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DEVELOPMENT AND DESIGN STANDARDS APPLICABILITY

ORDINANCE NO. 3417 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DEVELOPMENT AND DESIGN STANDARDS APPLICABILITY

Mayor Bellamy opened the public hearing at 10:45 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance to clarify standards and codify interpretations concerning the applicability of development and design standards. This public hearing was advertised on November 14 and 21, 2006.

The City of Asheville's Unified Development Ordinance (UDO) currently provides that certain developments must bring the entire site into compliance with the development regulations found in Article XI of the UDO. These regulations have to do with parking, loading, access, landscape and buffering, open space, traffic impact analysis, and sidewalks. The developments enumerated that must bring the entire site into compliance are the following:

- Any new public or private development with the exception of single or two-family housing developments.
- Changes of use to a higher impact use.
- Renovations with a total cost exceeding fifty (50) percent of the appraised (ordinance previously referred to assessed) value of the building according to the Buncombe County tax records.
- Expansions exceeding fifty (50) percent of the pre-expansion gross floor area or paved surface.
- Existing unpaved parking lots that are paved over or existing paved lots that are demolished and repaved.

These provisions concerning applicability, although pertaining to all the standards found in Article XI, are found in the landscape and buffering section of that article making it difficult for developers and citizens to know the particulars concerning applicability. This wording amendment moves the language concerning requirements for full compliance to the beginning of Article XI and makes them consistent for all requirements of this article, except where enumerated. The amendment also adds definitions for "renovation" and "expansion" and "appraised value."

Additionally, it has long been interpreted by the Planning and Development Department that "new development" includes the use of a building or property that has been vacant for a period of more than one hundred and eighty (180) days. This provision is consistent with the provisions concerning nonconforming situations found in the Unified Development Ordinance. The proposed wording amendment codifies this interpretation. The wording amendment also adds provisions for overcoming the presumption of cessation of use (due to vacancy for one hundred and eighty (180) days) through demonstration of substantial good faith efforts to continue the use.

This proposed amendment also clarifies the interpretation that the nonconforming provisions of Section 7-17-7, concerning parking and loading facilities, control when in conflict with Article XI applicability standards.

This amendment has been routed to CAN, CREIA, and CIBO for review and comment. Staff received some questions from one citizen prior to the Planning and Zoning public hearing on this matter. No one commented at the Planning and Zoning Commission meeting on this matter.

Pros:

- Codifies past staff interpretations on issues concerning the applicability of design and development standards.
- Clarifies design and development standards in the ordinance by moving language to a more appropriate code section and by adding definitions.
- Provides interpretation for overcoming the presumption of cessation of use through demonstration of good faith efforts to continue a use.

Cons

- Some may feel that allowing property owners to overcome the presumption of the cessation of use leads to continuation of many nonconforming uses.

At its meeting on November 1, 2006, the Planning and Zoning Commission unanimously (7-0) recommended approval of this wording amendment.

Staff recommends adoption of an ordinance to amend the UDO to clarify standards and codify interpretations concerning the applicability of development and design standards.

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Mayor Bellamy closed the public hearing at 10:46 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3417. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 168

I. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE URBAN VILLAGE DISTRICT DEVELOPMENT STANDARDS**

ORDINANCE NO. 3418- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE URBAN VILLAGE DISTRICT DEVELOPMENT STANDARDS

Mayor Bellamy opened the public hearing at 10:50 p.m.

Urban Planner Alan Gilnes said that this is the consideration of an amendment to the Unified Development Ordinance regarding the Urban Village District development standards. This public hearing was advertised on November 14 and 21, 2006.

The Urban Village District is written to develop walkable pedestrian oriented mixed-use districts designed around an arrangement of connecting streets. A goal of the district is to encourage a lively pedestrian environment. The wording amendment concerns two areas of the ordinance that deal with setbacks and window openings.

The setbacks generally require that buildings be placed up to 15' from the back of curb. Several special provisions are provided for additional setbacks for things such as outdoor dining areas (25'), institutional uses (75') or multi-family residential buildings (25'), etc. A circumstance has come up during project review concerning topographic challenges and a change in grade across the face of a building. In this instance the buildings are setback up to 40 feet from the back curb and include a retaining wall separating the building from the street. In order to accommodate this fairly common problem of grade change and the use of retaining walls, staff is providing this amendment to the ordinance to provide some practical flexibility.

The proposed amendment to section 7-8-23(8) would allow a building to be setback up to 40 feet from back of curb for topographic reasons subject to the following requirements:

- A pedestrian zone and sidewalk is provided at the back of the curb meeting UV standards and include street trees and other streetscape enhancements;
- The top of the retaining wall (excluding handrails, etc.) does not exceed 5 feet above (or below depending on the specific topographic grade) the sidewalk level;
- The area above (or below) the retaining wall and adjacent to the building includes uses to encourage a lively pedestrian space and shall be considered an active pedestrian level;
- Building frontages facing this active pedestrian level shall meet fenestration requirements as described in the ordinance.
- No more than 50% of the length of the façade of the building is separated from the main sidewalk level with the use of a retaining wall.

The wording amendment to the window and doorways section 7-8-23(11)(c) is designed to provide more flexibility in consideration for fenestration for street-facing facades of buildings. Upon review of other mixed-use type ordinances in the UDC, staff found the most useful language to be the statement "windows, doors and other openings" as read from the Central Business District ordinance. The inclusion of "windows doors and other openings" allows consideration of covered balconies, arcades and other openings in the calculation which complement the goals of a variety of fenestration along the façade of buildings along with the more usual windows and doors. This has worked well in the central business district ordinance and should be useful in the Urban Village District and other mixed-use districts.

For the second floor and above, similar language is proposed.

For the Urban Village section, staff proposes to reduce in the openings requirement from 40% down to 30% of the second and upper story wall surfaces. This will reduce the requirement by 10%. Staff came to this conclusion after reviewing a proposal of the Biltmore Park Town Center Urban Village and determined that the facades met the pedestrian interest goal even though they provided only 30% window openings. This reduction in window openings did not seem to harm the interest in the building facades as viewed from the street and sidewalk level. Staff is also proposing to allow residential-only buildings that are identified on the approved Master Plan to have their ground level openings reduced to 30%.

Pros:

- This amendment seeks to provide some flexibility for situations where topography makes placement of the building at the back of the sidewalk difficult
- This amendment protects the goals of pedestrian orientation and activity of the ordinance by limiting the use of retailing walls to just 50 % of a particular facade.
- The areas separated by the wall and adjacent to the building will be treated as an active pedestrian space and should be designed with that in mind.
- The changes concerning to the windows and doorways section to include the language 'windows, doors, and other openings' has been used successfully in other sections of the code and meets the intent of providing interest to the façade.
- The changes to the openings percentages to upper story windows of building and the allowance for a reduction for residential-only buildings to 30% is expected to provide more design flexibility without harming the vitality of the urban village district.

Cons:

- Separation of the pedestrian from the front of building may lessen the experience and the pedestrian nature of the district.
- Designers and engineers should try to minimize the use of retaining walls to situations where there is no other feasible solution to the topographic issues.
- There is no design criteria established for the retaining walls.

At their meeting in November 1, 2006, the Planning and Zoning Commission to recommend approval of the changes to the urban village district. Staff concurs with this recommendation.

Mayor Bellamy closed the public hearing at 10:54 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 2418. This motion was seconded by Councilman Mumpower and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. STATUS OF ROCK HILL ROAD SEPTIC SYSTEM

City Engineer Cathy Ball updated Council on the Rock Hill Road Septic System, which was discussed on November 21, 2006.

She said that City staff met on site with Tom Hartye and Ed Bradford with the Metropolitan Sewerage District (MSD) and Ken Castelow and Steven Jones with the Buncombe County Health Department on Thursday, November 16, 2006. Mr. Jones has been the case manager on this issue since September 18, 2006. He received an anonymous call from someone saying that the septic system at 236 Rock Hill Road had failed. Mr. Jones met with Mr. Author Edington on site and determined that the septic system had failed. He issued a permit to Mr. Edington to relocate the septic field to the side yard on this same property. This change means that the sewer from the basement would need to be pumped to the side yard (maybe 3 feet in elevation.) After further research, some of the key facts are as follows:

- Mr. Author Edington does not live at this location. It appears that this is rental property. Mr. and Mrs. Edington live at 129 Graham Lane.
- As stated above, according to the Health Department the septic system can be repaired on the existing property. Mr. Jones with the Health Department has designed and permitted this repair. The Health Department had no issue with stormwater runoff from the road.
- The cost of repairing the septic system is minimal ($7,000) as opposed to extending the public sewer system.
- Programs are available through the Clean Water Management Trust Fund, Mountain Housing Opportunities and EPA. The Clean Water Management Trust Fund and EPA programs are administered through the Land of Sky Council of Governments. These funds are structured as "forgivable" loans.
- Mr. Jones cannot confirm that other septic systems in the area were failing. He is planning to follow up on this matter.

City staff will be glad to assist Mr. Edington with contracting the agencies mentioned above to determine if he is eligible for the "forgivable" loans.

Staff also recommends that the request to extend public sewer to all of the locations listed at the November 21, 2006, worksession be evaluated as part of the annual budget process due to the financial impacts of this decision. Staff will coordinate this evaluation with the MSD.

Mr. Edington, son of the owners, felt that to site the septic tank in the front yard will also cause the system to fail since water drains down Graham Lane, over the curb and into their front yard.

Councilman Mumpower said that even though $7,000 is a lot of money, in all fairness the Edingtons own two homes and they are doing a lot better than a lot of other people. He felt that many people in Asheville have problems with septic tanks and he didn't feel the City is in the position of taking care of everyone's septic tank problems.

Ms. Ball reviewed with Council the drawing from the Health Department which recommended siting the septic tank in the side yard of the same property.

In response to Councilman Mumpower, Ms. Ball said that this is a unique circumstance in that 98% of the City is covered with public sewer system. She didn't think it was unique about replacing the septic tank. The Health Department did not see a concern of stormwater runoff at the new location. However, because of the location of the plumbing in the house, it would require pumping to the septic field.

In response to Councilman Newman, it is Ms. Ball's understanding from the Health Department that if the septic tank is relocated to the side of the house, there is a high degree of probability that it will be successful at least for the life of the tank as long as maintenance is provided.

Upon inquiry of Councilwoman Cape, Ms. Ball said that the City is responsible for maintenance of Rock Hill Road, not Graham Lane, which is a private street. In order to address Councilwoman Cape's concern of keeping water off the property, if so directed, they will review the curb across the Edington drive to make sure it is adequate to keep drainage from going down the drive and make sure it goes into the existing ditch.

Vice-Mayor Jones asked that future discussion take place about how we develop in areas where we know there are these type problems. City Manager Jackson said that we will work with the Health Department as we look at future building permits.

In response to Councilman Davis about this being a stormwater issue, City Manager Jackson said that our Public Works Department went out and cleaned out the culvert that appeared to have some sort of blockage.

It was the consensus of Council to instruct City staff to (1) make minor improvements to the curb to keep drainage from going down the Edingtons drive; and (2) assist Mr. Edington with contracting the agencies mentioned above to determine if he is eligible for the "forgivable" loans.

After a short discussion, it was the consensus of Council to instruct our Planning & Development Director to brief Council on annexation policies regarding sewer systems, and possible options for Council to consider to assist existing and/or future residents that are not on the sewer system. This information will be useful to Council during the budget deliberations.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Councilman Mumpower unveiled the November Asheville Drug Commission poster.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Heather Raybum urged Council to vote to send a Notice of Violation to Staples for enforcement of the Unified Development Ordinance. Mayor Bellamy stated that a letter has been sent to Staples, with language that this is a City Council concern, inviting them to attend a near certain date Council meeting and be prepared to address the issues raised, e.g., signs, pedestrian amenities to soften the flat wall in some form of green-screening, etc.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:31 p.m.

Keisha Lipe
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – December 12, 2006 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

2006 MAYOR BELLAMY STATEMENT

Mayor Bellamy thanked the community for allowing her to serve as Mayor. She thanked City Council for working with her and help move our community forward. Over the past year, City Council has focused on addressing some core basic services, some being, but are not limited to (1) approval of a $2.5 Million budget amendment to address critical capital needs including the Civic Center roof, street and sidewalk construction, public safety communication enhancements and fleet replacement; (2) commenced construction of two new fire stations, improving the City's standard of cover for fire and emergency medical services; (3) graduated 26 officers from two police academies produced in partnership with the City of Asheville and Asheville-Buncombe Technical Community College; current class of 24 cadets is set to graduate in 2007; (4) completed 12 sidewalk projects and 56 street paving projects; (5) implemented service enhancements within the Asheville Transit System including extended evening service hours and a 90-day fare free promotional program which produced a 60% increase in ridership; (6) added five new 30-foot low floor buses to Asheville's transit system which will improve access for elderly and handicapped riders; (7) began implementation of a strategic capital improvement plan for the water system and refinanced approximately $42.0 Million in water revenue bonds for a net present value savings of $2.2 Million; (8) received positive results from the American Waterworks Association QualServe peer assessment of the City's water system (designed to help water utilities achieve superior performance); (9) awarded an $820,000 grant from the N.C. Rural Center for initiatives that further the Wilma Dykeman Riverway Plan; (10) initiated a zoning sturdy of the area covered by the Wilma Dykeman Riverway Plan; proposals for rezoning certain areas will be presented to the Planning & Zoning Commission for consideration in early 2007; (11) continue support of the HUB Project with Council representation on the Community & Economic Development Alliance and staff support on the HUB Cabinet; (12) developed a Downtown Parking Action Plan including a schedule and funding strategy for providing public parking in downtown Asheville; (12) developed plans to construct and open public restrooms in downtown Asheville, construction will commence in early 2007; (13) co-sponsored a community event with Roger Brooks to learn more about Wayfinding opportunities in Asheville, working closely with the Tourism Development Authority and other partners to develop a Request for Qualifications for distribution in early 2007; and (14) continued a successful relationship with the new owners of the Asheville Tourists by partnering on renovations to McCormick Field. This work represents a significant investment in the lives of the people who live, work and play in Asheville. She believed that by working to address essential strategic areas, we will have a better tomorrow.

Mayor Bellamy said that for 2007, she would like to better communication with the community and City Council. After we complete our winter retreat and decide the important issues that we will address as a Council, she will work with staff to schedule the policy discussions for the year - that way as a community and Council we will be better equipped for policy discussions as well as become more involved. Additionally, she looks forward to working with Council in 2007 to (1) develop a Comprehensive Affordable Housing Plan; (2) develop a Comprehensive Plan to address drugs and crime in our community; (3) a Comprehensive Plan to address concerns for our youth in the community; (4) work to make development sustainable; (5) enhancement of our transit system; (6) reduce the number of chronic homeless on our streets; (7) protect our children from internet predators; and (8) many other issues. She committed to the community and Council to focus on people, policies and progress over pride and polarization. She didn't know about tomorrow, but knows who holds tomorrow. It is with that faith that she looks forward to a wonderful and prosperous 2007.

AWARDS

On behalf of the City of Asheville, Mayor Bellamy was honored to present the Gold Award for Municipal Excellence for the Cultural Renaissance Arts Program at the W.C. Reid Center, sponsored by the National League of Cities and CH2M Hill, to Mr. Lavon Griffin and Mr. David Mitchell. Mr. Mitchell thanked the City Council and Parks & Recreation Department staff for their support.

Also on behalf of the City of Asheville, Mayor Bellamy accepted the National League of Cities Award for 50 years of membership and dedicated service in shaping and advocating national municipal policy and helping to strengthen and promote communities of all sizes.

II. CONSENT AGENDA:

At City staff's request, Consent Agenda "F" was removed from the Consent Agenda.

At Council's request, Consent Agenda items "K", "L," "M" and "Q" were removed from the Consent Agenda for discussion and/or separate vote.

At City staff's request, Consent Agenda "R" was removed from the Consent Agenda for a motion to continue.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 28, 2006

B. RESOLUTION NO. 06-209- RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON STATE STREET

Summary: The consideration of a resolution authorizing the Mayor to convey land on State Street.

On November 28, 2006, City Council authorized advertising for upset bids pursuant to a bid from Steven & Suzanne Williams in the amount of $15,000 for the purchase of land on State Street. The advertisement was published on December 1, 2006, and no upset bids were received.

The land on State Street was acquired by the City by Commissioner's Deed dated June 29, 1932. There are discrepancies in the chain of title and title would have to be conveyed by non-warranty deed. The lot is 0.18 acre± and is parallelogram shaped. It has a moderate slope upward from the street. It is zoned Residential Multi-Family Medium Density District, and it is

suitable as a home site. The bid from Mr. & Mrs. Williams is in the amount of $15,000. Although the tax appraisal is $20,200, staff considers the offer to be realistic considering the impaired title. The Williams bid includes encumbering the property with a sewer easement to service the lot at the rear of the City's lot where the Williams plan to construct 4 to 5 units of infill housing on Pineview Street.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. It will facilitate the development of 4 to 5 units of infill housing.

Cons: There is no negative impact.

Economic Development staff recommends adoption a resolution authorizing the Mayor to convey land on State Street.

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C. RESOLUTION NO. 06-210 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution authorizing the Mayor to convey land on Martin Luther King Jr. Drive.

On November 28, 2006, City Council authorized advertising for upset bids pursuant to a bid from Elizabeth White for land on Martin Luther King Jr. Drive in the amount of $7,350.00. The advertisement was published on December 1, 2006, and no upset bids were received.

The subject parcel is a proposed 0.08 acre cut-out portion of PIN 9648.07-58-1660 which is a 1.6 acre parcel that runs along Martin Luther King Jr. Drive and is part of the property where Water Maintenance is located. The subject parcel is triangular shaped and has a gentle slope upward from the street. It is zoned Regional Business District as is the adjoining property. The proposed parcel encompasses an area that Ms. White, who owns and resides on adjoining property, fenced in several years ago by mistake and has since used and maintained. The proposed purchase is to rectify the error by paying the City due compensation for the property.

The bid from Ms. White is in the amount of $7,350. The value of the parcel was extrapolated from the tax assessment for adjoining land in the amount of $28,500 for 0.31 acre which translates to a per acre value of $91,935. The bid amount represents .08 of that amount rounded to $7,350. Staff considers the offer to be realistic and the proposal to combine the subject parcel with Ms. White's parcel appropriate.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will enable the purchaser to rectify an error in a mutually beneficial manner.

Cons: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey land on Martin Luther King Jr. Drive.

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D. REPORT ON MILLS RIVER WETLANDS RESTORATION

Summary: Staff was approached by representatives from Henderson County Soil and Water Conservation, Carolina Mountain Land Conservancy, and RiverLink concerning the possibility of establishing a wetlands along part of the City-owned property at the Mills River Water Treatment Plant located in Horseshoe, N.C., along the confluence of the Mills River and French Broad River.

Staff met with representatives who are working through the Wetlands Reserve Program to develop projects with a focus of restoration of wetlands in the Mills River area. A portion of the City-owned property seems to have been a natural wetlands area at some period in the past. The location of the property between both rivers seems to make it a good candidate for wetlands restoration. Staff will be meeting with these representatives to discuss locations of current piping from the river intakes to the treatment plant and any impediments that a restored wetlands area could have on operations at the plant. Soil testing and sampling of the property will need to take place to verify whether the area is suitable for further consideration for wetlands restoration.

PROS:

- The potential benefits to the City are additional protection along the river corridor through environmental efforts and also to reduce the potential of flooding along the intake road area during storm events.
- Grant funds would be pursued for this project with no City or local funds expended.

CONS:

- At this time there does not appear to be any cons for this potential project to proceed.

Staff recommends further analysis of the project through the Wetlands Reserve Program including allowing soil testing and samples to be taken to determine the feasibility of continuing to pursue wetlands restoration for part of the City-owned Mills River property. The City is under no obligation to continue this project after soil testing is completed and any future projects would be contingent on grant funding being obtained. Staff will update Council on the progress of this project in the March 2007 time frame.

It was the consensus of Council to complete further analysis of the project through the Wetlands Reserve Program including allowing soil testing and samples to be taken to determine the feasibility of continuing to pursue wetlands restoration for part of the City-owned Mills River property.

E. ORDINANCE NO. 3419- BUDGET AMENDMENT TO INCREASE THE HEALTH CARE BUDGET TO REFLECT UPDATED FISCAL YEAR 2006-07 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the health care budget by $194,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

During the month of November 2006, the City completed its annual open enrollment period during which time employees were allowed to make changes to their benefit selections for the 2007 calendar year. In preparation for open enrollment, staff completed an analysis of recent revenue and expenditure trends in the health care fund. Using the data from this analysis and the benefit selections made by employees during open enrollment, staff computed an updated estimate of the expected revenues and expenses in the health care program for the remainder of Fiscal Year 2006-07. Based on this analysis, staff is recommending that the employee health

care contribution revenue budget be increased by $194,000. This additional revenue will be used to cover claims expenses which are also expected to exceed the original budget estimates.

PROS:

- Provides a more accurate estimate of expected Fiscal Year 2006-07 revenues and expenditures in the health care program.

CONS:

- None.

City staff recommends City Council approve a budget amendment to increase the health care budget by $194,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

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F. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH ONTARIO INVESTMENTS FOR REPLACEMENT OF MOWING EQUIPMENT AT THE MUNICIPAL GOLF COURSE

This item was removed from consideration at this meeting.

G. RESOLUTION NO. 06-211 - RESOLUTION REAPPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: The terms of Assistant City Manager Jeff Richardson, Chief Financial Officer Ben Durant and City Attorney Bob Oast as members to the Board of Directors of Victoria of Asheville Inc. expired on November 29, 2006. This resolution will reappoint Mr. Richardson, Mr. Durant and Mr. Oast to each serve a three year term respectively, terms to expire November 29, 2009, or until their successors have been appointed.

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H. STATUS OF ROADWAY IMPROVEMENTS BY TARGET CORPORATION

Summary: In 2003, Target was issued a Certificate of Occupancy. They were required to post a bond in the amount of $350,000 to complete roadway improvements determined to be necessary by the completed traffic study. City staff has subsequently been involved in ongoing efforts to encourage Target to complete the necessary improvements. While progress has been slow, Target now appears to be making good faith efforts to complete the required

Two specific off-site roadway improvements were required to mitigate Target's traffic impact: (1) Installation of a traffic signal at the intersection of River Hills Road and Circuit City/Pier One; and (2) Addition of a second eastbound left-turn lane on Swannanoa River Road at S. Tunnel Road.

1. Traffic Signal

This project has been completed. The traffic signal was activated on November 22 and is fully operational. Several minor punch list items are still to be completed, but this project is 99.9% complete.

2. Turn Lane

Target has agreed to a completion deadline for this project, including all elements required, barring circumstances outside of their control, by May 31, 2007.

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If Council wishes to impose a deadline for completion of the improvements, staff recommends May 31, 2007.

It was the consensus of City Council to impose a deadline of May 31, 2007, for the completion of the Target improvements.

I. **ORDINANCE NO. 3420- BUDGET AMENDMENT FOR STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES APPROPRIATION OF FUNDS FOR THE HARVEST HOUSE**

Summary: The consideration of a budget amendment, in the amount of $15,368, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Harvest House.

Funds will be used to make improvements to Harvest House including new HVAC, repair gutters and renovate restroom.

Pros:
- Replace old HVAC system in lower level of center that is inadequate in heating and cooling that area of the center.
- Improve gutters to alleviate water leaks into building and to prevent future damage.
- Renovate restroom to improve accessibility and overall use.

Cons:
- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $15,368, to establish a budget for improvement at the Harvest House.

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J. **ORDINANCE NO. 3421- BUDGET AMENDMENT FOR THE STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES APPROPRIATION FOR FUNDS FOR THE SENIOR OPPORTUNITY CENTER**

Summary: The consideration of a budget amendment, in the amount of $15,367, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for Senior Opportunity Center.

Funds will be used to make improvements to the Senior Opportunity Center to create a new main front entrance into the center.

Pros:
- Renovate the main front entrance of the center making it fully accessible and improve overall use.

Cons:
- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $15,367, to establish a budget for improvement at the Senior Opportunity Center.

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K. RESOLUTION SUPPORTING THE N.C. STATE UNIVERSITY WATER QUALITY GROUP'S EFFORTS TO OBTAIN A RESEARCH AND MONITORING GRANT FOR THE INSTALLATION OF A GREEN ROOF AT THE CIVIC CENTER

This item was removed from the Consent Agenda for discussion and/or a separate vote.

L. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOTOROLA INC. FOR THE PURCHASE OF RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

This item was removed from the Consent Agenda for discussion and/or a separate vote.

M. BUDGET AMENDMENT TO PURCHASE UPDATED RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

This item was removed from the Consent Agenda for discussion and/or a separate vote.

N. RESOLUTION NO. 06-214- RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPT. OF JUSTICE

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of The Department of Justice (JAG); and the associated budget amendment, in the amount of $99,967, to accept these funds.

The City of Asheville has been awarded a grant from the JAG in the amount of $99,967 to be shared with Buncombe County Sheriff's Department. Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding and APD will be the grant funds administering agency. There is no local match and the City Of Asheville's portion of the grant is $59,980. The purpose of the grant program is to improve the police equipment in the area of crowd control and officer safety for the Asheville Police Department. The amount of the Asheville Police Departments of the grant funds will be equal to $59,980.00

45	Taser X26E units (w/holsters)	Each: $799.95	Total: $35,997.75
120	Taser replacement cartridges	Each: $18.97	Total: $ 2276.40
1	Package Appliqués for helmets	Each: $155.00	Total: $ 155.00
50	Eyeglass prescription inserts	Each: $70.00	Total: $ 3,500.00
35	V-Top shin guards	Each: $85.00	Total: $ 2,975.00
35	Torso Protectors	Each: $350.00	Total: $12,250.00
2	Pepper Ball Projectors	Each: $400.00	Total: $ 800.00
2	40 MM Gas Projectile Units	Each: $250.00	Total: $ 500.00
4	Training chemical certification	Each: $250.00	Total: $ 1,000.00
	Estimated Freight		Total: $ 1,000.00
		Grand Total:	$60,454.15

Pros:

- Will contribute to the reduction of crime by improving the effectiveness of police officers while working special events.
- By reducing injures to law enforcement as well as the public, this will aid in quality of life issues.
- Officer safety will be increased through proper training of the officers.

- By using these grant funds for this needed equipment, APD officers will have the items they need to properly respond to violent group incidents, that budget constraints would not allow otherwise.

Con:

- The City of Asheville and the APD would be required to maintain the upkeep of the equipment, replacing equipment when needed.

This action complies with City Council's Strategic Operating Plan Goal 3: Strong City and County Partnerships. This joint grant allows the City and the County to work together on an improvement initiative.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of The Department of Justice (JAG; and the associated budget amendment, in the amount of $99,967, to accept these funds.

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O. ORDINANCE NO. 3423- BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE PURCHASE OF CROWD CONTROL EQUIPMENT

Summary: See Consent Agenda "N" above.

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P. RESOLUTION NO. 06-215- RESOLUTION AMENDING RESOLUTION NO. 06-171 TO AMEND THE MEMBERSHIP STRUCTURE OF THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Summary: The City Council has the authority, pursuant to NCGS 160A-146, to make changes to advisory boards and commissions. City Council has determined it is in the public interest to change the membership of Sustainable Advisory Committee on Energy & the Environment to change the membership from one member with demonstrated expertise in the field of energy management, to one member currently employed with Progress Energy.

Therefore Resolution No. 06-171 be, and is hereby amended to change Sec. I.A. *Membership* to read as follows:

"A. One member currently employed with Progress Energy as the Regional Vice President (or other appropriate official) or his/her designee;"

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Q. SECOND READING OF ORDINANCE NO. 3412, AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE FAMILY RESIDENTIAL ZONING DISTRICTS

Summary: This item was removed from the Consent Agenda for an individual vote.

R. **SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD**

Summary: This item was removed from the Consent Agenda for a motion to continue.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES AND/OR DISCUSSION

RESOLUTION NO. 06-213- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOTOROLA INC. FOR THE PURCHASE OF RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

ORDINANCE NO. 3422 - BUDGET AMENDMENT TO PURCHASE UPDATED RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Motorola Inc. for the purchase of radios, and the associated budget amendment, in the amount of $115,000, to purchase updated radios for the Asheville Transit System (ATS).

The Asheville Transit System depends on the City's radio system for its communications. That system has recently been updated to provide better coverage. Further, the current transit system radios are 10 years old and replacement parts are no longer available for these radios. The Asheville Transit System needs to replace 23 radios at a total cost of $115,000. Federal capital funding of $92,000 is available to cover 80% of this expense. The remaining 20% or $23,000 will be funded with motor vehicle license fee revenue that was set aside in prior years as a matching source for capital projects. Motorola has offered a $7,900 discount on these radios if ordered by December 15, 2006. This discount is occasioned by a year end inventory reduction on the part of Motorola. Federal funds are available to fund this purchase, and matching funds are already accumulated. The opportunity to save $7,900 has accelerated the purchase schedule.

This action complies with the City Council Strategic Plan through Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

Pros:

- A fully functional communications system between elements of transit operations, police, emergency medical help, and any other city department.
- ATS will be able to communicate between buses with equipment which should be current for next ten years.

Con: None

City staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with Motorola Inc. for the purchase of radios, and approve the associated budget amendment, in the amount of $115,000, to purchase updated radios for the Asheville Transit System.

Manager of Transit and Parking Services Bruce Black responded to various questions/comments from Council, some being, but are not limited to: what is the regular replacement schedule for the radios; what other capital items can we use these federal funds for; will the radios enhance our ability to track buses in real time; and is it counter productive to buy the radios at this time if we go to a GPS tracking system.

Councilman Mumpower moved to approve Resolution No. 06-213. This motion was seconded by Councilman Freeborn and carried unanimously.

Councilman Mumpower moved to approve Ordinance No. 3422. This motion was seconded by Councilman Freeborn and carried unanimously.

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RESOLUTION NO. 06-212- RESOLUTION SUPPORTING THE N.C. STATE UNIVERSITY WATER QUALITY GROUP'S EFFORTS TO OBTAIN A RESEARCH AND MONITORING GRANT FOR THE INSTALLATION OF A GREEN ROOF AT THE CIVIC CENTER

Summary: The consideration of a resolution supporting North Carolina State University Water Quality Group's efforts to obtain a Research and Monitoring Grant for the installation of a green roof at the Civic Center.

The City of Asheville is in the process preparing a Request for Proposals to provide construction documents for replacing the Civic Center Roof. One of the options being explored is replacing the existing roof with an environmentally sensitive "green" roof.

The North Carolina State University Water Quality Group is prepared to request a grant from North Carolina Department of Water Quality for a Research and Monitoring grant for the installation of the green roof.

This resolution supports their efforts to obtain this grant on behalf of the City. This resolution does not commit the City to any financial obligation.

Pros:

- If the grant is awarded it will assist in the cost of the installation of the environmentally friendly roof.
- There is no cost or commitment to the City.
- The grant would assist in education the public on the installation of the green roof system.

Con: There is no negative impact.

City staff recommends City Council approve a resolution supporting North Carolina State University Water Quality Group's efforts to obtain a Research and Monitoring Grant for the installation of a green roof at the Civic Center.

Councilman Mumpower said that the people who originally installed the roof (Carlyle and Company) happen to be people that have the state of the art process for creating a green roof right now and we essentially know what we can do already. He felt we didn't need to spend any money to address something that has already been addressed.

There was a brief discussion about the timing of this grant opportunity vs. the timing of receiving proposals back to the City.

Councilman Davis questioned if the City would be put in a negative light if the City received the grant and then decided not to do a green roof and turn the grant down. Mr. John Calabria, from the N.C. State University Water Quality Group, did think that if the City received the grant and then turned it down, it would have negative consequences from this grant source. He did state that the grant cycle is at the end of the year and is site specific. City Engineer Cathy Ball also responded that the City could apply for the grant now and then if Council determines not to build a green roof, the City could advise the grant agency of that before any award is granted, and hopefully the City's credibility might not be hurt.

Mayor Bellamy asked if a green roof was installed would the Water Quality Group be able to conduct their research and monitoring. Mr. Calabria said that they would prefer to be involved in the front end because it would be difficult to set up the monitoring strategy after the roof is already placed and there are a lot of things that would be hard to retrofit.

Councilman Freeborn moved for the adoption of Resolution No. 06-212. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 161

SECOND READING OF ORDINANCE NO. 3412, AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE FAMILY RESIDENTIAL ZONING DISTRICTS

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

Councilman Davis could not be supportive of this amendment in that he feels it was crafted as an effort to work around the reasons why a bed & breakfast was denied on Edwin Place about a year ago.

Councilman Mumpower said that we are talking about a regulated activity when there are all kinds of things that can go on in someone's home that we have no way of regulating at all.

After a brief discussion about signage in order to identify the homestay in the neighborhood, the majority of Council instructed Planning staff to (1) research the options of allowing some type of discreet signage that would identify the facility; and (2) devise a way for people who are interested in opening up a homestay to be able to find out if they would qualify regarding the spacing requirements.

Councilwoman Cape moved for the adoption of the second reading of Ordinance No. 3412. This motion was seconded by Councilman Mumpower and carried on a 4-3 vote, with Mayor Bellamy, Councilman Freeborn, and Councilman Davis voting "no."

ORDINANCE NO. 23 - PAGE 149

SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

At staff's request, Vice-Mayor Jones moved to continue the second reading of Ordinance No. 3413 to January 9, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTION DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A SENIOR HOUSING RENTAL COMMUNITY

ORDINANCE NO. 3424- ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTION DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A SENIOR HOUSING RENTAL COMMUNITY

Mayor Bellamy opened the public hearing at 6:15 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone property located at 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a senior housing rental community. This public hearing was advertised on December 1 and 8, 2006.

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within one mile of transit service along Hendersonville Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

The project site is located within the City limits just off of Springside Road. Two single-family residences, one vacant and one occupied, currently exist on the site. Properties surrounding the property include: Buncombe County Schools, specifically TC Roberson, zoned Institutional to the south and west; a high density multi-family apartment complex, zoned Institutional to the east; single family dwellings zoned RS-4 and RM-6, and Cedar Forest Condominiums, zoned RM-6 to the north.

In February 2006, the Asheville City Council approved a Conditional Zoning request from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning with a 200% density bonus for the construction of an 84-unit senior housing development on this

site. The project was granted approval for local trust fund monies and also applied for federal housing tax credits but was denied. The developer or designated appointee is seeking to reapply for the federal housing tax credits in the coming year proposing essentially the same project only with a decrease in the total number of units.

The proposed changes to the project include the following:

- Previous application was approved for 84 units a density of approximately 28 units/acre. The current application proposes a reduction of 21 units for a total of 63 units, a density of approximately 21 units/acre;
- Reduced number of stories from 4 stories to 3 stories in height;
- A reduction in the number of parking spaces from 70 to 64 spaces;
- An increase in the overall open space provided for the project and the addition of a bio-retention rain garden that will assist with mitigating stormwater run-off, and serve as an amenity to the project.
- A reduction in the amount of density bonus approved from 200% to 125%. The project amenities, affordable housing rates, building design and enhanced landscaping features proposed on the original application are still applicable to this project qualifying it for the density bonus provision.

The building is proposed at 3 stories at a maximum height of 40-feet and will consist of 37 one-bedroom apartments, and 26 two-bedroom apartments. (All units are to be leased at a rate below the City's maximum affordable rental rate.) The building is oriented towards the street with pedestrian connections to the proposed sidewalk along Springside Road and to the proposed walking trail provided as an amenity to the residents. A 64-space parking lot and required bicycle parking is located behind the building towards the rear of the lot. Landscape buffers, parking lot landscaping and open space is being provided to meet the City's standards.

The building elevation illustrates traditional design with exterior features reminiscent of arts and crafts style architecture. Details include: an open porch area, gabled rooflines with moderate to deep overhangs, changes in building materials between floors, and double-hung windows. The exterior building materials and colors shown on the elevation (brick veneer and vinyl siding) may be enhanced to include stonework detailing in place of brick materials.

Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for the requested 125% density bonus by providing an exceptional development through:

- Affordable housing: <u>all</u> units within the development are proposed at a rate *below* the City's maximum affordable rental rate, meeting the needs of those (specifically seniors) with a household income of less than 60% of median income.
- Higher quality building design (see elevation details above)
- Enhanced landscaping: additional landscape materials and an increase in the size of plant materials above the City's Standard requirement will be provided.
- Project amenities: walking trails, benches, garden area with gazebo

On Monday, October 2, 2006, the Technical Review Committee (TRC) reviewed the proposed master plan and recommended approval of the project subject to the conditions outlined in the staff report. These conditions will be addressed upon submittal of detailed site plans to TRC.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use

permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The project site consists of two single-family dwellings that will be demolished in order to construct the proposed development. The property in its current state is relatively flat, grading of the site and removal of existing vegetation will be necessary in order to meet the stormwater and erosion control requirements and overall development of the site, as proposed.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development is reasonably compatible with the surrounding uses and is not expected to injure the value of adjoining or abutting property.

   The building is to be designed with enhanced architectural features and is likely to have a positive affect on adjoining and abutting properties. In addition, landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** Although the proposed development is (to a degree) larger in scale and greater in density than the existing development in the area, the project proposed is no larger than what would be allowed under the current Institutional zoning. The proposed use appears to be reasonably compatible with the other uses surrounding the site and with the established zoning in the area. (A rezoning to RM-16 is considered a "down-zoning" from Institutional district.)

   Additionally, the building is to be designed with enhanced architectural features that are likely to contribute to the character of the neighborhood. Landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within 1 mile of transit service along Hendersonville

Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

   While transit service is not currently provided on Springside Road, the site is located within a mile of several bus stops along Hendersonville Road. The development also proposes a drop-off area that can be utilized by an independent shuttle service.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City's Traffic Engineer has reviewed the proposal and determined that the project will not create any traffic issues.

Based on the information contained in this report, staff finds that the applicant's request is reasonable.

On Wednesday, November 1, 2006, the Asheville Planning and Zoning Commission reviewed the request and voted unanimously to approve the project subject to the conditions outlined in the staff report.

Considerations:

- This project utilizes Conditional Zoning and the density bonus provision in order to provide an exceptional development project through affordable housing, enhanced site and building design, and project amenities.
- To date staff has not received any negative comments or opposition to this project.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- The project provides an opportunity for infill residential development on property that is currently under-utilized.
- The revised application produces a building that is more in scale with other buildings currently found in the immediate area.
- City transit does not currently provide service along Springside Road.

Mr. Gerald Green, representing Shelter Development, spoke in support of this project in that it will provide senior housing in Asheville. He said that the neighboring Library and High School are also amenities for the senior citizens in that the High School JROTC would like to be involved in providing programs for residents of this housing development. He felt this development will be an asset to the community.

Mayor Bellamy closed the public hearing at 6:21 p.m.

When Vice-Mayor Jones asked why the NC Financing Agency would want to reduce the number of affordable units, Mr. Darryl Jones, representing Shelter Development, said that it had to do with the scoring by the State.

Councilman Mumpower supported affordable housing for seniors, but if we are going to subsidize something with taxpayer dollars, he felt we have the responsibility to be careful with those dollars and beauty shops and other amenities to him represent excess.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3424, to conditionally zone property located at 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a senior housing rental community, subject to the condition that all TRC conditions are met. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 115

B. PUBLIC HEARING TO CONSIDER APPLYING THE MANUFACTURED HOUSING OVERLAY ZONING TO 24 LOTS CURRENTLY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON CASE ROAD, FAITH ROAD, ALBANY GRAY ROAD AND CHARLIE ARTHUR ROAD

ORDINANCE NO. 3425- ORDINANCE TO APPLY THE MANUFACTURED HOUSING OVERLAY ZONING TO 24 LOTS CURRENTLY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON CASE ROAD, FAITH ROAD, ALBANY GRAY ROAD AND CHARLIE ARTHUR ROAD

Mayor Bellamy opened the public hearing at 6:25 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to apply the Manufactured Housing Overlay Zoning to 24 lots currently zoned RM-8 Residential Multi-Family Medium Density District located on Case Road, Faith Road, Albany Gray Road and Charlie Arthur Road. This public hearing was advertised on December 1 and 8, 2006.

Mr. Shuford said that the Asheville City Development Plan 2025 (ACDP) does not directly address the subject of manufactured homes except to note that more than 50% of new homes in Buncombe County outside of Asheville are mobile homes. It goes on to say that on rented land, the owners are effectively tenants with little security while the value of the units depreciate over time. The ACDP also, however, describes in significant detail the pressing problem of providing affordable housing and draws a correlation between affordable housing and economic development. While manufactured (or mobile) homes may not be an appreciating investment or provide the most security for our citizens, they do provide an affordable form of housing. The MH-Overlay allows for this affordable housing with the opportunity for land ownership.

These lots and other areas were brought into the City of Asheville's extra-territorial jurisdiction (ETJ) in 2001; notes from public meetings at that time indicate that residents from

other affected areas in vicinity of Sardis Road and the east side of Brevard Road (Possum Trot) expressed a desire to retain the ability to establish manufactured housing, however, there appears to have been no such request from the residents of the subject area. The initial zoning in 2001applied the RM-8 Residential Multi-Family, Medium Density District zoning which best reflects the residential uses and existing density; it can be speculated that the lack of interest from the public is the likely reason for the omission of the Manufactured Housing Overlay at that time.

A recent citizen request prompted staff to perform a field survey of the subject area for the additional application of an overlay that would allow for manufactured homes, not normally permitted in the RM-8 zoning district. Staff discovered that of the 24 lots identified in this report, 21 were occupied. Of the 21 occupied lots, 13 (or approximately 62%) contained one or more manufactured homes. Additionally, manufactured homes were found to be scattered in less developed areas directly around this community and appear to be a relatively common form of housing.

Without the manufactured housing overlay, additional manufactured homes could not be established on the existing lots thereby limiting housing choices to either modular or traditional stick-built homes. The Manufactured Housing Overlay was established to expand the range of housing opportunities available to the residents of Asheville while assuring that the manufactured housing is compatible with the existing homes in the area. The Overlay establishes standards for the individual manufactured homes while also establishing a procedure for identifying areas where the overlay may be applied. The individual standards for manufactured homes are dictated by those established by the Department of Housing and Urban Development and must also meet all applicable state building codes. Evaluation of a new manufactured home's ability to comply with those standards are evaluated on an individual basis through the review procedure established for single family home permits; responsibility for issuing all site and building permits for properties located within the City's ETJ was assumed beginning in July of this year. This analysis focused on those standards established for identifying areas appropriate for the Manufactured Housing Overlay and are as follows:

1. ***Manufactured homes located on individual lots and meeting the development standards set for in subsection 7-9-5(c) above would be architecturally compatible with the existing site-built homes in the area.***
   There appear to be approximately six site-built homes in the area that are compatible with the majority of the manufactured homes in size, height, orientation, and materials.

2. ***Manufactured homes should be located in the area prior to its designation as a manufactured housing district and should comprise at least 20 percent of the homes in the area.***
   The existing manufactured homes in the subject area comprise approximately 62% of the residential structures.

3. ***Vacant land should be available upon which to locate manufactured homes.***
   Some vacant land is available upon where new manufactured homes could be located. Additionally, under the existing RM-8 zoning, a number of lots in the study area are large enough to support additional units.

4. ***The area should be a minimum of five acres.***
   The total acreage included in the study area is 17.53 acres.

In summary, staff research and field investigations supports the application of the Manufactured Housing Overlay zoning to the 24 properties identified in this report.

On November 16, 2006, the Planning & Zoning Commission reviewed this request and voted (5-0; 2 commissioners absent) to approve the zoning overlay. There were a number of residents in support of the zoning overlay, none opposed.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Application of the Manufactured Housing Overlay does not prohibit the addition of modular or site-built homes.
- The Manufactured Housing Overlay provides additional housing opportunities not currently available.
- A significant number of lots are large enough to support more than one residential unit.

Cons:

- Road infrastructure is not built to City of Asheville standards.
- The creation of additional lots by subdivision, without extending public infrastructure, is extremely limited.

Staff recommends approval of this request. The Council may choose to reduce the area but may not increase it without additional advertising.

Ms. Lucinda Jordon, property owner on Case Road, spoke in support of the Manufactured Housing Overlay.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Councilwoman Cape said that manufactured homes are affordable housing for many people in our community. In addition, more and more manufactured homes are made energy efficient that will really provide a level of affordability long term and there are a lot of moves in this country to look at mobile home communities.

Councilman Mumpower appreciated the City demonstrating some flexibility because mobile homes do represent affordable housing. He wondered if it might be good to look at other opportunities for us to create additional possibilities for this affordable housing resource at Council's retreat.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3425, to approve the zoning map amendment to include the addition of the Manufactured Housing Overlay zoning as noted in the Exhibit A zoning map attached to the ordinance; and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 189

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON DAVENPORT ROAD AND IDENTIFIED AS DAVENPORT SUBDIVISION PROJECT, FOR A PROPOSED 16-LOT SUBDIVISION

ORDINANCE NO. 3426- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON DAVENPORT ROAD AND IDENTIFIED AS DAVENPORT SUBDIVISION PROJECT, FOR A PROPOSED 16-LOT SUBDIVISION

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:31 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located on Davenport Road, and identified as Davenport Subdivision Project, for a proposed 16-lot subdivision.

This review concerns a proposed 16 lot major subdivision with a development standard bonus for a reduction in lot size, width, setbacks and modifications to road and sidewalk design. Pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO), development standard bonuses for residential zoning districts are reviewed as a conditional use.

The subject site is located in west Asheville, within the City of Asheville's corporate limits, at 149 Davenport Rd. The subject site consists of two parcels comprising approximately 2.83 acres in area (Attachment to City Exhibit 3 - Aerial Map). Both lots are zoned RS-8 Residential Single-Family High Density District.

The subject site is bounded to the north by single and multi-family residences and Davenport Road zoned RS-8, to the east by a single-family residence and West Asheville Park zoned RS-8, to the south by the park and a single-family residence zoned RS-8, and to the west by a church, vacant land and single-family residences zoned RM-8 and RS-8.

The RS-8 zoning district was created to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living.

At their November 20, 2006, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report.

Section 7-16-2(d)(17)(c) provides that in order to promote exceptional development projects, the City Council may permit the alteration of development standards for projects that

exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood. The applicant must meet a minimum of three items as listed on the "Exceptional Development" Checklist. The applicant has chosen to meet this requirement by incorporating the following four standards into the project design: Significant use of green building techniques, enhanced stormwater management, environmentally sensitive design to preserve existing vegetation and pedestrian orientation and amenities (Attachment to City Exhibit 3 - Site Plan).

Staff has received 4-5 communications from property owners concerned that the proposed development will create increased traffic, add to Davenport Road being used as a 'cut-through' to other roads in the vicinity and worsen safety concerns for pedestrians.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The area of the property to be developed has previously been disturbed by past grading and development. No stark topographical changes exist on the property. Rhododendron Creek running through the western portion of the property will remain undisturbed and improved for a future greenway connection. The proposed project is thus compatible with the topography and natural features.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed development would mesh with other single-family residences, and would thus be in harmony with the neighboring area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The application of exceptional development standards and the incorporation of a greenway easement mesh with the spirit and smart growth policies as described in both the Asheville Development Plan 2025 and the Strategic Operating Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The development will gain access from Davenport Road which is a city maintained street. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Project will require modifications to site development standards including reductions in lot size, width, setbacks, road construction and sidewalk design.
- The development will incorporate exceptional development standards into the design.
- A greenway connection is being provided along Rhododendron Creek adjacent to the West Asheville Park.
- High density infill development and stormwater best management practices would further the goals and objectives of the comprehensive and strategic operating plan.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the City Council and TRC staff reports. Additionally, staff recommends approval to the development standard modifications listed above.

Mr. David Tuch, Land Planner with Equinox Environmental Consultation & Design Inc., explained how the Davenport site provides infill development; meets City's smart growth goals; creates a healthy housing project; and complies with the City's comprehensive Plan. He said the exceptional development checklist requires 3 items, but the following four items are being provided: (1) green building techniques (Applicant Exhibit 2) - (a) passive solar design; (b) efficient framing techniques; (c) construction waste reduction; (d) compact and tightly sealed construction; and (e) low or non-toxic finishes; (2) stormwater management - (a) narrow roads to reduce imprevious surfaces; (b) porous pavers; (c) bio-swale; and (d) bio-retention area; (3) preservation of existing vegetation - (a) preservation of hardwood forest; (b) preservation of riparian buffers; and (c) stream protection; and (4) pedestrian oriented amenities - (a) 30-foot greenway easement; (b) road design to promote pedestrian safety; and (c) the "Woonerf" (Street for Living). He reviewed the preliminary master plan and showed the architecture of the homes. He explained their request for a modification to the sidewalk requirement since (1) the square is oriented for the pedestrian; (2) it is a difficult site location; and (3) they are proposing a stamped concrete crosswalk makes a better connection. Another modification request is for the one-way road to be 14-feet instead of the required 16-feet. He explained that is not a fire code issue; 16-feet width would encourage two-way traffic; a modification would reduce construction impact; and there are numerous examples of one-way streets in Ashevile that are 14-feet or less. In addition, he said that there was a staff recommendation that a greenway connection be built from the development to the proposed greenway easement. Regarding that, he said that they are providing a greenway easement and the timeline for greenway construction unknown and will give potential buyers the impression that construction is not finished (Applicant Exhibit 1)

Mr. Jody Goukas, developer, spoke in support of the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 6:42 p.m.

There was a brief discussion about the modification requests, with Assistant City Manager Jeff Richardson stating that staff has no concerns with the modification requests.

Councilwoman Cape suggested staff review the adopted Greenway Master Plan to see if property is developed on those lots in the greenway area if it is required that an easement must be granted.

Regarding the "T" turnaround for fire trucks, Councilwoman Cape pointed out a possible secondary "T" turnaround on the site plan.

Councilman Mumpower moved for the adoption of Ordinance No. 3426, approving the Conditional Use Permit adopting the proposed master plan, with the requested modifications to lot size, width, setbacks, road construction and sidewalk design for the Davenport Subdivision subject to (1) the conditions recommended by City staff; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Deviation from these plans may require reconsideration; and (6) At the direction of the Planning Director, this Project may be required to be reviewed by the TRC prior to issuance of any building or grading permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 192

D. PUBLIC HEARING TO CONSIDER A PROPOSED AMENDMENT TO THE 2006 CONSOLIDATED STRATEGIC PLAN TO DESIGNATE WEST RIVERSIDE WEED AND SEED AREA AS A COMMUNITY DEVELOPMENT BLOCK GRANT NEIGHBORHOOD REVITALIZATION STRATEGY AREA

RESOLUTION NO. 06-216 - RESOLUTION TO AMEND THE 2006 CONSOLIDATED STRATEGIC PLAN TO DESIGNATE WEST RIVERSIDE WEED AND SEED AREA AS A COMMUNITY DEVELOPMENT BLOCK GRANT NEIGHBORHOOD REVITALIZATION STRATEGY AREA

Mayor Bellamy opened the public hearing at 7:06 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to amend the 2006 Consolidated Strategic Plan to designate West Riverside Weed & Seed area as a Community Development Block Grant (CDBG) Neighborhood Revitalization Strategy Area. This public hearing was advertised on December 1 and 8, 2006.

Asheville's West Riverside neighborhood, which includes the Pisgah View and Burton Street neighborhoods has recently been designated and funded by the U.S. Department of Justice as a national Weed and Seed program area. It would be advantageous also to have this area designated by HUD as a CDBG Neighborhood Revitalization Strategy Area (NRSA).

NRSAs are target areas where CDBG funding is used strategically to foster community-based initiatives addressing housing, economic development and human service needs. As incentives, HUD provides certain flexibilities in the use of CDBG funds in NRSAs.

The groundwork needed for the NRSA designation has been covered in planning the Weed and Seed program. Likewise, reports generated for the Weed and Seed program will cover HUD's reporting requirements as well.

HUD Requirements:

1. The proportion of low-moderate income residents in an NRSA must be in the upper quartile of all city census tracts: for Asheville that is 55%. The West Riverside area has 57.3 % LMI.

2. A neighborhood revitalization strategy must be made part of the City's Strategic Five-year Housing and Community Development Plan. This requires a public hearing and formal amendment to the current strategic plan, adopted in 2005. The necessary public notice for this has been given.

3. After Council action, the proposed NRSA plan (in this case the Weed and Seed Plan) must be submitted to HUD for approval.

Pros:

- Additional flexibility in using CDBG funds within the designated area
- Encouraged by HUD nationally

Cons:

- None

Staff recommends approval of a resolution to amend the City's Consolidated Strategic Housing & Community Development Plan to designate the West Riverside Neighborhood as a Neighborhood Revitalization Strategy Area.

Mayor Bellamy closed the public hearing at 7:08 p.m.

Councilman Mumpower felt that a good effort was made to engage the Weed & Seed Program in this community and looked forward to turning this into something real.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-216. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 165

E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT 237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A RESTAURANT

At staff's request, Vice-Mayor Jones moved to continue this public hearing until January 9, 2007. This motion was seconded by Councilman Newman and carried unanimously.

CLOSED SESSION

At 7:10 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, providing that any actions authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed by the City about matters which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:45 p.m., Vice-Mayor Jones moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIGN CODE TO ALLOW FOR CITY COUNCIL APPROVAL OF SIGNAGE PLANS FOR LARGER-SCALE DEVELOPMENTS

ORDINANCE NO. 3427 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIGN CODE TO ALLOW FOR CITY COUNCIL APPROVAL OF SIGNAGE PLANS FOR LARGER-SCALE DEVELOPMENTS

Mayor Bellamy opened the public hearing at 7:46 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) regarding changes to the Sign Code to allow City Council approval of signage plans for larger-scale developments. This public hearing was advertised on December 1 and 8, 2006.

Staff has been approached by Biltmore Farms/Crosland developers about a creative signage plan for the Biltmore Park development. As the development's signage plan was being prepared, it was noted that many of the way-finding signs desired for the development were not allowed. Staff suggests that there be an adjustment to the UDO for larger developments to allow for City Council approval of signage plans that deviate from "basic" sign requirements providing key city goals were met and there were topographical or site design constraints or needs which warranted the deviations.

The amendment was prepared to create a new Section 7-13-10 to allow for the creation and processing of signage plans for the following development types:

- Urban Village projects
- Level III projects
- Commercial, industrial, or mixed use developments containing five or more acres in area.

Pros:

- Provides an alternative to the variance process for addressing the unique signage requirements for large scale developments.
- Promotes City goals for way-finding, pedestrian-orientation, and business identification.
- Allows for creative signage solutions.

Con:

- Adds additional staff and Council responsibilities.

The Planning and Development staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to establish a new section 7-13-10 for Signage Plans.

Mayor Bellamy closed the public hearing at 7:49 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3427. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 177

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. PRESENTATION OF THE FISCAL YEAR 2006 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, said that the City has been issued a "clean" audit. Specific findings and results of the Fiscal Year 2005-06 audit are as follows: (1) An unqualified opinion of the financial statements of the City has been issued; (2) No matters involving the internal control over financial reporting and its operation were considered to be material weaknesses; and (3) No instances of non-compliance or other matters that are required to be reported under governmental auditing standards were identified.

City Manager Jackson said that enhancing the automation for preparation of our financial statements is not our highest investment opportunity at this point in time, but it is something they noted. He said that we will come up with a plan to invest and upgrade our financial management systems to make sure that we are working effectively and also using state of the art technology for all manners of financial reporting.

At the suggestion of Councilman Mumpower, Councilman Newman, Chair of the Revenue and Finance Committee, said that they would review the City's AA bond rating and what we might do to get a higher bond rating.

It was the consensus of Council to accept the Fiscal Year 2006 Annual Audit and Comprehensive Annual Financial Report.

B. RESOLUTION NO. 06-217- RESOLUTION ADOPTING THE CIVIC CENTER ACTION PLAN INCLUDING THE SCHEDULE FOR CAPITAL IMPROVEMENT AND MAJOR MAINTENANCE

When Councilman Mumpower asked and was informed that this agenda item was not officially reviewed by the Civic Center Commission, he said that Council has been fussing for years for a role for that Commission and we made a commitment that when there is a Civic Center matter that we run it by the Civic Center Commission to at least give them the opportunity to offer an opinion.

Councilman Davis, liaison to the Civic Center Commission, explained how even though this item, in the format it is being presented, has not been taken to the Civic Center Commission they have seen it in essence. They in fact provided the first list in the form of their White Paper, which itemized a lot of the deferred maintenance items.

After a short discussion on whether to refer this matter to the Civic Center Commission for review prior to any Council action, Councilman Mumpower moved to defer action on this matter until the Civic Center Commission has had an opportunity to review it and at such time as the Mayor chooses, to place the matter back on Council's agenda. This motion died for a lack of a second.

Councilman Davis said that it's important that the community know that we are not just letting the Civic Center sit there. This Council has shouldered the responsibility to start giving attention to the many items that need attention. We have also looked very closely at the options we have. It is very clear that there is not the money, or the ability of City taxpayers, to fund a new arena at another place. The realistic part is that the Civic Center we have is in a good location, it sits well with the City of Asheville and is good for the downtown. With that in mind, we had four items that were identified: (1) repair and improve the existing Civic Center - which City Council has indicated they wished to do; (2) repair and improve the Civic Center and study the feasibility of a new performing arts center as part of the mixed-use redevelopment; (3) abandon the existing Civic Center and build a new arena outside the City; and (4) abandon the existing Civic Center and build a new arena outside the City and study the feasibility of a new performing arts center. We would also like to proceed with Option No. 2 of with studying the feasibility of the Parkside site for a performing center. There is always that possibility that we as a region could come together and there would be something built outside the City. The Tourism Development Authority (TDA) was interested in helping when we were looking to build a new facility, and it is incumbent upon us to seek revenues from that source to repair what we have. In fact, the Warren Haynes concert has people coming from 42 states and that is definitely a tourism development piece. He hoped Council would consider putting this on our legislative request instead of a pay-as-you go situation. We could save on construction costs and make the building better at the same time if we have the funding mechanism to do it.

City Manager Jackson said that there are a variety of ways to approach the capital funding needs for the Civic Center. Earlier this year the Civic Center Task Force completed an extensive review of the alternative improvement options.

Regardless of the alternative eventually implemented, further consideration should be given to maintaining the existing physical structure. This includes addressing deferred maintenance items, potential safety issues, and replacing outmoded equipment essential for continued event production and patron attendance.

With this in mind, staff developed a capital improvements plan for the venue. As part of this planning, deferred maintenance and repair items were identified and segregated from facility upgrades. The capital improvements for deferred maintenance starts on a systematic methodical year fixed allocation which for the Civic Center arena amounts to $7.8 Million. There are also facility upgrades amounting to $7.3 Million, but we are not suggesting to Council a capital improvement program that gets to this type of upgrade since they might be ripped up if Council did a whole scale renovation. The Task Force has also recommended the following business

investments: upgrade all concession stands, install separate HVAC system in Banquet Hall, completely renovate Banquet Hall, install freight elevator, rebuild the east end of the arena, and rebuild the stage area of the auditorium, which amount to $25 Million. The total full project list (deferred maintenance projects - $7.8 Million; the facility upgrades - $7.3 Million; and the business investments - $25 Mil) totals $40.1 Million. The first cut for the Capital Projects request list for the next five-plus years, beginning in 2006-07, is replacing the arena roof ($1.5 Million) and the replacement of a standby transformer ($45,000). If we had a recurring source, we would systematically, over the next years address at least the $7.8 Million deferred maintenance projects, and then move into the other ones at such time in the schedule that Council is ready to make upgrades to the existing facility - but we would not get to those facility upgrades for the five years, or until Council has consensus on a major investment. With existing revenue streams, we feel like $400,000 a year for the next five years is doable. For 2007-08 we would replace smoke hatches, repair damage to concourse and replace floor seating in the arena for a total of $360,000. For 2008-09, we would replace motor generator system and replace all spot lights for a total of $400,000. For 2009-10, we would add more power/production space in arena, replace portable stage and convert locker rooms into dressing rooms for a total of $345,000. For 2010-11, we would replace light 1000 watt fixtures in the arena, replace T12 lamps with T8 and replace exterior doors for a total of $350,000. And, for 2011-12, we would replace emergency generator and install dimmers on arena lights for a total of $440,000. We are making an attempt to address the most important investments from the overall deferred maintenance list. All of this is subject to the Civic Center Commissions review and recommendation and this Council's actual approval of the budget on an annual basis. The draft resolution of Council's general direction is that Council adopt the Civic Center Capital Improvement Plan and to continue to evaluate the feasibility of locating a new performing arts hall within a mixed-use development at Parkside and continue to pursue a regional partnership for replacement or renovation of the Thomas Wolfe Auditorium, depending upon a sustaining source of revenue for future operation and maintenance coming about as a result of regional partnerships.

City staff recommends approval of a resolution adopting the Civic Center Action Plan including the schedule for capital improvement and major maintenance.

Mr. Dwight Buckner, President of the Asheville Downtown Association, said that the Asheville Downtown Commission has adopted the following resolution "The Asheville Downtown Commission supports the Civic Center as a necessary asset to promote civic entertainment, tourism, and economic development. The Downtown Commission supports protection and maintenance of the current Civic Center complex, while any discussions are held to determine future options for the Civic Center/Thomas Wolfe. The Downtown Commission urges legislative support for the City and County to assist with funding options for the required deferred maintenance and repairs of the Civic Center in downtown Asheville." He said that a similar resolution will be considered by the Asheville Downtown Association.

Mr. Dennis Justice said that if Council decides that sports should not be in the building that should be reflected in the policy. He thinks one of the reasons the sport teams failed is because of the condition of the building. He did think the action plan should be brought forth before the Commission. He supported a two building solution.

Mr. John Martin, with the Asheville Area Center for Performing Arts, spoke in support of this Action Plan preserving the existing Civic Center and also supported evaluating the feasibility of a new performing arts center location.

Councilman Freeborn moved to approve Resolution No. 06-__, adopting the Civic Center Action Plan of the limited deferred maintenance list of $1.5 Million in 2006-07 and approximately $400,000 in the next five years (totaling approximately $3.4 Million), and to include studying the

feasibility of a new performing arts center as part of the mixed-use redevelopment. This motion was seconded by Councilman Davis.

Councilman Newman didn't want to declare that sports are inappropriate in the Civic Center because there are a lot of different kinds of sports that people are excited about bringing to the Civic Center. He liked the fact that if we have to stand on our own, we have a plan to fix the facility. He wondered if we could fix the facility faster than just $400,000 a year out of our General Fund. If a performing arts center turns out to be a viable project, he didn't want to make investments in the facility that we would end up having to tear out after just putting them in. He asked if any of the items listed in the deferred maintenance list or in the facility upgrades list would be resources not well spent if a performing arts center goes forward.

City Manager Jackson said that the $400,000 a year is a realistic minimum figure (we could manage $1 Million a year). However, if we only spend $400,000 a year, we will never go beyond the deferred maintenance list. We would not be able to make upgrades. We do not anticipate getting into the facility upgrades list in the five-year period unless there is a significant change in policy direction. He said that none of the limited deferred maintenance list would be wasted dollars if a performing arts center turns out to be a viable project.

Councilman Newman felt that if we really want to fix the facility up and did the entire deferred maintenance list and the facility upgrade list, that would total approximately $15 Million. Ideally, if none of those investments would be unwise with the scenario of potentially having a performing arts center, then we should reach out to the community and say here is what we think would be great to happen at the Civic Center. If this is a plan that Council wants, then we should make a commitment of how we are going to do it on our own and then we should also ask for our County and State to be partners with us and give us additional tools to do all the deferred maintenance and facility upgrades now. The way most other communities across the state have funded their civic center is the hotel occupancy fee. If this is the plan we want, if we had a 1-cent hotel occupancy fee (which is approximately $1.3 Million a year), then basically it would fund basically the entire deferred maintenance and the facility upgrades.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that if there is not a significant new revenue source available to us, we would be prepared to do the limited deferred maintenance list of $1.5 Million in 2006-07 and approximately $400,000 in the next five years. There is also the preferred plan of deferred maintenance which is approximately $1 Million for the next five years. When staff was asked what they can realistically manage if the City had the resources to responsibly address the deferred maintenance list, the $1 Million a year was the response. If regional partners came to the table to help address the facility, the $1 Million a year deferred maintenance list is what we would recommend.

Upon inquiry of Councilwoman Cape, Mayor Bellamy said that at Council's retreat a discussion is scheduled for a planning calendar for City Council and the community to know what is coming to Council in advance.

Upon inquiry of Councilman Mumpower, City Manager Jackson said that he has not talked with Buncombe County or our State representatives about this plan.

Councilman Mumpower felt we are moving in the right direction, in terms of the feasibility and realism in trying to fix what we have. He wondered if there are other ways to create opportunities to enhance attractiveness as well as efficiencies, e.g., a design competition. That said, he would not support the motion because we are voting on a $40 Million full project list plan without official review by our appointed Civic Center Commission.

Vice-Mayor Jones supported the limited deferred maintenance list of $1.5 Million in 2006-07 and approximately $400,000 in the next five years.

City Manager Jackson suggested we title the limited deferred maintenance list "City-Funded Capital Improvement Plan" and the $1 Million a year deferred maintenance list "Project Requests with Regional Partnerships." In addition, the resolution should be amended to include that City Council will pursue regional funding partnerships to accomplish the "Project Requests with Regional Partnerships." He said the $40 Million full project list is presented to Council only to qualify how the numbers were arrived at, noting that the Civic Center Commission did see this list.

Mayor Bellamy preferred to approve the limited deferred maintenance list of $1.5 Million in 2006-07 and approximately $400,000 in the next five years, totaling approximately $3.4 Million over 2006-07 - 2011-12.

Councilman Davis hoped that we can maintain the entire $40 Million full project list as objectives we want as a goal and hoped that we would be willing to be flexible with the plan, if necessary.

The motion made by Councilman Freeborn and seconded by Councilman Davis to approve Resolution No. 06-217, adopting the Civic Center Action Plan of the limited deferred maintenance list of $1.5 Million in 2006-07 and approximately $400,000 in the next five years (totaling approximately $3.4 Million), and to include studying the feasibility of a new performing arts center as part of the mixed-use redevelopment carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Newman suggested a motion to (1) request participation with Buncombe County and the State legislators to implement both the entire deferred maintenance plan and the facility upgrades, totaling approximately $15 Million (which are identified on the full project list), noting that we are open to talking about different ways to do that, however, a hotel occupancy fee has been used for civic centers across the state and we would request that Asheville have a 1-cent hotel occupancy revenue for the deferred maintenance and facility upgrades; and (2) request feedback from the Civic Center Commission about the details of the plan.

Councilman Mumpower felt that until we have some kind of full plan (other than maintaining what we already have) that we can sell to the community, Buncombe County and State legislators, spending $14 Million seems short-sighted and he could not support the motion. He did note that he would have voted in favor of the first motion, but voted against it because we did not allow the Civic Center Commission to review it first.

Councilman Newman moved that that it is the sense of Council that (1) we would like to move forward with implementing both the entire deferred maintenance plan and the facility upgrades, totaling approximately $15 Million (which are identified on the full project list); (2) we are going to need partners with Buncombe County and the State legislators to move forward with implementing both the entire deferred maintenance plan and the facility upgrades; (3) we believe the 1-cent hotel occupancy fee would be sufficient for that plan; and (4) we would like to get feedback from the Civic Center Commission on that direction as well as studying the feasibility of a new performing arts center at Parkside or elsewhere in the downtown area, before we take a final vote. This motion was seconded by Councilman Davis.

Mayor Bellamy could not support the motion of the 1-cent hotel occupancy fee being used only for the deferred maintenance and facility upgrades, because if the Parkside project comes alive, that would be an opportunity to use that dedicated fund.

Councilman Newman was open to amend his motion to clarify that the 1-cent hotel occupancy fee could be used for other things, but the 1-cent hotel occupancy fee would basically cover the deferred maintenance fee and facility upgrades. If the performing arts center goes forward, it will require a lot of private money and the mixed-use development portion will help bring the costs down.

Councilman Mumpower questioned if a motion was necessary since we are making a lot of assumptions about the 1-cent hotel occupancy fee.

It was the majority of Council's consensus to charge Councilman Davis, as liaison to the Civic Center Commission, to advise the Civic Center Commission that this is the direction Council wants to move forward in and ask them for their input as soon as possible, after which City Council will take a final vote.

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C. RESOLUTION NO. 06-218 - RESOLUTION APPROVING THE ACQUISITION OF MCCORMICK HEIGHTS APARTMENT COMPLEX FROM ASHEVILLE MOUNTAINSIDE, LLC, AND ESTABLISHING A PUBLIC HEARING WITH REGARD TO AN INSTALLMENT PURCHASE IN COMPLIANCE WITH N.C. GENERAL STATUTES

City Manager Jackson said that this is the consideration of a resolution approving the acquisition of McCormick Heights Apartment Complex from Asheville Mountainside, LLC, and establishing a public hearing on January 9, 2007, with regard to an installment purchase in compliance with North Carolina General Statutes.

The McCormick Heights apartment complex is located at 56 Ardmion Road and 54 Hunt Hill Place adjacent to property owned by the City of Asheville. The property is situated north and northeast of Memorial Stadium, McCormick Field and the City's Purchasing Office and Warehouse. The complex sits on an 8.45 acre site and consists of 100 residential units spread over 17 buildings. Although all of the rents would be considered affordable in the market, 60 of the units are required to be affordable to households with income less than 60% of area median. The complex is in need of substantial repairs and currently only 41 of the units are occupied. The complex has failed to reach market potential and is not economically viable in its current configuration.

Asheville Mountainside, LLC, is a limited partnership consisting of CaroHome LLC, a subsidiary of Progress Energy, controlling partner and Mountainside Assisted Housing, Inc. an affiliate of the Housing Authority of the City of Asheville, managing partner. Asheville Mountainside, LLC was formed to purchase and renovate the property in the mid and late 1990s. A variety of financing was utilized including low income housing tax credits, a first mortgage from Mechanics and Farmers Bank of Durham and Community Development Block Grant (CDBG) and HOME program rehabilitation loans.

The proposed purchase agreement is in the amount of $2,250,000. That amount would be sufficient to clear the following debts on the property: the first mortgage of $1,765,000 and the balances due to the City on the CDBG and HOME rehabilitation loans. It is recommended that the purchase be funded by refinancing the existing first mortgage for a term of 4 years and 11 months and paying the remainder in cash from the fund balance.

The property was appraised by Thomas Steitler, MAI, in January 2005 at an "as is" value of $1,650,000. A supplemental letter to the appraisal dated September, 2005 indicated that if the property were able to achieve 90% occupancy and maintain the same expense profile the

property would be worth $2,500,000. Although this latter assumption is not achievable given the current condition and design of the complex it reflects a marketability of the property for redevelopment. The agreed upon price of $2,250,000 compares favorably to nearby land sales for residential development in the Central Business District even when the cost of demolition is considered which is estimated at between $250,000 and $400,000.

The property is located in a desirable residential area due to its proximity to employment, shopping, dining, educational, entertainment, cultural and recreational amenities of downtown. Redevelopment of the property in a market competitive design with a mix of affordable and market rate as well as rental and owner-occupied units spread across a broad range of market prices would have the best chance for success. This potential for redevelopment would be enhanced by the combination of the property with adjacent City owned property to create a parcel of about 20 acres.

The fact that McCormick Heights is no longer economically viable places at risk a significant number of affordable housing units. It is reasonably certain that if the City does not purchase the property, it will be purchased by a private developer for redevelopment as high end residential units and the affordable units will be lost. By acquiring McCormick Heights the City has the opportunity to direct redevelopment so as to ensure replacement of the affordable housing that would otherwise be lost and do so within a more desirable and market competitive community.

In anticipation of the redevelopment the City can assist with the relocation of the existing tenants to mitigate hardship. It is expected that the relocation would take place over a 6 month period after closing during which time the Housing Authority would continue to manage the property under an agreement with the City. CDBG funds could be made available to cover moving expenses and the City could contract with the Affordable Housing Coalition to implement the relocation assistance.

Pros:

1. The price for the land is justified by comparison to recent nearby sales for residential development.
2. The acquisition will give the City the opportunity to direct redevelopment so as to replace needed affordable housing.
3. It is a voluntary sale at a fairly negotiated price.
4. It will ensure relocation of the tenants in a manner that mitigates hardship.
5. It will provide the opportunity of combining City owned land for a net gain of housing of various market levels close to downtown.

Cons:

1. The acquisition will require a substantial appropriation of funds.
2. The City will be responsible for relocation of tenants.
3. The City will be responsible for demolition of the existing structures.

Approval of the resolution will establish $2,250,000 as the acquisition price for the property and authorize the Mayor to execute all documents necessary to complete the transaction.

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Staff recommends adoption of a resolution approving the acquisition of McCormick Heights Apartment Complex from Asheville Mountainside, LLC, and establishing a public hearing on January 9, 2007, with regard to an installment purchase in compliance with North Carolina General Statue.

Supplemental information provided by Planning & Development Director Scott Shuford shows that the steady loss of affordable rental units in and near downtown has been of concern for several years. With the exception of the Griffin and Woodfin Apartments, almost all new and renovated housing in this area has been unaffordable to people at or below median income. Yet maintaining an appropriate mix of housing options in the downtown area is one of the pillars of the Asheville's Comprehensive Plan.

Retaining affordable housing, and preferably affordable rental housing, on the McCormick Heights site should therefore be a consideration in any redevelopment plan. The existing 8 acre site has been developed for 100 units in one and two story buildings, at a density of 12 units per acre. When it was purchased and renovated in 1998, it was intended to provide a mix of 60 affordable units and 40 market rate units. However, the layout and design are not attractive and offer few resident amenities. The "market rate" units have in practice rented for little more than the rent-controlled units: it has never operated as a truly mixed income development.

A more attractive development of similar density could be designed, but the land and construction costs would make it hard to achieve a mixed-income development with a similar number of affordable rental units. However, acquisition of the property by the City provides an opportunity to combine the site with two City-owned adjoining parcels to the south and east, as follows:

Site A: approximately 4.5 acres of flat land currently used in part as the City's central purchasing stores and in part as an under-utilized recreation area.

Site B: approximately 6 acres of undeveloped land above Memorial Stadium, potentially accessible from the McCormick Heights site.

The combined site would provide almost 20 acres, which could be developed with a mix of housing types and densities suitable to the terrain to provide between 250 and 350 units of housing with good amenities, while simultaneously allowing the preservation of much of the steeper area as passive recreation. With appropriate incentives, it should be possible to combine both affordable rental and homeownership opportunities with market rate homes. The location and views will ensure premium prices for the market rate units that could be used to cross-subsidize the affordable homes. An increase in the tax base of at least $40 million can be expected.

Supplement information provided by Community Development Director Charlotte Caplan shows that under the McCormick Heights Redevelopment Plan, 41 families currently living at McCormick Heights will be required to relocate to another permanent residence. The City of Asheville recognizes that moving can be a disruption to these families and is dedicated to making the transition as smooth and easy as possible.

Should the purchase of the McCormick Heights property be approved by City Council, City staff recommends implementing a Housing Counseling Program to guide residents through the moving process by providing residents with the resources and coaching to make the right housing choices for their families. Under this proposed plan, the City give residents six months in which to make their individual plans. Counseling and financial assistance will be provided to each household to: (1) Identify available housing; (2) Find a suitable residence for their move; (3) Pay for moving costs; and (4) Pay for initial costs such a rent and utility deposits.

Staff is developing a detailed Housing Counseling Program that outlines the roles and responsibilities of both the City and McCormick Heights residents. With City Council's approval of the land purchase, residents will receive detailed information about the program at an on site meeting scheduled for Thursday, December 14, 2006.

In order to successfully implement this program during the next six months, staff proposes contracting with the Affordable Housing Coalition of Asheville and Buncombe County (AHC). The AHC has more than 15 years of experience in providing housing counseling, educational and supportive services to those in search of a home.

The Housing Authority of the City of Asheville will also continue to partner with the City by continuing to operate McCormick Heights during the six month Housing Counseling Program. HACA will also take applications from residents who wish to relocate to public housing developments, giving them priority as displaced tenants.

Preliminary budget estimates indicate that the Housing Counseling Program will require up to $85,000 in funding, which can be allocated from CDBG funds.

Pros:

- Provision of adequate time and resources to ensure a smooth housing transition for current McCormick heights residents,
- The ability to contract with the Affordable Housing Coalition to provide residents with housing counseling services.

Cons:

- Loss of the opportunity to use the recommended CDBG funds for other purposes.
- Requires staff oversight of the ongoing housing counseling program through June 30, 2007.

Staff recommends City Council approval to continue developing the Housing Counseling Program. With City Council's approval, City staff will bring a CDBG budget amendment forward for consideration in January.

Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville, gave a brief history of the property after they renovated it. He said that the criminal element was a major deterrent to get market-rate people in and the initial pro forma that they had was not as realistic as it should have been. It assumed a 93% occupancy rate and at the time we thought that because of the proximity and newness of the renovated property we would be able to rent it, but we were not able to do that. Therefore, we incurred a significant amount of debt on the property and tried to sell it. When properties get that stigma over a long period of time, it is very difficult to do anything to the property and have it viable. So the suggestion to demolish the property is the only viable alternative to make that site work.

Upon inquiry of Councilwoman Cape, Chief Financial Officer said that City Council will hold a public hearing on this matter on January 9, 2007, and that the City will need approval by the Local Government Commission as well.

Councilman Mumpower felt that we have essentially surrendered a public housing development to drug dealers, criminals, and others who destroyed the safety of that development. He felt that crime has destroyed this facility and we have not done the kind of job we should have been doing in terms of protecting people. We should not be satisfied with this failure. He felt that to create more density at the same location before we fix the real problem is disaster. Every

public housing project that we have is not safe and we need to fix that problem first. He felt the City of Asheville does not have a good history with development and believes we are wasting our money to try to do it again.

Vice-Mayor Jones said that there is a giant demand for affordable housing and many of the housing developments are not crime-ridden. Developers, with a vision similar to what we will be asking for, have built developments that have a high quality of life. She said this Council is very concerned about crime and remains committed to the public housing safety commitments.

Mayor Bellamy said that there are two large notebooks full of police response calls to McCormick Heights, showing that we have not ignored them. We are trying to address these issues, but the Court system is what has failed. She said the police cannot solve all the ills in our society. She said that we need to partner with existing residents to develop a comprehensive plan to address drugs and crime in all neighborhoods, especially in public housing.

Councilwoman Cape noted that Asheville's failures with public housing has happened all across the county when you isolate people in single level incomes together - it doesn't offer a neighborhood. Other redevelopment plans have shown that you go back in and re-create neighborhoods. We have learned with the HOPE 6 Program that you can take these areas, make distinct changes, make areas where people can live together and have new neighborhoods without replicating the same problems.

It was the majority of Council's consensus to charge the Public Safety Committee bring back to Council a comprehensive plan to address drugs and crime in all neighborhoods, especially in public housing.

Vice-Mayor Jones said that she would be looking for the Police Chief's leadership in addressing the comprehensive plan in addressing these issues.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-218. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At 9:37 p.m., Mayor Bellamy called for a short recess.

D. RESOLUTION NO. 06-219- RESOLUTION APPROVING A $160,000 HOUSING TRUST FUND LOAN TO SKYLOFT ASHEVILLE, LLC, FOR CONSTRUCTION OF FOUR UNITS OF AFFORDABLE HOUSING ON ALEXANDER DRIVE

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving a $160,000 Housing Trust Fund (HTF) loan to Skyloft Asheville, LLC.

On June 27, 2006, Skyloft Asheville, LLC received conditional zoning approval of its condominium development on Alexander Drive with the stipulation that 7 of the 69 units be sold affordably. Phase I of construction will include the first 4 of these affordable units as well as 20 market-rate units.

The two-bedroom affordable units will range in size from 780 – 850 square feet. They will be offered at the HTF sales price limit of $120,000, well below the estimated construction cost of

$162,000 per unit. The discounted sales price is being subsidized mainly by the market-rate units in Phase I, not by Housing Trust Funds. Soft second HTF loans will be available as a further subsidy to families with income below 80% Area Median Income.

This is an infill project in close proximity to public transit and downtown jobs and services. The developer has responded to community needs by incorporating affordable units, a bus shelter, and extra sidewalks. The design includes green building features, underground parking, and more green space than required. The developer has used a density bonus to make efficient use of land. Financing has been committed, with a significant equity contribution, a conditional use permit has been approved, and grading is underway.

The managing partners of Skyloft Asheville, LLC, lack development experience on this scale. However, they have assembled an experienced development team and have already tackled many of the difficult issues that new developers face.

The Housing and Community Development Committee reviewed the application on November 20, 2006, and has recommended awarding a HTF loan in the amount of $160,000 on the following terms: two year construction loan at 2% interest, with up to $25,000 per unit available as soft second mortgages for eligible families (i.e. those with income less than 80% of area median). Currently over $750,000 is available in the Housing Trust Fund.

Pros:

- Creates four units of affordable housing;
- Supports smart-growth policies;
- Exemplifies voluntary inclusion of affordable units within a market-rate project.

Cons: None

Staff recommends approval of a resolution to approve $160,000 loan from the City's Housing Trust Fund to Skyloft Asheville, LLC.

Upon inquiry of Councilman Mumpower, Ms. Caplan explained the soft second mortgage loan.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 06-219. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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E. RESOLUTION NO. 06-220- RESOLUTION AMENDING THE HOUSING TRUST FUND GUIDELINES

Planning & Development Director Scott Shuford said that this is the consideration of a resolution to amend the Housing Trust Fund Guidelines.

The Housing and Community Development Committee has reviewed the guidelines for the City's Housing Trust Fund (HTF), which were established in September 2000 and last significantly updated in October 2004. At its November 2006 meeting, the Committee noted the following issues:

- Construction costs across the nation have increased by about 25% over the past 3 years. In Charlotte (the closest city for which cost data is available) the increase has been closer to 40%.
- Existing house prices in Asheville have risen by 36% in the same period. It is likely that the price of developable land has risen by a similar amount.
- The use of our Housing Trust Fund and Fee Rebate programs by developers of homes for sale has declined sharply since 2004:

Year	Units with HTF Loans	Fee Rebate Units
2004	42	43
2005	7 (4 on hold)	35
2006 to Nov 30	0	11

The rapid increases in land and construction costs have made the current HTF and Fee Rebate program price limits unachievable except for the lowest quality factory-built homes. The current price limits were set in October 2004, with a 3-bedroom house capped at $135,000, which was then just affordable to a household at 80% AMI. Based on purchasing power alone no increase would be called for – the small rise in median incomes since then has been more than offset by interest rate increases. However, keeping up with construction cost inflation would call for a new 3-bedroom limit of at least $150,000.

Pros:

- Increased price limits will restore the fund's availability to developers;
- Increased loan amounts per unit will help to offset construction cost increases;
- Increased loan subsidy will assist low-income homebuyers;
- Equity sharing helps buyers maximize first mortgage while preserving value of HTF loan portfolio in real terms.

Cons:

- Homes priced close to the new limits will be less affordable.

The following changes are recommended by the committee with immediate effect:

1. Increasing the FY 2007 price limits for both the HTF and Fee Rebate programs as follows:

Size	Existing Limit	Proposed Limit
0-bedroom (efficiency)	95,000	110,000
1-bedroom	110,000	120,000
2-bedroom	120,000	135,000
3-bedroom	135,000	150,000
4-bedroom	150,000	150,000*

* The HCD Committee recommends the same price limit for 3- and 4-bedroom homes.

2. Increasing the maximum HTF construction loan amount from $40,000 per unit to $50,000 (repayable within 2 years unless assumed by buyer)
3. Increasing the maximum amount of HTF construction loan assumable by a low-income buyer from $25,000 to $30,000.

4. Deferring all payments on homebuyer loans until resale of the home, but making the interest rate equal to the rate of price appreciation of the home so that loans retain their real value relative to housing prices. Also called "equity sharing", this keeps the HTF "whole" and allows us to provide the same level of help to future families. Having no monthly payments on the HTF loan allows the buyer to maximize conventional mortgage financing.

5. Increasing the maximum HTF loan for rental development from $25,000 per unit to $30,000

No change is recommended in the $500,000 maximum loan amount per development (set in April 2006)

Mr. Rod Hubbard, developer who has provided 168 affordable housing units over the last year in Asheville, requested the fee rebate structure as follows: increasing the limit of one bedroom from $100,000 to $105,000, the two-bedrooms from $120,000 to $130,000 and the three-bedrooms from $135,000 to $140,000. These increases are less than what staff is recommending, not that he doesn't support staff's recommendation because he does, but the reason why he is able to sell his units for less than the staff's recommendations is because of density. However, if he was a single-family home builder and was building one, two or three units at a time, then there would be no way he could sell his units at an affordable housing rate.

Mr. Mike Vance, Home Ownership Manager for Mountain Housing Opportunities, supported staff's recommended increase in the Housing Trust Fund price caps.

Councilman Mumpower understands the rationale of the resolution but could not support the resolution as he felt that $150,000 doesn't define affordable for most people. We are essentially reaching into the pocket of people who are struggling to make it on their own merits and putting that into the pockets of people who are asking for a subsidy. In other countries where land values are very expensive, people think on a smaller scale and he wondered if we haven't reached a point in Asheville about how big a bedroom really needs to be or how much space we need to be subsidizing with tax dollars for people who can't afford to pay for it themselves.

Mayor Bellamy felt that this is a way to enhance the tools in our toolbox for affordable housing. Because we don't have a comprehensive affordable housing plan, this does need support. She agreed that we do need to look at smaller and more density, but we need to do it in a comprehensive manner. In 2007 she will establish a Mayor's Task Force on Affordable Housing with the only charge being to create an affordable housing plan. She felt this plan can be complimentary to what staff is already working on. She invited Council to give her names for the Task Force, noting that final membership would be determined by only her.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-220, as outlined by City staff. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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F. FUTURE LEED CERTIFICATION AND GOAL FOR ENERGY AND FUEL CONSERVATION

Councilman Newman said that in anticipation of the formation of our Sustainable Advisory Committee on Energy and the Environment (Committee), Councilwoman Cape and he

had the following two basic policy questions they would like Council to consider (1) whether or not Council would like to make a decision that we would commit to incorporating green building practices in future municipal facilities that we construct, as well as during significant rehabilitation of public facilities; and (2) setting a goal for energy and fuel conservation for the City in the future. The basic idea that we want Council to consider is if we are interested in the idea of potentially doing green building in the future through the Leadership in Energy and Environmental Design (LEED) certification process, and setting some energy and fuel conservation goals for the future, that we would advise our City Manager that we are interested in those two questions and ask him to work with our newly formed Committee to look at those two questions and bring back specific recommendations for Council to consider sometime in the first quarter of 2007. As we have seen, there is a lot of interest in green building in the community. We think it makes sense for Asheville to exercise that leadership commitment as well and the LEED certification process is a nationally recognized, most objective recognized process for doing that. The idea of setting an energy and fuel conservation role is that if we set a goal, as we make all future decisions around facilities and vehicle purchases, it will challenge and encourage us to think about ways to do that to make it safe, save us costs while at the same time improving air quality.

When Mayor Bellamy felt that the questions being asked are actually defining the work of the Committee, Councilwoman Cape responded that it was up to the Council to set the policy for the City to make the LEED commitment and let the Committee look at the parameters of what is the best LEED standard to use. The reason for going with the LEED certification instead of saying "green building" is that it is much more specific, more attainable and there are real benefits to it, opposed to "green building" which is very vague.

Mayor Bellamy felt this is good background information; however, she was concerned that we are asking for policy direction without being given all the information. She would prefer to have the comprehensive data the Council agreed upon on July 18, 2006, in that one of the things that the Committee would be charged to do is "Those issues regarding green building, environmentally and energy sustainability in Asheville are (1) should the City adopt a LEED policy that all new municipal buildings of 5,000 square feet are certified under the LEED certification process." She would prefer to have the research from the Committee first, e.g., why did we choose 5,000 square feet, what types of LEED standards have other cities adopted, and what are the benefits.

Councilwoman Cape said that buildings account for 48% of our energy use and buildings create the most CO2 emissions. She explained what that LEED is the Leadership in Energy and Environmental Design (LEED) Green Building Rating System which is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings' performance.

LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: (1) sustainable site development; (2) water savings; (3) energy efficiency; (4) materials selection; and (5) indoor environmental quality.

LEED provides a roadmap for measuring and documenting success for every building type and phase of a building lifecycle. The GSA says that LEED is the most credible building rating system and cites at least five reasons for its conclusions about the LEED system (1) LEED applies to all GSA project types, including new and existing buildings, interiors, and other areas covered by USGBC standards; (2) it "tracks the quantifiable aspects of sustainable design and building performance," a major focus of federal programs under the impetus of the Government Performance and Results Act and a general demand for performance measurement; (3) training professionals verify LEED; (4) it has a "well-defined system for incorporating updates, "which

LEED is now undergoing through a far-reaching LEED 3.0 update; and (5) LEED is "the most widely used rating system in the U.S. Market."

The following federal agencies who require LEED certifications on their new buildings include NASA, US Air Force, US Navy, US Army, GSA (United State's largest landlord), Environmental Protection Agency, Department of Interior, Department of Energy, Department of Agriculture and US Forest Service.

The following states require LEED standards on State supported building projects: Arizona, California, Colorado, Connecticut, Hawaii, Maryland, Michigan, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Wisconsin and Washington. She also said that a partial listing of the many cities that have adopted LEED standards for their own buildings include: Albuquerque, New Mexico; Chicago, Illinois; Arlington, Virginia; New York, New York; Chapel Hill, North Carolina; Dallas, Texas; Gainesville, Florida; Clayton, Missouri; Pleasanton, California; Madison, Wisconsin; Fort Collins, Colorado; Pasadena, California; Phoenix, Arizona; Grand Rapids, Michigan; Omaha, Nebraska; Houston, Texas; Kansas City, Missouri; Cranford, New Jersey; Issaquah, Washington; Long Beach, California; Portland, Oregon; Denver, Colorado; San Diego, California; Calabasas, California; Boston, Massachusetts; Boulder, Colorado; Normal, Illinois; Atlanta, Georgia; Eugene, Oregon; San Jose, California; and Cincinnati, Ohio.

She explained that every building built today will have a direct impact on our energy use now and in the future. Best practices in a growing number of cities, states and agencies point to the use of LEED to ensure that the choices made today will have a net positive effect on energy security, fiscal responsibility and community stewardship.

Councilwoman Cape asked Council to make a commitment to make all municipal buildings LEED certified and that we task the new Committee with researching and presenting to Council the alternatives for the perimeters of this policy direction.

Councilman Newman moved that we give direction to the City Manager to work with the new Committee on the following two public policies and to develop recommendations on each of these two policies for Council to consider sometime by the end of the first quarter of 2007: (1) the establishment of an energy and fuel conservation goal (that is ambitious and achievable) for the City over a defined period of time with benchmarks to achieve that goal; and (2) that the City of Asheville make a commitment to have future municipal facilities to be LEED certified, with recommendations on what level they think would be appropriate, the costs and benefits of the different level of certifications. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt that the following language the staff prepared in the draft resolution was fair and even-handed and was proper process to provide public input on this major decision: "The City of Asheville has a strong commitment to protecting the environment. The City of Asheville has a long-standing commitment to promoting economic development of the City and region through quality of life enhancements. The City of Asheville recognizes the direct connection between environmental protection, economic development, and local and regional quality of life. The City of Asheville supports regional, state and federal programs to reduce pollution, improve energy efficiency, and reduce dependence on fossil fuels. The City of Asheville currently supports green building through permit fee rebates and preferential regulatory processing. The City of Asheville has adopted a comprehensive plan for the City's future growth and development, the Asheville City Development Plan – 2025 ("ACDP"), and this plan strongly supports a program of green building in the City. The City of Asheville has adopted a strategic operating plan ("SOP") for the City's immediate future and this plan strongly supports a program of green building in the City. The City of Asheville has contributed significant staff and financial resources to developing and implementing the ACDP and SO. Therefore, that the City of Asheville adopts the following Green Building Policy and reaffirms the green building goals and

strategies of the ACDP and SOP, both of which have been officially adopted by the City of Asheville.

GREEN BUILDING POLICY

The City of Asheville is committed to a comprehensive green building program and will support that program in the following ways:

- Public and private development projects that significantly incorporate green building techniques will be supported through permit fee rebates, expedited development review, economic development incentives, opportunities for density and/or intensity bonuses, and other appropriate means.
- City of Asheville development projects will include an evaluation of applicable green building techniques to determine the feasibility for inclusion based on an analysis of cost of construction, environmental and energy benefit, lifecycle and maintenance costs, among other considerations.

The City Manager for the City of Asheville is directed to use the staff and fiscal resources necessary to implement this policy through the City capital improvement program, regulatory processes, permitting and development review procedures, budget process, economic development incentives, and other means appropriate." However, he felt that the two public policy directions being requested lay a heavy hand of government on people without proper input and procedure and also turns it over to a board that he feels will be "stacked." He felt that all of Council is in favor of green construction, but was concerned about the policy process.

Councilwoman Cape responded to the comment of the "stacked" Committee. She said that Council spent four weeks interviewing candidates and they had amazing applicants apply for this new Committee. She couldn't understand why Councilman Mumpower felt the Committee was "stacked" when he didn't participate in the interviews.

Councilman Davis liked the idea of developing a strategy for reducing fuel consumption, but was concerned that we are putting policy in place before the Committee is formed. He didn't feel qualified to make a decision about LEED certification on all municipal buildings until he knows the specifics about it.

Councilwoman Cape explained that the new Committee is not going to take the place of the policy decisions of this Council.

Mayor Bellamy stated that the project that came before Council in West Asheville said nothing about LEED certification, but we held it as a good project. She wondered if the City could afford its buildings to be LEED certified. We are asking our community to embrace green incentives and that is good, but she felt we need to do it step by step and not force-feed a certain level. She wanted to make sure that as Council makes a policy that the community can embrace and feel comfortable with it, because when we come back with a higher cost, we must explain why to the community. She felt that benchmarking is good, but just to say the building has to be LEED certified is taking too giant of a step.

The motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

G. ORDINANCE NO. 3428- ORDINANCE PROHIBITING REGISTERED SEX OFFENDERS FROM ENTERING PUBLIC PARKS

City Attorney Oast said that this is the consideration of an ordinance prohibiting registered sex offenders from entering public parks.

In recent years, public concern about sexual offenses against vulnerable segments of the population – especially children – has intensified. In response, many states, including North Carolina, have adopted laws requiring that persons convicted of certain sex-related offenses register with local authorities, and that registry is available to the public. Additionally, some states have enacted laws prohibiting registered sex offenders from living within a specified distance of certain facilities. Effective December 1, North Carolina prohibits registered sex offenders from living within 1000 feet of a school or child day care center.

Some communities, including communities in North Carolina, have gone further, and prohibited sex offenders from entering their public parks. Woodfin and Fletcher are two communities near Asheville that have adopted such ordinances. These ordinances were adopted in 2005 and are too new to have much of an enforcement history. However, staff has learned that Woodfin and Fletcher have taken the affirmative step of notifying any registered sex offender within their corporate limits of the requirements of this ordinance.

Such ordinances, being relatively new, have been the subject of legal and constitutional debate nationally. The Woodfin ordinance was recently challenged on several constitutional bases, and was upheld in Buncombe County Superior Court. This decision has been appealed to the North Carolina Court of Appeals, but there has been no decision yet.

The ordinance is based on ordinances obtained from Woodfin and Fletcher, and from Kernersville in Forsyth County. It has not been reviewed by the Police Department or the Public Safety Committee.

Given the public interest in these laws, the State may take action in the coming legislative session to strengthen its law and to provide for uniformity in local ordinances. Staff is currently investigating whether any further amendments will be introduced.

Pros
- Helps address public concern about sex offenders having access to places where children or other vulnerable populations congregate.
- Complements newly effective State law.
- Consistent with ordinances in surrounding communities.

Cons
- May discourage sex offenders from registering
- May be difficult to enforce effectively (depends on knowing who offenders are)

If Council is satisfied with the ordinance as drafted, it may be adopted. As an alternative, Council may refer the Ordinance to the Public Safety Committee for further review and refinement.

Rev. Christopher Chiaronmonte spoke against the ordinance because he felt the Supreme Court will determine that this is an unconstitutional law and it will cost the both the City and the alleged offender money.

Vice-Mayor Jones felt that this sends a strong message about our City. When she questioned if we would expand this in terms of residents who actually live in proximity of public parks, City Attorney Oast said that the State of North Carolina is looking into enacting something similar to this on a state-wide level and that he would look into that particular issue.

City Attorney Oast responded to Councilman Freeborn about what constitutional issues were challenged in the Woodfin ordinance. He feels that this is a defensible ordinance and if the Woodfin ordinance gets invalidated, he would advise our Police Department to not enforce the ordinance until further direction.

Police Chief Bill Hogan responded to Councilman Freeborn regarding how he envisioned the Police Department enforcing this ordinance.

Councilman Freeborn felt it would be good to have a link on our website to the N.C. Registry of Sex Offenders. He would even be willing to expand the ordinance to prohibit known sex offenders from passing out Halloween candy and decorating the outside of their homes at Christmas as parents take their children around to see the lights.

Councilman Mumpower suggested that this type ordinance could have gone through the Public Safety Committee. Therefore, it was the consensus of Council to direct the Committee review the other issues discussed surrounding this ordinance.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3428. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE *199*

H. RESOLUTION NO. 06 - 221 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Advisory Committee on Energy and the Environment.

City Council instructed the City Clerk to arrange the interviews: At Large Category: Lack Zemp, Sylvia Farrington, Jonathan Barnes, Cathy Holt, Sasha Vrtunski, Kathryn Gubista, Bruce Mulkey, Catherine Shane, Vic Fahrer, John Wilson, Keith Bamberger, Marjorie Vestal and Leah Karpen. Mr. Chad Leatherwood was unable to attend the interview. In addition, Margie Meares was a candidate but an interview was not necessary. Real Estate Development Industry: David Spector, Robert Sweetser and Mark Matthews. Construction Industry: Tabetha Reyes and Peter Waskiewicz. Energy Management: Yuri Koslen. Operation of a Business: Christopher Gilbert, Michael Murphy and Jane Mathews.

Vice-Mayor Jones reminded Council that the membership on the Committee was changed to replace one member with demonstrated expertise in the field of energy management, to one member currently employed with Progress Energy.

Councilman Mumpower said that since he did not participate in the interview process, he would not be casting a vote on any of the candidates.

After Council spoke highly of the candidates, the following votes were taken: (1) In the At Large Category Lack Zemp received 4 votes, Sylvia Farrington received 6 votes, Jonathan Barnes received 3 votes, Cathy Holt received 1 vote, Sasha Vrtunski received 6 votes, Kathryn Gubista received 1 vote, Bruce Mulkey received no votes, Catherine Shane received no votes, Vic Fahrer received no votes, John Wilson received 1 vote, Keith Bamberger received no votes,

Marjorie Vestal received 1 vote, Leah Karpen received 1 vote, Chad Leatherwood received no votes, and Margie Meares received 4 votes. (2) In the Real Estate Development Industry David Spector received 3 votes, Robert Sweetser received 1 vote and Mark Matthews received 2 votes. (3) In the Construction Industry category, Tabetha Reyes received 4 votes and Peter Waskiewicz received 2 votes. (4) In the Energy Management category Yuri Koslen received 1 vote. (5) In the Operation of a Business Category Christopher Gilbert received no votes, Michael Murphy received no votes and Jane Mathews received 6 votes.

Therefore, Lack Zemp, Sylvia Farrington, Jonathan Barnes, Sasha Vrtunski and Margie Meares were appointed as at-large members. David Spector was appointed as the representative in the real estate development industry. Tabetha Reyes was appointed as the representative of the Construction Industry. And Jane Mathews was appointed as the representative in the Operation of a Business category. All were appointed to each serve a three year term respectively, terms to begin in January 2007 and expire in January of 2010, or until their successors have been appointed.

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VI. OTHER BUSINESS:

Councilman Mumpower thanked the volunteers in the current project from the For Our Kids Program.

Councilman Freeborn noted that since we no longer have a municipal mulch pit for City residents to contact the Public Works Department and they will deliver a free load of mulch.

The following claims were received by the City of Asheville during the period of November 17-30, 2006: Crystal Fender (Water), Christine Boggan (Streets), Stan Poole Fire), Tony McCoy (Transit Services), Robin Barnett (Sanitation) and Barbara Parker (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte felt the City ordinance banning panhandling in City parks is not defensible.

Ms. Grace Curry asked Council to consider that any time there is to be a change in city ordinances that impact all neighborhoods, that there be a broad public notice given for the purpose of informing the residents and for soliciting their input. Mayor Bellamy asked that the City Manager instruct the Neighborhood Coordinator and the Planning & Development Director of this request and how we might address the issue.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:09 p.m.

Keisha Lyse
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – January 9, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Councilman Bryan E. Freeborn

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF DAVID HERBERT

On behalf of the City of Asheville, Mayor Bellamy thanked Mr. David Herbert who has led the citizen effort in providing bus service to the Social Security Administration facility by working with City staff, writing letters to our legislative delegation and by providing free rides to the Social Security facility.

B. PROCLAMATION PROCLAIMING JANUARY 2007 AS "RADON AWARENESS MONTH"

Councilman Davis, liaison to the WNC Regional Air Quality Agency, read the proclamation proclaiming January 2007, as "Radon Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Ashley Featherstone, Engineering Supervisor of the WNC Regional Air Quality Agency, who briefed City Council on some activities taking place during the month.

C. RECOGNITION OF THE WORKSITE PHYSICAL ACTIVITY INCENTIVE PROGRAM

City Wellness Coordinator Destiny Mattson and County Wellness Coordinator Susan McDonald explained the Worksite Physical Activity Incentive Program which goal is to make activity a habit. The Moveabout Program begins March 5, 2007, through May 14, 2007. Mayor Bellamy encouraged participation in this program.

D. ANNOUNCEMENT

On behalf of City Council, Mayor Bellamy thanked Traffic Engineer Anthony Butzek for his work with the City of Asheville. Mr. Butzek will be moving to Portland, Oregon, to accept another position. She also welcomed Mr. Ken Putnam who will become the City's new traffic engineer.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "D" was removed for discussion.

At the request of Councilman Mumpower, Consent Agenda "E" was removed for an individual vote.

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 12, 2007**

B. **RESOLUTION NO. 07-01 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON HAYWOOD STREET FOR RIGHT-OF-WAY ACROSS REAL PROPERTY LOCATED ON ROBERTS STREET**

RESOLUTION BOOK NO. 30 – PAGE 177

C. **RESOLUTION NO. 07-02 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON MCDOWELL STREET IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT**

Summary: The consideration of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on McDowell Street in the East Riverside Redevelopment Project.

The bid of CHSA Building Partnership (CHSA) in the amount of $17,400 for the purchase of Disposal Parcel 152 of the East Riverside Redevelopment Project, (PIN 9648.10-35-6031), is not less than the tax value of $17,400.

Disposal Parcel 152 is a 0.08 acre rectangular shaped lot on the east side of McDowell Street about 450 feet south of the intersection with Choctaw Street. The land slopes upward from McDowell Street to the rear line. It is covered with natural vegetation consisting of grass, small trees and brush. The parcel is zoned Institutional and the character of the surrounding neighborhood is primarily medical offices. The highest and best use for the subject parcel would be assemblage with an adjoining parcel.

CHSA owns the adjoining property where the medical offices of Carolina Hand Surgery Associates, P.A. are located. The proposal would combine Disposal Parcel 152 with property owned by CHSA for potential expansion of the existing development.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Pros:

1. The sale will be at fair market value as established by the tax appraisal and the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. It will facilitate expansion of existing development.

Cons: There is no negative impact.

City staff recommends adoption of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on McDowell Street in the East Riverside Redevelopment Project.

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D. RESOLUTION OF INTENT TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD AND SET A PUBLIC HEARING FOR FEBRUARY 13, 2007

This item was removed from the Consent Agenda for discussion.

E. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

This item was removed from the Consent Agenda for an individual vote.

F. RESOLUTION NO. 07-04 - RESOLUTION AMENDING THE MANAGEMENT AGREEMENT WITH URTV, INC.

Summary: The City entered into a Management Agreement with URTV Inc. in November of 2004 and said agreement will expire in November, 2009. URTV, Inc. receives public funding and this Board feels all URTV Inc. Board of Director's meetings should be open to the public. The City and the Board of Directors for URTV have agreed to amend the Management Agreement between the parties dated the 23rd day of November, 2004, to include the requirement that URTV will comply with the North Carolina Open Meetings Law, set forth in Article 33C of the North Carolina General Statutes Sections 143-318.10 et seq.

Councilwoman Cape noted that the URTV Board has been conducting themselves in an open fashion and this action is to amend the agreement to formally include that provision.

RESOLUTION BOOK NO. 30 – PAGE 180

G. RESOLUTION NO. 07-05 - RESOLUTION AMENDING CITY COUNCIL'S RULES AND PROCEDURE REGARDING THE ORDER OF BUSINESS

Summary: The consideration of a resolution amending Council's Rules of Procedure to provide a place on the agenda for the consent agenda, and for certain presentations and reports.

The proposed amendment to Rule 8 of Council's rules of procedure changes the Order of Business (the agenda) in two ways:

1. Adds a place on the agenda for the Consent Agenda, reflecting Council's long practice. Placing items on a consent agenda has long been specifically permitted by Rule 5, but the Order of Business has somewhat curiously never listed the Consent Agenda in the Order of Business.

2. Adds an item for Presentations and Reports. Since Council will no longer be holding regular worksessions, a place was needed on the agenda for presentations and reports (such as committee reports) that were previously given at worksessions.

The placement of these items on the Order of Business is a suggestion, Council may want to consider scheduling Presentations and Reports after the Consent Agenda, rather than before, as many City staff with items on the consent agenda attend the Council meetings only for that purpose, the Consent Agenda usually does not consume much time, and seating is frequently at a premium.

If Council desires to make this amendment to the City Council's Rules of Procedure, adoption of the resolution is recommended.

It was the consensus of City Council that the Agendas contain the following Order of Business: Proclamations; Consent Agenda; Presentations and Reports; Public Hearings; Unfinished Business; New Business; Other Business; Informal Business and Public Comment; and Adjournment.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA

RESOLUTION NO. 07-03 RESOLUTION OF INTENT TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD AND SET A PUBLIC HEARING FOR FEBRUARY 13, 2007

Summary: The consideration of a resolution of intent to permanently close a portion of Vance Gap Road and set a public hearing for February 13, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Brian Cauthren on behalf of Zealandia Holdings, LLC, has requested the City of Asheville permanently close a portion of Vance Gap Road that runs between their properties (also known as Old Chunns Cove Lane).

The Public Works Department staff has researched and determined this portion of Vance Gap Road is not City maintained. Closure of this portion of street will not deny any of the adjoining property owners reasonable means of ingress and egress as Zealandia Holdings, LLC owns all adjoining property along the portion requested to be closed.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for February 13, 2007, to close a portion of Vance Gap Road.

At the suggestion of Councilwoman Cape, it was the consensus of City Council to have City staff include the Greenway Commission in the review process of all potential road and right-of-way closings prior to City Council consideration.

Councilwoman Cape moved for the adoption of Resolution No. 07-03. This motion was seconded by Councilman Mumpower and carried unanimously.

E. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

On December 12, 2006, a motion to continue this matter until January 9, 2007, was unanimously approved.

Councilman Mumpower felt that when the City creates an historic preservation overlay district we are providing special privileges to a neighborhood and at the same time we are exerting greater controls over other people's use of their properties. He feels like this is a heavier hand and an administrative responsibility that doesn't serve the City strongly.

Councilman Newman was concerned about the increased cost of construction to build homes in this historic overlay area. He asked if an analysis could be performed on what it would cost to build a home in the historic overlay district vs. building the same home in an area that did not have an historic overlay district. He would like to have that analysis information in future requests for this type of overlay.

Mayor Bellamy noted that the City Council Planning & Economic Development Committee (PED) will be reviewing the Unified Development Ordinance and any ordinances that would hinder affordable housing and suggested this issue be addressed by that Committee.

Councilman Davis, Chair of the PED, felt that this action should be postponed in order to allow the PED Committee time within which to review the matter.

Councilwoman Cape was supportive of the study, but noted that this is the community asking for the overlay.

Councilman Newman's major concern is the bigger policy issue for the community in that we have a lot of old unique neighborhoods that might have the potential to qualify for this overlay.

Councilman Mumpower moved to continue the second reading of Ordinance No. 3413 until such time as the PED Committee has had an opportunity to perform their work relating to ordinances that hinder affordable housing. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Vice-Mayor Jones voting "no."

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT 237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A RESTAURANT

ORDINANCE NO. 3429 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT 237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A RESTAURANT

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy explained that this public hearing was originally scheduled on December 12, 2006, but was continued to this date. She then opened the public hearing at 5:43 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for Broadway mixed-use Phase II located at 237 Broadway Street for a development which will include residential, office, retail uses and a restaurant.

The project site is located on Broadway Street at the corner of Elizabeth Street. The development consists of four parcels totaling 1.38 acres, all zoned NCD (Neighborhood Corridor District). Properties surrounding the site include a mix of residential, commercial and warehouse uses, zoned NCD along the north, east and south sides of the property, and a mix of residential uses, zoned RM-8 to the west of the site (Attachment to City Exhibit 3 - Aerial Map).

The proposed project is being reviewed as a Level III project due to the timing and permitting of Phase One, known as The Pioneer Building located across the street at the corner of Broadway and Bordeau Street. Phase One of the development, also owned by Boulevard Development Group was reviewed as a Level II project and is currently under construction. The ordinance requires that properties developed by the same owner within a 3 year period and also located within 1,500 feet of the proposed site are evaluated as one development. The Pioneer Building and the proposed development meet the size threshold together for a Level III review. (Refer to Section 7-5-8(a)(1)b.)

The main, Phase II project proposes two mixed use buildings that are located on the periphery of a structured courtyard and plaza area. This area will serve as the primary open space for the development providing a social gathering area with outdoor seating and other pedestrian amenities. The center plaza area between the two buildings leads to a stairway that provides a connection to the planned Reed Creek Greenway that sits below the development.

- Building A-1 proposes a footprint of 11,942 square feet, is 4 stories in height and consists of approximately 11,232 square feet of retail on the first floor, 10,087 square feet of office on the 2nd floor, and 19,486 square feet of residential use consisting of 18 units on the 3rd and 4th floors. (Five of the units will be 700 square feet or less and with two units meeting the affordable housing standard.)
- Building B-2 proposes a footprint of 11,931 square feet, is 4 stories in height and consists of approximately 6,675 square feet of retail and 5,245 square feet of office on the first floor, and

32,214 square feet of residential use consisting of 26 units proposed on the remaining 3 floors. (Seven of the units will be 700 square feet or less with three units meeting the affordable housing standard.) (Attachment to City Exhibit 3 - Site Plan)

The development proposes a total of 78 parking spaces that are provided in an underground parking deck that is accessed from Elizabeth Street; a secondary egress is proposed onto Broadway at the southern end of the property. The parking deck area also provides for two off-street loading bays and a disposal area.

Reed Creek, a tributary of the French Broad River flows along the west side of the property. The developer has been working with the City's Parks and Recreation staff to allow a portion of the property to be used as a section of the Reed Creek Greenway. This area of the site is adjacent to residentially zoned land and requires the equivalent of a 20-foot Type B buffer. The developer has asked that staff consider an alternative to the buffer requirement in this area in order to ensure the safety of pedestrians using the greenway and to also provide an effective buffer to the adjacent residentially zoned properties.

The first phase project, the Pioneer Building, also a mixed use development is permitted and under construction. The project consists of 13,106 square feet of commercial space (retail and office) and twenty two residential units including six units at 700 square feet or less and two units meeting the affordable housing standard. In addition, a public courtyard/ plaza area and parking deck are also part of this project. (Attachment to City Exhibit 3 - Elevation Drawings)

Both of these projects were reviewed and approved by the Asheville Downtown Commission where flexible development standards was granted to allow an increase in building height to a maximum of 53-feet. The Pioneer Building Phase One was also granted flexible development standards for open space and an increased setback along Broadway Street.

On October 2, 2006, the Asheville Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report. Most of the conditions are relatively minor and will be addressed in detail upon final submittal of plans to the TRC following Council decision.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The applicant is incorporating the slope of the property in the design of the proposed building. The majority of grading will occur along the west side portion of the property where the topography drops towards the creek. In order to minimize excessive

disturbance to the entire site an underground parking deck is proposed to serve the development rather than creating surface parking. The developer is also making an effort to minimize disturbance near the creek where the greenway connection is proposed. Any vegetation removed in this area will be replaced by required buffer plantings.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
These two projects proposed along the Broadway corridor will likely spur additional development and promote vitality in the area by bringing in a mix of uses and increased density and by including a number of pedestrian amenities to enhance the livability of the entire area. An improved streetscape, sidewalks and greenway connection will likely have a positive affect on the surrounding area by increasing the value of adjacent or abutting properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
Both projects meet the goals and intent of the NCD district. Each project is intended to enhance and fit in with the surrounding area providing a neighborhood scaled development designed for the pedestrian. The building façades, as viewed from Broadway, incorporates window and door openings, a mix of building materials, and other building fenestration treatments to assist in reducing the overall size and scale of the building making it more pedestrian-oriented. Each project offers outdoor courtyard and plaza areas that are well landscaped providing an enhanced streetscape and attractive outdoor seating areas. Landscape plantings will be provided along the greenway where adjacent to the residentially zoned property. Staff will work with the developer, Parks and Recreation staff and the Police Department to ensure that the type and location of plantings provided in this area offers a safe environment for the pedestrians using the greenway and also provide an effective buffer to adjacent properties.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The City's smart growth initiative, contained in the comprehensive plan, encourages mixed use developments and compatible, higher density commercial and residential development. The plan notes that new-urbanist projects are encouraged to provide greater densities and a mix of uses along commercial corridors where the infrastructure is in place to support the development. This type of mixed-use development provides a pedestrian friendly environment and supports public transportation.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development. Several transit stops are located within very close vicinity to the project sites.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The project has been reviewed by the City's Traffic Engineer and has determined that the project is not expected to create a traffic hazard or cause undue traffic congestion.

On November 1, 2006, the Asheville Planning and Zoning Commission reviewed the project and made a positive recommendation (7-0 vote) to approve the project subject to the conditions outlined by staff. They also granted a variance (6-1 vote) that allows a reduction in the amount of window fenestration on Building 1-A (along Elizabeth Street) from 40% to 21%.

Considerations:

- To date staff has not received any negative comments or opposition to this project.
- These two projects have the potential of being positive catalysts for other development opportunities along the Broadway Corridor.
- Several transit stops are located within walking distance to both project locations.
- The two projects together will provide 7 (seven) affordable housing units and 18 units that are 700 square feet or less.
- The Phase II project provides the City with a potential section of the Reed Creek Greenway.
- The project addresses many of Council's adopted Goals and Visions for Asheville.
- The building, although designed to work with the topographic issues along Elizabeth Street, creates the need for use of a large retaining wall along the sidewalk where pedestrian activity and interaction is expected.

Both projects meet the goals and intent of the Neighborhood Corridor District. Each project is intended to enhance and fit in with the surrounding area providing a neighborhood scaled mixed-use development that will promote vitality and increase pedestrian activity in the area.

Staff recommends approval of the project subject to the following conditions:

1. The project shall comply with all conditions outlined in the TRC staff report.
2. The developer shall work with City staff in providing an effective and safe landscape buffer between the development, greenway and adjoining residential properties along the west side of the development.
3. The applicant shall continue working with the City's Parks and Recreation staff to determine the final location for the section of Reed's Creek Greenway proposed with this project.
4. All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets.
5. All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the final site, landscape and grading plans.
6. The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may require reconsideration of this request.
7. If determined necessary, this project may be reviewed by the TRC prior to issuance of any building, grading or zoning permits.

Mr. Kevin Kerr, developer, spoke in support of the permit in that their vision is to create an urban pedestrian friendly development with as much green space as possible.

Mr. Mitchel Sorin, architect, said that the concept is that the buildings interrelate around the courtyard and for the site to interact with the greenway. He encouraged Council to look at the bigger picture and encourage the N.C. Dept. of Transportation to allow on-street parking because the pedestrian oriented environment between I-240 and Chestnut Street is a lot different than Chestnut Street going north.

After rebuttal, Mayor Bellamy closed the public hearing at 5:54 p.m.

In response to Councilwoman Cape, Ms. Hamel explained the landscape buffer, especially for the residential area behind the development. She said that regarding the buffer, where the greenway is proposed, they have been approached by the developer to work with them and the Police Department to look at how to make landscaping more safe. The developer has asked to sit down with the Police, Planning and Parks & Recreation Departments to look at how they can accommodate the Type-B buffer required, ensuring that the type of plantings and species that are selected also provide a safe environment for the people using the greenway.

Upon inquiry of Councilwoman Cape about the dumpsters location, Ms. Hamel said that they are located above the greenway area behind the retaining wall. Ms. Hamel also noted that the location of the greenway on the site plan is the initial proposed location and that the developer will work with the Parks & Recreation Department for the final greenway location. Mr. Kerr also responded that regarding the dumpster, they have designed an enclosed area which will be a compactor and also a recycling area and will not be visible from the greenway.

In response to Councilwoman Cape about the retaining wall, Mr. Chris Eller, civil engineer, said that the wall is a small retaining wall to accommodate the grade change.

Mayor Bellamy felt it was important that the Elizabeth Street residents not be in a similar situation as the residents on Maxwell Street regarding a dumpster, noise and landscaping. And, to accommodate that, we may need a smaller greenway, higher wall, different vegetation, more trees, etc.

In response to Mayor Bellamy, Councilman Mumpower suggested a condition that staff create assurances that noise and other neighborhood intrusions are appropriate minimized by this project. The developer acknowledged that he would agree to the condition.

Councilwoman Cape suggested a thin green greened buffer around the dumpster, recognizing the neighborhood behind the project.

In response to Councilman Newman, City Manager Jackson said that there has already been a preliminary analysis done about on-street parking on Broadway and the N.C. Dept. of Transportation has been advised about the City's interest in proceeding with this. He said staff will present Council with some design principles in approximately two weeks.

When Councilwoman Cape asked if the City could take any action with the fairly blighted building next to the project, City Attorney Oast said that we do have the right to ask the property owner to paint the graffiti off the building and if there are any building code violations, we can advise the property owner.

Councilman Mumpower moved for the adoption of Ordinance No. 3429, granting a conditional use permit for Broadway mixed-use Phase II located at 237 Broadway Street for a development which will include residential, office, retail uses and a restaurant, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The developer shall work with City staff in providing an effective and safe landscape buffer between the development, greenway and adjoining residential properties along the west side of the development; (3) The applicant shall continue working with the City's Parks and Recreation staff to determine the final location for the section of Reed's Creek Greenway proposed with this project; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the final site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may require

reconsideration of this request; (7) If determined necessary, this project may be reviewed by the TRC prior to issuance of any building, grading or zoning permits; and (8) Staff create assurances that noise and other neighborhood intrusions are appropriate minimized by this project. This motion was seconded by Councilman Davis and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY PARKING GARAGE LOCATED ON WOODFIN STREET, FOR A PROPOSED SEVEN STORY GARAGE AND APPROXIMATELY 245,000 SQUARE FEET IN SIZE

ORDINANCE NO. 3430- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY PARKING GARAGE LOCATED ON WOODFIN STREET, FOR A PROPOSED SEVEN STORY GARAGE AND APPROXIMATELY 245,000 SQUARE FEET IN SIZE

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:15 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the Buncombe County parking garage located on Woodfin Street for a proposed seven story garage and approximately 245,000 square feet in size (City Exhibit 3 - Location Map).

Mr. Glines said that the Comprehensive Plan notes the need for structured parking in a variety of locations in the downtown area. Parking structures are encouraged because of their efficient use of land and improvement over surface parking lots. Garage structures can be less disruptive to the pedestrian environment than the same number of parking spaces provided on surface lots fronting on City streets. Parking structures are encouraged to be wrapped in retail or office uses. The Buncombe County proposal is locating the garage internal to the block and would maintain the land by the street for a future infill building.

The Strategic Operating Plan lists the goal of encouraging public-private partnerships to address downtown parking needs. The proposal by the County will serve some of the need for parking. As proposed the majority of the spaces will be reserved for County workers during the week. For a smaller number of spaces on week days, after hours and weekends, the deck will be available for public parking.

The proposal for review is for a parking garage located adjacent to the Health Department. This parcel is a through lot with frontage along both College Street and Woodfin Street. The proposed garage will be located in the 'L' of the Health Department Building using what is currently a surface lot. The 650 spaces will be used primarily for Buncombe County employees. But some limited number of spaces will be available for public parking. It may be expected that after hours the deck would be available to downtown visitors or for special events. The garage may serve an important role in providing parking during these times

The site plans provided show access to the garage from both Woodfin Street and College Street (City Exhibit 4 - Site Proposal A). The access point along Woodfin Street has been the subject of much planning and design from the County's design team and staff and City staff. The optimal plan would be to have the Woodfin Street exit align with Central Avenue through an improved signalized intersection (City Exhibit 5 - Site Proposal B). To do this, access will be needed from the Renaissance Hotel property. Both City and County staff agree that this is the optimal alignment. The Renaissance Hotel has a driveway and loading dock along this property line. Staff recommends that if the City is able to secure use of the hotel property for the stated purpose then Buncombe County would construct the intersection improvements and provide the traffic signal. The back up plan (and the original submittal) will be that a driveway is used for garage access along Woodfin Street at its current location (offset from Central Avenue). Although traffic will function at Woodfin Street with the driveway, there could be some difficulty making a left turn at the afternoon peak period. On the other side of the garage, there will also be a driveway provided along College Street. This driveway would allow right-in / right-out only access onto College Street.

The garage structure is not located directly along the street. It is setback from College by over 100 feet (Attachments to City Exhibit 3 - Views from College and Woodfin Streets) (City Exhibit 6 - View from Green; City Exhibit 7 - Perimeter Trellis). From Woodfin Street the garage is wrapped by the Health Department Building. The area in front of the garage along College Street will be used for a driveway access to the garage and for a green space in front of the entrance to the Health Department. Staff would like to consider the garage proposal as a two-phase proposal. The 'Phase One' of the project will be the garage and green space. The 'Phase Two' portion will be a building to be located along College Street in the 'place holder' green space. This future building will provide County office space expansion and provide an active use along the street.

The Downtown Commission reviewed the design of the structure and approved it at their November 10, 2006, meeting. They noted that the site on the internal area of a block is the ideal location for the garage use since it is close by without over powering the street or nearby buildings. The Downtown Commission did support the concept that the green space would be used at a future date for a building site and they recommended some public art at the College Street entrance to the garage.

This project is a conditional use permit (CUP) because of the scale of the project and because it is a governmental use located in the Central Business District. In addition to the seven standards used to evaluate CUP projects, several additional standards are used to review governmental uses in the Central Business District. The conditional use standards apply to this review as well as the additional requirements for governmental uses located in the Central Business District.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

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1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposal is being reviewed for safety by the reviewing agencies including City and Buncombe officials.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The site is an infill site using a paved parking lot. This use of the lot for a parking garage is an appropriate use of the lot given the context in the downtown area of the city.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The garage is expected to be a benefit to nearby uses and the downtown area. Although during the week the garage will be used mostly by County workers but evenings and weekends the garage could be used by the public which should be a benefit to nearby uses.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The garage will be out of view for the most part by the Health Department Building. Along the edges of the building trees will provide additional screening. The site for the garage in the interior of the block provides a buffer by distance and reduces the massing and bulk of the structure.

5. **That the proposed use or development of the land will generally conform to the *comprehensive plan, smart growth policies, sustainable economic development* strategic plan and other official plans adopted by the City.**
The need for additional structured parking has been identified and discussed for some time. Partnerships to provide this parking have been identified as a Strategic Plan goal. Although the City of Asheville is not directly involved in this project it fits in well with these goals and plans.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Being located in the downtown area, infrastructure is in place to provide service to this use.

7 **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The project is being constructed to better handle the existing parking needs generated by the County facilities. The designers of the project are working to mitigate any traffic congestion created by patrons exiting the garage at the afternoon rush hour. The parking need exists already and this project is not expected to cause undue traffic congestion or create a traffic hazard.

Section 7-16-2(d)(13) provides several additional conditional use findings that government uses located in the Central Business District must meet:

- **The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.**

The garage is appropriately located on property already owned by Buncombe County and should make other private parcels in the Central Business District available for redevelopment.

- **No alternative location for the building or use exists within areas previously developed for government buildings and/ or uses.**
  This proposal is a redevelopment site on an existing surface lot. This conditional finding is written to encourage location of such uses on exactly this kind of site. The placement of the garage will add value and efficiency to the government uses in the area.

- **If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.**
  The design for the garage was reviewed and approved by the Downtown Commission at their November 10, 2006, meeting. The structure will be mostly shielded by the Health Department structure and surrounding uses. The drawings and elevations and site plan will become part of the regulating documents if the project is approved.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This Level III Conditional Use Permit for the Buncombe County garage was recommended 6-0 for approval by the Planning and Zoning Commission at their December 6, 2006, meeting with staff conditions included as requirements. Staff concurs with this recommendation and encourages the Site Proposal B of the shared driveway with the Renaissance Hotel. No members of the public attended to discuss the proposal.

Considerations:

- Parking downtown has been identified as a need for the community.
- The parking garage will allow Buncombe County to consolidate some their facilities and make other property available for other uses.
- The project review team and staff from Buncombe County are working to provide an improved intersection access at Woodfin Street and Central Avenue.

Mr. Jon Creighton, Assistant County Manager of Buncombe County, spoke in support of and the need for this project. The deck will be a positive for Courthouse employees and patrons, people going to City Hall, and downtown patrons. We feel the design will be completed in early April of 2007 and hope to have it completed in summer of 2008.

Mr. Keith Hargrove, architect, summarized the design and site considerations involved in the project. Of the 650 spaces, 66% will be retained for the County and 34% will be revenue generating. He explained how they are attempting for the building to be as efficient as possible.

After rebuttal, Mayor Bellamy closed the public hearing at 6:31 p.m.

Upon inquiry of Councilman Newman about plans for the site of the future building, Mr. Creighton said that there is not a plan at this time but they are trying to preserve that site for future court needs.

All of Council thanked Buncombe County for working with the City on providing parking in our downtown area.

Councilman Mumpower moved for the adoption of Ordinance No. 3430, granting a conditional use permit for the Buncombe County Parking Garage located on 35 Woodfin Street, adopting the proposed plan subject to the following conditions: (1) The project shall comply with all conditions outlined in the Technical Review Committee staff report; (2) The median opening at College and Davidson will be partially closed, allowing left turns only from College to Davidson, blocking other left turn and U-turn movements with final design approved by the City traffic engineer; (3) If the City of Asheville is able to secure the use of land from neighboring property owners to allow the alignment for the shared garage driveway with Central Avenue, then Buncombe County would provide design plans, intersection improvements and the traffic signal meeting City requirements; (4) If the City is unable to provide this access then the County would be able to use the existing driveway onto Woodfin Street but make improvements to provide dual exiting lanes with the final design approved by the City traffic engineer; (5) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (7) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building and grading permits." This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 208

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 723 FAIRVIEW ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING INCLUDING SHARED PARKING WITH A CITY RECREATIONAL FACILITY

At the request of City staff, Councilman Mumpower moved to continue this public hearing until January 23, 2007. This motion was seconded by Councilman Davis and carried unanimously.

D. PUBLIC HEARING TO CONSIDER THE INTENT TO PURCHASE 8.45 ACRES ON OR NEAR HUNT HILL PLACE AND ARDMION PARK DRIVE, HAVING AN ADDRESS OF 56 HUNT HILL PLACE AND BEING KNOWN GENERALLY AS MCCORMICK HEIGHTS

At the request of City staff, who are still negotiating the plan and contractual terms, Councilman Mumpower moved to continue this public hearing until January 23, 2007. This motion was seconded by Councilman Davis and carried unanimously.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO THE BILLBOARD STANDARDS

Mayor Bellamy opened the public hearing at 6:35 p.m.

City Attorney Oast said that this is the consideration of an amendment to the Unified Development Ordinance to regulate the removal, relocation and reconstruction of qualified signs within the qualified sign overlay. This public hearing was advertised on December 29, 2006, and January 5, 2007.

Back in September of 2004, acting pursuant to a new provision in the general statutes, the City Council adopted amendments to the sign ordinance allowing for removal and relocation

of "qualified signs" within certain designated areas. The relocated signs must comply with certain area, spacing and height limitations, but replacement was otherwise permitted on a sign-by-sign basis.

The proposed amendment would allow for the areas of more than one qualified sign to be combined into one larger sign, as long as the area of the new sign did not exceed the combined area of the signs being replaced. The new sign may also not exceed 380 square feet, which is the limit established for all replacement signs.

The proposed amendment also removes the prohibition on back-to-back signs, but does not otherwise relieve any sign from the spacing and height limitations. It will also allow more than one sign on a pole facing the same direction.

Pros.
- Creates potential for reduction in number of signs, without permitting an increase in the area
- Adds flexibility that may enable more use of the new ordinance
- Does not allow a larger sign to be broken up into smaller ones

Cons.
- Area of some qualified relocated signs may be larger than would have been possible otherwise.

If Council approves of the proposed amendment, Council may adopt it.

Mayor Bellamy closed the public hearing at 6:39 p.m.

In response to Councilwoman Cape, City Attorney Oast agreed that the sign company can get more sign face, but they can't get more square footage.

Upon inquiry of Councilwoman Cape, City Attorney Oast said that electronic billboards are not allowed in our community.

In response to Vice-Mayor Jones, City Attorney Oast said that the City doesn't verify the content of billboards. He said that complaints should be filed with the Consumer Protection Division of the Attorney General's Office.

Throughout discussion, City Attorney Oast responded to various questions/comments from Council. As a result of that discussion, the majority of Council instructed City Attorney Oast (1) for a visual presentation; (2) inclusion of a provision that the square footage cannot be banked; (3) research into a provision that if the sign company takes advantage of this flexibility to move their sign into an area that is more commercially valuable to them that they lose a little of their square footage by a certain percent; and (4) information about the size of standard billboards.

Councilwoman Cape moved to continue this matter until January 23, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IV. UNFINISHED BUSINESS:

A. BUNCOMBE COUNTY HUMAN SERVICES REPORT

Ms. Mandy Stone and Mr. Jim Holland, with Buncombe County Human Services, said that Buncombe County is looking at a re-organization of human services and appreciated the

opportunity to present this information to the City. At this time, they explained in detail the current and future realities of the program, while adhering to their mission of (1) encouraging independence and self-sufficiency by providing basic care and protection while promoting self-reliance; (2) addressing the current and changing needs of individuals by making efficient use of available resources; (3) responding effectively to needs of individuals and families by providing flexibility in service delivery; (4) maximizing the effectiveness of County services through collaborative planning, development and evaluation of human services programs; and (5) enhancing human services programs through collaboration with community partners.

After Ms. Stone responded to various questions from Council, on behalf of City Council, Mayor Bellamy thanked Ms. Stone and Mr. Holland for their informative presentation.

CLOSED SESSION

At 7:21 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Swannanoa River Road and McCormick Heights by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; May 1st We Are One America Committee; State of North Carolina; County of Buncombe. The statutory authorization is contained in G.S. 160A-318.11 (a) (3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:55 p.m., Vice-Mayor Jones moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

B. RESOLUTION NO. 07-06- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR PROJECT MANAGEMENT FOR THE DEVELOPMENT OF CITY-OWNED PROPERTY

Economic Development Director Sam Powers said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Project Management Professional Services.

In preparation for development of the City Owned Property Request For Qualifications (RFQ) as per the direction from City Council at its November 21st work session, staff reviewed the qualifications of four firms that specialize in real estate advisement and project management services to public agencies. The firms are located in Baltimore, Memphis, Orlando, and Charlotte. The Charlotte firm was felt to be qualified, but the firm is currently active as a developer in two real estate development projects in Buncombe County, and staff did not enter into discussions with the firm for that reason. After reviewing credentials for the three other firms, contacting references, and telephone interviews with principal staff from the three firms, staff felt that Real Estate Research Consultants (RERC), located in Orlando, Florida, provided the best level of qualifications and experience to assist the City with project management associated with structuring and development of the RFQ process.

Staff has negotiated a preliminary scope of work required to develop and market the RFQ. Additionally we have worked to negotiate a professional services fee for the RFQ portion of the project. The negotiated fee for Phase One is a $55,000 plus expenses based on an hourly

rate contract with a not to exceed clause. Staff will work with the firm in development of a fee structure for respondents in phase two, the RFP process, which would recover some costs.

Timeline (after Notice to Proceed):

Market Scan	January 10-31
Develop and Finalize RFQ document	January 10-31
RFQ marketing and advertisement period	February 1-March 31
Review and Evaluation of Respondent SOQs	March 31-April 30
Invitations for Selected Developer RFPs	May 2007

Pros

- Upfront work by the project manager and staff will create a basis for initial screening and a more directed end submittal by qualified developers.
- The firm has a vast amount of experience in public/private development projects and can provide assistance in expectations about the developer's role in responding to capacity and constraints.
- The firm has a much broader access to potential interested and qualified development teams than the city would have on its own.
- Project management assistance can help structure the RFQ/RFP process to help recover administrative costs

Cons

- City will be required to provide compensation to consultant prior to cost recovery in Phase 2.

Our goal is to (1) achieve best response from national level develop teams with opportunities for local developers to respond and/or team; (2) receive creative responses that meet the goals established by City Council; (3) provide certainty and yield to incent developer interest in participation; and (4) more direction provides better control of expectations and outcome of the process.

The Phase I tasks include (1) establish market and physical framework; (2) criteria development for RFQ; and (3) prepare RFQ describing procedures and criteria.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Project Management Professional Services.

Throughout considerable discussion, Mr. Powers and City Manager Jackson responded to various questions/comments from Council, some being, but are not limited to: what specific properties are included in the RFQ and if any of those are properties have current facilities, when will Council receive the information about relocation costs, etc.; are the Real Estate Research Consultants realtors; is there an estimate of what the second phase would cost; is this the process that other communities use to market their properties; is it possible to hire a project development coordinator on a limited basis; and what will happen to the contract if one of the properties is taken off the table.

Councilman Mumpower appreciated the creativity of this initiative, but didn't think the dollars and benefits will compensate for the cost of moving and building new facilities to replace what we have. In addition, some of the things that we are trying to do will put a lot of controls on the people who will come in and develop these properties.

Mayor Bellamy felt that if we are going to put these key City properties out, she wanted someone or some firm accountable consistently throughout the entire process to make sure that the City's interests are protected.

Councilman Davis felt it was a major step to identify the available property, some with strategic goals. At this point we are risking $55,000 for a professional in the area to come back and say these are the items you are looking for and if we are not serious about this, this is the time to back off. If we don't move forward with some of those, we will lose credibility. He thinks we need to take a hard look and say do we really want to market all the available property or are we only interested in developing a couple of properties.

Mr. Powers explained that the consultant brings a level of expertise and a level of doing these types of tasks on a daily basis for multiple clients vs. our ability to do them once in a lifetime. The team that the consultant assembles exceeds our ability to do that in-house and because they do it every day, they know the tricks of the trade and with their negotiating skills with developers, they get the best deal for the client - in this case, the public body. It is very expensive, but if we are successful in getting the kind of end product that Council is interested in seeing on even one of these pieces of property, the fee would pay for itself several times over.

Councilman Newman felt that Council has already given the City Manager direction on the kinds of outcomes we wanted to see, e.g., workforce housing, green building, etc., understanding that every piece of land is not well suited to achieve each of those goals.

When Mayor Bellamy asked when Council would have the opportunity to talk about what they would like to see on each individual property, Mr. Powers said that the first task will be for the project manager to evaluate potential uses based on the input received from Council at their worksession, look at the market feasibility and financial feasibility, evaluate achievability given location and economic thresholds, and evaluate public sector participation.

Mayor Bellamy asked who will be reading the proposals once they are received. Mr. Powers suggested a mix of staff, stakeholders and elected officials. He felt City Council should ultimately determine who they feel is best qualified, with input from the City Manager, to make those evaluations. Staff would determine the criteria involved and what we think are thresholds for evaluation, but the evaluators should be up to Council to decide. Mayor Bellamy felt the proposals should be reviewed by a subcommittee of key people in the community who have experience in what we should look for in taking us down this road.

In response to Mayor Bellamy, City Manager Jackson said that this contract is for Phase I and it takes you to a clear point where we would have to evaluate whether it is something we can take over or come back to Council and ask for them to be retained for Phase II. The alternative to that would be to go to engage them for a turn-key project at a fee base that would be variable with a not-to-exceed amount. That would be through Phase I and Phase II or beyond. You could do a yearly contact and then have it renewable for another year to carry you through. Since this will be a multi-year program, you could structure this as you do a multi-year service agreement.

Mayor Bellamy said that the contract needs to include an out-clause if they are not performing at an appropriate level and requested a log of their work.

Upon inquiry of Councilman Davis, Mr. Powers said that we are proposing to engage them for a scope of work that includes a market scan of the properties we propose and their review of their professional expertise on the achievability of those projects.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-06. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no".

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C. RESOLUTION NO. 07-07 - RESOLUTION AUTHORIZING CITY STAFF TO BEGIN THE PROCESS FOR A WATER FUND REVENUE BOND IN THE APPROXIMATE AMOUNT OF $35 MILLION

Chief Financial Officer Ben Durant said that this is the consideration of a resolution authorizing city staff to begin the process for a Water Fund Revenue Bond in the approximate amount of $35 million.

City Council requested that staff develop an option for financing the water system Capital Improvement Program (CIP) that uses debt issuance and a lower CIP fee.

Consultants previously recommended that the City invest at least $66 million into the water capital improvements programs over a six year period to begin addressing the water system's infrastructure needs. Initially, the City proposed to fund this investment through a six-year pay-as-go financing strategy. Based on further direction from Council, staff analyzed the option of combining a pay-as-go financing strategy with debt issuance. As a result of this analysis, staff has determined that the City can fund a portion of the $66 million capital improvements program with $35 million in revenue bond issue which must be approved by the North Carolina Local Government Commission (LGC) prior to any bond issuance. The LGC requires that design and construction bids be obtained prior to any bond issuance taking place.

The schedule for design, construction cost bids, LGC approval is:

1. Design of projects: March 1, 2007 – August 31,2007
2. Construction bids: September 1 – September 30, 2007
3. LGC approval: October – November, 2007

Staff will be coming back to Council concerning the CIP fee charges after approval by the LGC for revenue bond financing.

PRO: The Water Fund has sufficient debt capacity for a $35 million revenue bond issue.

CON: The annual debt service payments from a bond issue will become a fixed cost in the operating budget that could potentially limit the water fund's operating flexibility in addressing declining revenues resulting from the loss of major water system users.

Staff recommends adoption of a resolution authorizing city staff to begin the process for a Water Fund Revenue Bond in the approximate amount of $35 million.

When Councilwoman Cape asked what is the projected cost of the financial feasibility study, Mr. Durant said that the consultants would be part of the financing team and that cost would be negotiated when we send out the Request for Qualifications. He would, however, look at prior financings and provide Council with a ballpark figure.

Councilman Mumpower felt that we should wait to resolve our legal dilemma with our state legislators over the Water Agreement prior to prior to beginning this process.

In response to Councilwoman Cape, City Attorney Oast said that the money for the financing team comes from the revenue bond proceeds.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-07. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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D. LEGISLATIVE AGENDA UPDATE

City Attorney Oast said that this is a continuation of discussion begun in November of 2006 of legislative initiatives and requests for potential action during 2007 session of North Carolina General Assembly

At its November 9, 2006, meeting, Council began initial consideration of its legislative agenda for the 2007 session of the N. C. General Assembly. The purposes of that report were to review legislative action from last year, and to begin considering initiatives or requests for 2007. This report will provide Council with additional information as to some matters, focusing on items appropriate for action at the State level, and suggest some topics for consideration of legislative action.

A. Communication with legislators. While the City Council and members of the delegation do not always agree with each other, members of the delegation that he has spoken with have emphasized the need and desirability for better and more frequent communication. One member of the delegation has suggested that Council schedule a meeting to which the local delegation is invited. The 2007 session begins on January 24, and if such a meeting is to occur it will be easier to schedule before the session begins, when the legislators' duties require their presence in Raleigh. A special meeting for this purpose would be appropriate, if Council desires. However, such a meeting could be scheduled at any time, and visits to Raleigh and communication via other means is invited. Council's retreat is now scheduled for January 19-20, which permits a discussion of legislative proposals prior to the convening of the session, and this may present an opportunity – however limited – for discussions with members of the delegation.

B. Bill submission deadline. The deadlines for getting proposed legislation to the legislature's bill drafting staff and for introduction are established by each house after the session convenes. Although that exact deadline cannot be predicted, if the past long sessions are any indication, these deadlines will probably be in mid-March. However, there is always a flurry of activity as the deadlines approach, and early submission of proposals is encouraged and appreciated.

C. Legislative initiatives by other bodies.

1. Chamber of Commerce. At its meeting on December 18, 2006, the Legislative Task Force of the Asheville Area Chamber of Commerce adopted the draft legislative agenda for the Chamber. This agenda was adopted by the Chamber's Executive Committee on December 21, and is scheduled for action by the Chamber Board on January 12. The Council can review this document for items that the City can lend its support to.

2. League of Municipalities. The November 2006 Staff Report attached a copy of the N.C. League of Municipalities' legislative agenda, adopted in October, and review of that agenda is encouraged as well.

D. City of Asheville legislative agenda for 2007.

1. Prior requests affecting Asheville. As to Council's initiatives of last year, several items specific to Asheville were requested, but not acted on. These include repeal of the Sullivan Act and establishment of a funding source for the Asheville Civic Center. At Council's direction, similar action will be requested again this year. However, establishing a funding source for the Civic Center may be an appropriate topic to discuss with the local delegation before action is requested. The delegation has indicated that they would like to see the plans for the Civic Center more fully developed, and be more involved in local discussions, before establishing a funding source.

   It should be noted that the delegation did introduce legislation and obtain action on our request for annexation of some property near the airport, and settling the annexation/utility franchise tax issue with Progress Energy.

2. Prior requests for action of general interest. Council also requested action on some matters not specific to Asheville. At Council's direction, action will be requested again this year as to items with respect to which action was not taken, or with respect to which action was taken, but not as requested by Council. These items include:
   - Land for Tomorrow initiative
   - Increase funding for criminal justice
   - Increase in the minimum wage
   - Review of child care reimbursement amounts for Buncombe County
   - Support campaign funding, reform to allow local grants to implement public financing of local elections.
   - Revise State tax laws relative to the homestead exemption for elderly homeowners

3. New requests (general). Council has recently expressed interest in several other matters. For the most part, these are matters that may be more appropriately addressed by general rather than local law, but have been discussed at the State level, and Council may wish to take an official position on one or more of them. These include:
   - Strengthening criminal laws dealing with sexual predators, especially as related to children
   - Obtaining legislation to strengthen the City's ability to regulate development on steep slopes, including transfer of development rights
   - Obtain stronger legislative authority to encourage the provision of affordable housing
   - Obtain stronger legislative authority to encourage environmentally sensitive design
   - Obtain stronger legislation to deal with illegal immigration at the local level (e.g., ability to deny business licenses, other permits)
   - Obtain stronger legislative authority for regulation of trees and vegetation

4. New requests (local). Clearly of local concern are some annexation issues with respect to which legislation may be necessary:

- Renew the request for action to allow for voluntary annexation of properties that may not otherwise quality for voluntary annexation due to their proximity to other incorporated municipalities. This would address the recurring situation with the area near the airport.
- Annexation of some isolated parcels between Asheville and Woodfin, near the UNC-A campus.

5. Issues for further research. Council or staff may become interested in legislative initiatives in other areas, and whether those initiatives would be of benefit to Asheville. One such initiative is described below. Council may learn of others. Further research or investigation on such items can be performed at Council direction.

   - Establish authorization and funding for a program to allow for enforcement of City's "quality of life" ordinances (noise, solicitation, junk vehicles, minimum housing, etc.), similar to existing programs in other N.C. cities.

The foregoing summary constitutes a beginning point for Council discussion and direction. There is no requirement for Council to take action before the General Assembly convenes, but action should be taken soon enough as to allow for timely submission to the local delegation.

This matter is before Council for further discussion and/or direction as appropriate. Once the legislative action items have been settled on, a resolution will be prepared, to be supplemented with supporting materials and transmitted to members of the delegation.

Vice-Mayor Jones wanted to be very supportive of the County's needing help in the human services area, but pointed out that an item on the Chamber's priorities is to provide critical Medicaid relief for North Carolina counties and increased state funding for payments to Medicaid providers. She was concerned that that proposal might potentially harm municipalities. In addition, in the League's priorities there is a statement that the League will seek additional dedicated funding for affordable housing. There is a positive conservation beginning regionally about some local opportunities and she wanted to make sure that is included, in particular the real estate transfer tax for helping our community in affordable housing and construction. Regarding the homestead exemptions, she would like that clarified to read "Expand eligibility for homestead exemptions for elderly homeowners". Regarding living wages, if given the opportunity through how the City collects business privilege tax, would the City be able to give a rebate back to businesses in Asheville that provide a living wage as an incentive to pay their people a living wage.

Councilman Mumpower said that there is a continued problem with a delay in our State Bureau of Investigation lab that was supposed to be resolved last year, but still has not been resolved. It takes approximately 7 months by the time you send a drug analysis off until you get it back, which dramatically delays our ability to prosecute. It was the consensus of Council to ask staff to consult with the Police Chief about any weak links in the State support system that we might highlight, noting the delay with the State Bureau of Investigation lab.

Councilman Newman said that Council has said in the past that we would like a revenue source for the Civic Center but don't want that to be an increase in sales tax. In addition, he wondered if the City should send a letter to the Land for Tomorrow State Study Commission stating that City Council has endorsed the Land for Tomorrow Initiative. Finally, he said that the current State policy regarding the homestead exemption gives property tax relief for lower income senior citizens. Other states have a much broader policy about giving tax relief not only for lower income senior citizens, but structuring property taxes in a way to give relief to all lower income

residents and middle-class families as well. We should encourage our legislators in North Carolina to look at.

Mayor Bellamy said that this item will be on the City Council's retreat agenda and each request will be voted on separately.

V. NEW BUSINESS:

A. RESOLUTION NO. 07-08 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A WHOLESALE WATER CONTRACT WITH THE CITY OF HENDERSONVILLE, N.C.

City Manager Jackson said that this is the consideration of a resolution authorizing the Mayor to enter into a wholesale water agreement contract with the City of Hendersonville.

Staff has been negotiating with City of Hendersonville staff to enable Asheville to sell wholesale water to Hendersonville on a daily basis. The wholesale water purchase agreement allows Hendersonville to purchase 1,000,000 gallons of finished water per day from the Asheville Mills River Water Treatment Plant and up to 2,000,000 gallons per day with a 30 day written notice. Hendersonville agrees to pay a minimum daily charge for 1,000,000 gallons. This agreement is for 20 years and renewable on an annual basis thereafter. The wholesale water rate increases will be tied to the Consumer Price Index (CPI) of the previous calendar year.

PROS:

- This agreement will help offset the loss revenue of major industrial customers of the Asheville water system.
- This agreement will generate over $395,000 of revenue for the water fund.

CONS: There are no cons for this proposal. This is excellent opportunity for regional cooperation which is beneficial to both cities.

Staff recommends City Council adopt a resolution authorizing the Mayor to enter into a wholesale water agreement contract with the City of Hendersonville.

Throughout discussion, City Manager Jackson and Water Resources Director David Hanks responded to various questions/comments from Council, some being, but are not limited to: is the 20-year commitment too long; how much does it cost to produce water at the Mills River Plant and at the North Fork Plant; are we able to renegotiate our wholesale contracts; is the wholesale rate the same for all wholesale customers; what happens if we determine the wholesale rate is too low; is there any opportunity for increases to wholesale customers; who sets the wholesale rate structure; how will any cost of production increases affect the agreement; and what constitutes "good cause" in the termination provision.

Councilman Mumpower felt we should not enter into any water agreements until our legal dilemma with the State legislators is resolved.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-08. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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B. RESOLUTIONS STATING THE INTENT OF THE CITY TO ANNEX THE BILTMORE LAKE AREA, SARDIS ROAD AREA AND SCHENCK GATEWAY AREA AND SETTING THE PUBLIC INFORMATION MEETINGS ON FEBRUARY 26, 2007, AND THE CITY COUNCIL PUBLIC HEARINGS ON MARCH 27, 2007

At the request of the City Manager, Councilman Mumpower moved to delay this action in order to allow additional time within which to perform additional analysis and associated service requirements. This motion was seconded by Councilwoman Cape and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 1-22, 2006: Dale Anderson (Parks & Recreation), Scot Padgett (Water), Terry Medford (Water) and Cameron Lewis (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Stewart and Mr. Reid Thompson, Maxwell Street residents, individually spoke to Council about their problems associated with the loading dock at Greenlife Grocery on Merrimon Avenue. Mayor Bellamy said that City Council will be discussing this issue at the January 16, 2007, meeting.

At 9:56 p.m., Councilman Mumpower moved to continue the closed session. This motion was seconded by Councilman Davis and carried unanimously.

At 10:13 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:13 p.m.

Kesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – January 16, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF DR. MARTIN LUTHER KING JR. DAY

Mayor Bellamy recognized January 15, 2007, as "Dr. Martin Luther King Jr. Day."

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 9, 2007

B. RESOLUTION NO. 07-09- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BUCKEYE CONSTRUCTION COMPANY FOR NEIGHBORHOOD ENHANCEMENT WATER SYSTEM IMPROVEMENTS PHASE II PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Buckeye Construction Company in the amount of $ 1,062,966 for Neighborhood Enhancement Water System Improvements Phase III Project and the associated budget amendment.

Sealed informal bids were received by the Water Resources Department on November 7, 2006 for the Neighborhood Enhancement Water System Improvements Phase III. Three bids were received with Buckeye Construction Company submitting the low bid price of $ 1,062,966. A summary of all bids received follows:

NEIGHBORHOOD ENHANCEMENT WATER SYSTEM IMPROVEMENTS PHASE III

Buckeye Construction Company Canton, North Carolina	$ 1,062,966.00
Payne, McGinn & Cummins, Inc. Travelers Rest, South Carolina	$ 1,182,677.50

EMATS, Inc.
Cedar Bluff, Virginia $ 1,435,892.50

These bids have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended award of the low bids to Buckeye Construction Company. The bids have been reviewed by the Office of Economic Development for compliance with the City of Asheville's Minority Business Program and Ms. Brenda Mills, Coordinator, indicates that the bids received conform to the City's Minority Business Plan.

PRO:

- This project involves the installation of approximately 13, 100 linear feet of 6-inch and 8-inch waterlines on eight (8) different streets within the water service area; replacing an equal amount of old 2-inch waterline. These new waterlines will dramatically improve water service to existing customers, provide fire protection for the adjoining properties and reduce maintenance and operation expenses. Approximately $ 600,000 of grant funds is appropriated for this project. This money will be lost if it is not expended on this project.

CON:

- Failure to approve award of this contract will result in the loss of approximately $ 600,000 of State grant funds. This loss would delay the replacement of these old, undersized waterlines which are in very poor shape and are causing customer service issues.

City staff recommends City Council approve a resolution authorizing the City Manager to sign a contract with Buckeye Construction Company in the amount of $ 1,062,966.00 for Neighborhood Enhancement Water System Improvements Phase III Project and the associated budget amendment.

RESOLUTION BOOK NO. 30 – PAGE 185

C. ORDINANCE NO. 3431 - BUDGET AMENDMENT TO REFLECT REPROGRAMMING FUNDING FOR THE BUCKEYE CONSTRUCTION COMPANY'S CONTRACT FOR THE WATER RESOURCES DEPARTMENT

Summary: See Consent Agenda "B" above.

ORDINANCE BOOK NO. 23 - PAGE 214

D. RESOLUTION NO. 07-10 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH HOBSON CONSTRUCTION COMPANY FOR THE US 70 WATERLINE BRIDGE CROSSING AND THE HOMINY CREEK WATERLINE CROSSING PROJECTS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Hobson Construction Company, in the amount of $ 261,001.30, for the US 70 Waterline Bridge Crossing and the Hominy Creek Waterline Crossing Projects and the associated budget amendment.

Sealed informal bids were received by the Water Resources Department on November 30, 2006 for the US 70 Bridge Crossing and the Hominy Creek Bridge Crossing. Two bids were received for each project and are summarized as follows:

US 70 WATERLINE BRIDGE CROSSING

Hobson Construction Company Arden, North Carolina	$ 36,701.30
Buckeye Construction Company Canton, North Carolina	$ 166,994.00

HOMINY CREEK WATERLINE CROSSING

Hobson Construction Company Arden, North Carolina	$ 224,300.00
Buckeye Construction Company Canton, North Carolina	$ 280,300.65

These bids have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended award of the low bids to Hobson Construction Company. The bids have been reviewed by the Office of Economic Development for compliance with the City of Asheville's Minority Business Program. In a letter, Brenda Mills, Minority Business Coordinator, approves the minority outreach efforts by both Hobson and Buckeye for these projects.

PROS:

- During the storm resulting from hurricane Francis, the waterline under the Swannanoa River at the US 70 bridge over the Swannanoa River was washed out. This waterline was replaced temporarily with a waterline on the deck of the bridge. The N.C. Dept. of Transportation (NCDOT) is pressing for this temporary waterline to be removed and installation of this new permanent 8-inch waterline under the bridge will accomplish that.
- The Water System Master Plan includes a 24-inch waterline on Brevard Road. Portions of this waterline have been completed and others will be completed in the upcoming NCDOT project to widen Brevard Road from I-40 to I-26. The small section of 24-inch waterline included in this project is necessary to complete this eventual Brevard Road transmission line which will address current serious water flow issues on Brevard Road.

CONS:

- Failure to proceed with the installation of the 8-inch waterline on the US 70 Bridge will result in the loss of a significant feed on the eastern side of our distribution system. NCDOT will require that we remove the temporary waterline from the deck of the bridge and without its replacement this water supply will be lost.
- Connection of a 24-inch transmission main between the water supplies of Mills River and North Fork is in the current Water System Master Plan. Without this part of that transmission main, the ability to transfer water between these two (2) supplies will be limited and the existing fire flow deficit on Brevard Road will not be addressed.

City staff recommends City Council approval of a resolution authorizing the City Manager to sign a contract with Hobson Construction Company, in the amount of $ 261,001.30, for the US 70 Waterline Bridge Crossing and the Hominy Creek Waterline Crossing Projects and the associated budget amendment.

E. ORDINANCE NO. 3432 - BUDGET AMENDMENT TO REFLECT REPROGRAMMING FUNDING FOR THE HOBSON CONSTRUCTION COMPANY'S CONTRACT FOR THE WATER RESOURCES DEPARTMENT

Summary: See Consent Agenda "D" above.

ORDINANCE BOOK NO. 23 - PAGE 217

F. RESOLUTION NO. 07-11 - RESOLUTION APPROVING AN ACQUISITION FOR PARCEL 3 IN THE AZALEA ROAD/SWANNANOA RIVER GREENWAY PROJECT

Summary: The consideration of a resolution approving an acquisition for parcel three in the Azalea Road/Swannanoa River Greenway Project.

Negotiations for certain real property in the Hominy Creek/Amboy Road Greenway Project have produced an agreement that proposes an increase in Just Compensation in order to acquire the property.

The Azalea Road/Swannanoa River Greenway Project begins at Azalea Road Park and follows the East bank of the Swannanoa River to Gashes Creek Road and then crossing the Swannanoa River it crosses Gashes Creek Road and follows Gashes Creek Road to Swannanoa River Road then turning North follows Swannanoa River Road for a distance of about 800 feet. The proposed trail will be paved and about twelve (12) feet wide.

The project proposes easements over 9 parcels, 5 of which have been acquired. Negotiations are being pursued on the remaining 4 easements. An agreement has been reached on one of the easements which proposes an increase in the just compensation in exchange for a fee simple conveyance instead of an easement.

The agreement on Parcel 3, owned by Viewpointe Homeowners Association (VHA), (PIN 9668.09-15-4163) calls for payment of $6,130 for fee simple conveyance of the easement area instead of by easement. The proposed acquisition was for an easement, but the negotiations snagged over the question of liability. The proposed fee simple purchase of the property resolves the VHA concerns. The original offer for the easement based on an appraisal dated August, 2004, was $2,500. The proposed settlement was derived as follows: the appraisal of the Viewpointe property dated 8/16/2004 estimates the fee value of the affected portion of the property was $5,066. Because the acquisition will be fee simple instead of an easement, the fee value of $5,066 has been updated at a rate of 10% per year increase for the two years since the appraisal rendering the sum of $6,130.

Just Compensation was established December 7, 2004, based on appraisals by Benjamin Beasley, MAI and reviews by Joseph Moore. The proposed increase is as follows:

Parcel #	Total Area (acres)	Easement (acres)	Easement Just Compensation	Fee Simple Just Compensation
3	9.51	0.106	$2,500	$6,130

Approval of the resolution will increase Just Compensation for fee simple acquisition of the easement area over parcel 3 in the Azalea Road/Swannanoa River Greenway and approve the proposed agreement.

PROS:

- A significant portion of the greenway trail will be acquired.
- The proposed increase in Just Compensation is fair and reasonable.
- The fee simple acquisition will eliminate a property owner concern.
- The agreement is voluntary and does not involve eminent domain.

CON:

- The only negative is a fee simple acquisition removes the property from the tax rolls whereas an easement would not.

Economic Development staff recommends adoption of a resolution approving a resolution approving an acquisition for parcel three in the Azalea Road/Swannanoa River Greenway Project.

RESOLUTION BOOK NO. 30 – PAGE 186

G. RESOLUTION NO. 07-12 - RESOLUTION APPROVING AN ACQUISITION FOR EASEMENTS OVER PARCELS 9 AND 12 IN THE HOMINY CREEK/AMBOY ROAD PROJECT

Summary: The consideration of a resolution approving an acquisition for easements over Parcels 9 and 12 in the Hominy Creek/Amboy Road.

Negotiations for Certain parcels in the Hominy Creek/Amboy Road Greenway Project have produced an agreement that proposes an increase in Just Compensation in order to acquire the property.

The Hominy Creek/Amboy Road Greenway Project begins at the West end of Carrier Park and follows Amboy Road and the West bank of the French Broad River to Hominy Creek Park. It is generally a crescent shape approximately 1 mile in length and averages about 20 feet wide. The proposed trail will be paved and about 12 feet wide. It will be installed generally in the same location as an existing unofficial foot path used by fishermen and hikers. All of the land within the project is in the flood plain.

The project proposes easements over 9 parcels. Three of the easements have been acquired including the two largest parcels comprising over half of the trail distance. Negotiations are being pursued on the remaining easements. Agreements have been reached with two property owners which propose an increase in the just compensation as follows:

The agreement on Parcel 9, owned by Tony Wilson, (PIN 9638.18-30-0014) calls for a cash payment of $6,500 and incidental site improvements consisting of a paved driveway valued at about $36,000 for a total package value of $42,500. .

The agreement on Parcel 12, owned by Max and Flora Wilson, (PIN 9638.18-40-1264) calls for a cash payment of $3,500 and incidental site improvements consisting of a paved parking area valued at about $13,500 for a total package value of $16,500. .

The additional pavement is incidental to the greenway construction and will be included at the time of construction of the greenway. The pavement will contribute to stabilization of driveways and parking areas adjacent to the greenway.

Just Compensation was established December 7, 2004, based on appraisals by Benjamin Beasley, MAI and reviews by Joseph Moore. The proposed increases are as follows:

Parcel #	Total Area (acres)	Easement (acres)	Established Just Compensation	Proposed Just Compensation
9	2.85	0.49	$5,200	$6,500
12	2.25	0.11	$2,300	$3,500

Approval of the resolution will increase Just Compensation for the easements over parcels 9 and 12 in the Hominy Creek/Amboy Road Greenway and approve the proposed agreements.

PROS:

- A significant portion of the greenway trail will be acquired.
- The proposed increase in Just Compensation is fair and reasonable.
- The additional pavement proposed will contribute to the stability of the area immediately around the trail and enhance the trail experience.
- The agreements are voluntary and do not involve eminent domain.

CON:

- The only negative is that the cost of asphalt is likely to increase in the future, as would construction cost in general.

Economic Development staff recommends adoption of a resolution approving an acquisition for easements over Parcels 9 and 12 in the Hominy Creek/Amboy Road.

RESOLUTION BOOK NO. 30 – PAGE 140

H. RESOLUTION N O. 07-13 - RESOLUTION ACCEPTING DEDICATION OF TRIPLE H DRIVE IN THE SAND HILL ROAD AREA TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution accepting dedication of Triple H Drive in the Sand Hill Road area to become a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Triple H Drive is a developer-constructed street that has an average paved width of 24.5 feet and a length of 0.15 miles. Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Triple H Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- The City will receive Powell Bill funds from the N.C. Dept. of Transportation to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council adopt a resolution accepting dedication of Triple H Drive in the Sand Hill Road area to become a publicly maintained street.

RESOLUTION BOOK NO. 30 – PAGE 191

I. RESOLUTION AUTHORIZING THE PURCHASE OF STREET LIGHTING FOR BILTMORE VILLAGE FROM A SOLE SOURCE UTILIZING NC RURAL CENTER GRANT FUNDS

This item was removed from the Consent Agenda for discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 07-14 - RESOLUTION AUTHORIZING THE PURCHASE OF STREET LIGHTING FOR BILTMORE VILLAGE FROM A SOLE SOURCE UTILIZING NC RURAL CENTER GRANT FUNDS

Summary: The consideration of a resolution authorizing the purchase of street lighting for Biltmore Village from a sole source utilizing NC Rural Center Grant Funds.

The goal of the Biltmore Village Development Plan is to preserve and restore the original pedestrian oriented design of Biltmore Village. The guidelines for the Village require that new lighting in pedestrian areas of the Village be in the historic style with underground wiring. City staff and Biltmore Village merchants have worked to have the historic lighting reproduced and made available to the general public. The manufacturer and sole source of supply for this lighting is Jefferson Lighting and Brassworks of Lynchburg, Virginia. Their product line is distributed in North Carolina by L.A.M.P.S., Inc. of Knightdale.

NC General Statute Article 143-129 identifies the procedures for the letting of formal public contracts and includes exceptions to the requirements of the Article. Section (e)(6) of those procedures states that the governing body of a political subdivision of the State shall approve the purchase of apparatus, supplies, materials or equipment when "(ii) a needed product is available from only one source of supply or (iii) standardization or compatibility is the overriding consideration."

PROS:

- Utilization of the sole source award exception to formal bidding processes as allowed under 143-129(e)(6) will permit materials to be received for timely installation.
- Utilization of the sole source award exception to formal bidding processes will maintain compatibility and standardization of the historical aesthetics of Biltmore Village
- All new and retrofitted Biltmore Village lights will have a 250 watt metal halide lamp which will provide increased night visibility and safety to pedestrians and vehicles.

CON:

- In order to maintain historical infrastructure there are severe limitations to competitive bidding. Since the Biltmore Village light is a customized specification and there is only one supplier, it is difficult to ascertain if the pricing received is "fair"

Staff recommends Council approval of a resolution authorizing the purchase of street lighting for Biltmore Village from a sole source utilizing NC Rural Center Grant Funds.

Councilman Mumpower was concerned that there is no cost sharing involved by the businesses and others who profit from the existence of the village and also the use of state tax supported dollars.

Upon inquiry of Mayor Bellamy, Planning & Development Director Scott Shuford explained how the money being allocated is through a planning grant we received regarding the flooding issue.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-14. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. ASHEVILLE FILM COMMISSION PRESENTATION

Ms. Alison Watson, Chair of the Asheville Film Commission (AFC), said that the mission of the Asheville Film Commission is to support the city as a "film friendly" town and to support media arts in the area. The AFC will support the WNC Film Commission; URTV's Public Access Station and the Media Arts Project and assist local filmmakers in finding resources and promoting their work, through our WNC Film Seeds Program.

She reviewed the following accomplishments from 2006:

- **Successfully launch the WNC Film Seeds Program** - This is a program that collects vouchers from local businesses (food, hotel rooms, printing, equipment rentals, general discounts) and will be given to low budget films in the area to offset costs.

- **Advocacy and support to Feature Films** - The AFC brought a proposal to city council to waive meters and barricades, bringing a $1.5 million feature to Asheville. The AFC assisted four other films shot in the area by finding equipment, helping in location scouting and hiring crew.

- **Support of the Asheville Film Festival** - Assisted in finding sponsors and creating awards for the AFF. Volunteered at events and parties. Served as an advisory board and general liaison.

- **Support of URTV's Public Access** - The AFC was responsible for a membership drive among board members. We also contacted groups in the community to provide content.

- **Support the Media Arts Project and HUB Goals** - Volunteered at Off the MAP events held at the Fine Arts Theatre. Helped in placing local talent with full-time and contract jobs in the media arts industry that the MAP advertised. Worked with the MAP on how to best serve HUB goals for economic development when dealing with film and the media arts community.

- **Support the 48 Hour Film Project** - Volunteered during the event and screenings to follow. Assisted in promoting the event.

She then outlined the goals of the Film Commission, being: (1) Continue supporting the WNC Film Commission; (2) Continue supporting the MAP and URTV; (3) Launch a new website; (4) Advertise and take applications for the WNC Film Seeds Program; and (5) Assist local filmmakers and films in the area through advocacy and industry connections.

Ms. Watson explained why she felt the Film Commission should be placed in the Economic Development Department other than in the Parks & Recreation Department.

Ms. Watson and Mr. Butch Kisiah, Superintendent of Recreation, responded to various questions/comments from Council, some being, but are not limited to: what is the Film Commission's role with the Film Festival planning; what is the Film Commission's perspective in collaborating with others who would like to get into the film festival business; regarding the start-up time of the Film Festival, are there any plans to start sooner than after the Bele Chere Festival; where does the dialogue for the Film Festival happen; and should the Film Festival remain a City responsibility or should we out-source the Festival.

City Manager Jackson said that he would provide Council with a report regarding a proposal from AdvantageWest regarding the Film Festival.

Mayor Bellamy announced that on the fifth Tuesdays of any month, we will have the opportunity for the community to talk about certain issues. Starting this month, one of the first topics will be Bele Chere. After hearing the public comments, Council can decide the direction on those issues either by staying the course or going in a different direction.

At the request of Vice-Mayor Jones, it was the consensus of Council to instruct the City Manager to investigate the pros and cons of the moving the Film Commission out from Parks & Recreation Department into Economic Development Department and to provide Council with a report.

On behalf of City Council, Mayor Bellamy thanked Ms. Watson and the entire Film Commission for their hard work.

IV. PUBLIC HEARINGS:

V. UNFINISHED BUSINESS:

A. GREENLIFE GROCERY/MAXWELL STREET RECOMMENDATIONS

Councilman Newman and Councilman Freeborn said that this is an update to City Council on their progress related to Greenlife Grocery and mitigating truck traffic on Maxwell Street.

Councilman Newman said that since December, 2006, they have been working with City staff to explore alternatives for reconfiguring Greenlife's delivery area as well as traffic calming alternatives for Maxwell Street. Their goals were (1) to look at possible design ideas to restore more of the buffer on Maxwell Street; and (2) to get the large trucks off Maxwell Street as well as their maneuvering on Maxwell Street to get to the loading dock. They also looked at ways to restore the residential parking on Maxwell Street and they also looked into the site visibility triangle concern. We have discussed these options with the owners of Greenlife Grocery, members of the community, as well as the owners of the property on which Greenlife is located. This is no means a perfect solution to the concerns, but it seems to go a long way towards

addressing them. If the option for redesign of the loading dock is what Council is interested in, there would need to be a rezoning process for one lot next door to Greenlife which will need to go through the Planning & Zoning Commission.

Councilman Freeborn explained the two options. The preferred option is to reconfigure Greenlife's driveway and parking lot so that large trucks would enter and maneuver into Greenlife's loading area without entering Maxwell Street or the adjacent sidewalk. This option would also entail reconfiguring and bolstering the buffer between Greenlife and Maxwell Street. Essentially it will give us a 17-foot buffer and will remove large trucks from Maxwell Street. The current entrance on Maxwell Street would be shifted and become part of the buffer. This option will need to go through the rezoning process. The second option is traffic calming. We could put in traffic calming measures along Maxwell Street that would make it physically impossible for large trucks to be on Maxwell Street and impossible for them to maneuver the trucks back into the loading dock. Staff feels the traffic calming measures would cost approximately $30,000 and if Council chooses to pursue that option, staff will have to come back with a design and an actual budget request. He asked that Council listen to the proposals along with public comment and then decide on which option they would like to proceed with.

Using a site plan, Assistant Director of Planning & Development Shannon Tuch presented detailed information on the Greenlife's site reconfiguration regarding buffering, privacy fence, relocation a small house, reconfiguration of the loading dock and parking.

Using a map, Traffic Engineer Ken Putnam presented information about alternative traffic control measures for Maxwell Street should loading area reconfiguration not be the option Council wants to pursue. Essentially, there would be a median island in the curve that would physically block the large trucks from accessing Maxwell Street or making any backing maneuver on it. In addition, at Broadway there could be a gateway island that would also restrict large truck movements onto Maxwell Street as well. In doing that, there would be some removal of parking spaces to accommodate the islands.

Councilman Newman reiterated that the preferred option would be redesigning of the loading dock. And if that option moves forward, then the traffic calming approach is not necessary. A couple of more items that can be looked at, as the process goes forward, is to get all of the commercial trucks off Maxwell Street and with this general design idea, it may be possible to redesign the loading dock so that the smaller delivery trucks also come in off of Merrimon Avenue. But doing that might mean the buffer in that area of the store would need to be reduced because you would need to have room for two different kinds of trucks to park there. One scenario is you would still have smaller delivery trucks on Maxwell Street with a bigger buffer and the other one would be all the trucks off Maxwell Street but the buffer would be somewhat compromised. These scenarios are still a work in progress.

Councilman Freeborn said that if Greenlife decides they want to pursue the reconfiguration of the loading dock option, it is their recommendation that they submit an application for rezoning and site redesign within 30 days of this meeting and if they do not submit that application that Council agree to look at the traffic calming at the February 27, 2007, meeting.

Throughout considerable discussion, Councilmen Freeborn and Newman and City staff responded to various questions/comments, some being, but are not limited to: why not use both options; how do you avoid staging on Maxell Street; how will the truck drivers be made aware of the changes; could we still restrict large trucks from entering Maxwell Street via traffic calming measures in addition to the reconfiguration of the load dock option; the island at the end of Maxwell Street would not be user friendly for cars; could we make Maxwell Street a one-way street and they couldn't turn off of Broadway; when the truck manipulation software was used for the loading dock reconfiguration, was it charted for the trucks to get getting back out of the

loading dock; concern that after the expense of the reconfiguration of the loading dock takes place, residents may still have concerns with the smaller trucks, noise, etc. from Greenlife; where will the staging of the trucks take place; maybe not relocate the small house but demolish it all together and use that relocation area to stage other trucks off Merrimon Avenue; safety concerns of pedestrians and vehicles when large trucks are maneuvering in the parking lot near the front door of Greenlife; suggestion to have the area where the small house is located designated for unloading of small trucks and have them cart their produce across the parking lot to Greenlife; how often do tractor trailers and some straight trucks back into the loading dock; and if we asked Greenlife to put in two bays, what would be a minimum buffer.

Mr. John Swann, owner of Greenlife, addressed some of the concerns addressed by Council. He said that large trucks do not use Maxwell Street to approach the loading dock or for staging. Their procedure now is that when a large truck comes in, the manager goes out into the parking lot and he guides the truck. With the new configuration, they do have the opportunity to continue that procedure. Regarding staging, we do have the ability, and have done so on occasions, to waive the truck off and tell them to come back at a later time. We will work harder on scheduling the deliveries. Most supermarkets operate with a primary supplier that supplies 80-95% of the product in the store, however, Greenlife's primary vendor supplies them with about 35% of the products, noting they have 400 vendors that they buy from. This plan takes tractor trailers off Maxwell Street and moves the entrance over. This plan does not address the straight trucks, except we may be able to squeeze in a secondary ramp by the loading dock so that small trucks (van size trucks) can do the pallet-loads off the truck. We still have the issue of compactors in the back that still need to be serviced and the small truck deliveries. Regarding unloading the smaller trucks in another area and carting the produce across the parking lot, it is not feasible to do that since they buy tractor trailer loads full of produce. They have looked at satellite facilities and it is not economically feasible to do that due to issues regarding material handling, liability, timing and the number of trucks it takes for a satellite facility.

In response to Mayor Bellamy's request that no trucks be allowed on Maxwell Street, Mr. Swann said that their plan removes tractor trailers on Maxwell Street which is about 1/3 of the truck traffic that Greenlife receives. The other 2/3's are small trucks that are unloaded by hand.

Councilman Freeborn said that he and Councilman Newman were working under the assumption that it was the large trucks that were a concern of the community and they did not address small trucks.

When Mayor Bellamy asked if Councilmen Freeborn and Newman would look at this issue again to address some of the concerns raised, Councilman Freeborn felt they needed direction from Council on whether small delivery trucks could travel on Maxwell Street.

In response to Councilwoman Cape, Ms. Tuch explained the buffering to accommodate the additional second loading area for a smaller truck in the same space. The option calls for 17 feet of buffer and we would need an 8 feet for that second loading area. That would leave us with 9 feet of buffer and the minimum width requirements without alternative compliance is 10 feet. They would have to get alternative compliance and this probably isn't the best site to consider alternative compliance. Mr. Swann also responded that there are two large trees that they are trying to not cut down and if you add any more width, we will get into the possibility of having to cut the trees.

Councilman Davis wondered if Greenlife could use the existing dock with the buffer for the smaller deliveries and build a walkway and a one bay on the south end of the store that could be accessed by large trucks. Mr. Swann responded that they looked at that option in depth. The problem is that corner of the building is the grade, which is about 15 feet above Bordeau Street. Not only is it very expensive, in order to get the large trucks to that location would eliminate most

of the parking area in the parking lot. In addition, we are beginning the thoughts of expanding the store and if we do, that would be the area they would expand into.

Mr. Benjamin Gilliam liked the proposal to get the large trucks off Maxwell Street. He suggested a building a second dock for the small trucks on the south end of the building about half the length of the building, so the topography would not be so steep.

Mr. Fred English suggested making Maxwell Street one-way.

Ms. Hillary Stewart, resident on Maxwell Street, was concerned about the other 2/3 trucks on Maxwell Street.

Upon inquiry of Vice-Mayor Jones, Mr. Swann said that he is amenable with the reconfiguration of the loading dock, however, it does not solve the problem of straight trucks.

In response to Vice-Mayor Jones, Mr. Swann said that if an expansion should occur, they would pull the retail part of the store in the south end direction, leave the back end the same, and turn the café' into a loading bay.

There was a brief discussion of the David Owen's report regarding City Council's ability in this case to prohibit trucks off residential streets. Mayor Bellamy said that we can do something with traffic calming, but we can't reclassify Maxwell Street because the project is already in place and received the proper permits.

When Councilman Freeborn asked if City Council has the authority to redesign a street, Assistant City Attorney McGlohon said that Council does have the authority to regulate local streets. However, there may be some concerns with inverse condemnation issues of state control and whether or not the state has attempted to preempt local control as it relates to interstate commerce, where you go to the point of restricting traffic on local streets to the point that the business cannot make a reasonable use of that street.

Councilman Freeborn wondered if we could instruct City staff to bring something back to Council on February 27, 2007, that shows a street redesign of Maxwell Street taking all trucks off Maxwell Street.

Councilman Newman said that if the majority of Council feels that no design should be considered that doesn't get all delivery trucks off Maxwell Street, then that would be helpful to know. It was his impression that the main goal was to get all large trucks off Maxwell Street, with a sub-goal of getting all trucks off Maxwell Street.

Councilman Mumpower said the compromise is to get the large trucks off Maxwell Street, not all trucks and felt that was fulfilled by this option with room for improvement.

Mayor Bellamy noted that small trucks have to service Greenlife for trash and recyclables. Councilman Freeborn agreed that City Sanitation trucks have to pick up trash for the Maxwell Street residents as well.

Assistant City Attorney McGlohon said that Council may want to instruct the legal staff to research the issue of prohibiting all service trucks on residential streets, given that Council does have the authority to regulate streets. There appears to be a middle area where there may be some state control or federal regulations as it relates to interstate commerce.

Councilwoman Cape supported all trucks off Maxwell Street and a smaller buffer with a variance.

Councilman Davis didn't think that we can keep all small trucks off Maxwell Street. Since he didn't think there was going to be 100% satisfaction by the residents and Greenlife, getting to the middle ground of the getting the large trucks off Maxwell Street is a good direction.

It was the consensus of Council to instruct the City Manager to prepare a memorandum to City Council before February 27, 2007, regarding clarification on our signs and what we are trying to do with the no truck signs on Maxwell Street.

Councilman Freeborn said that they report back to Council on February 27, 2007, and encouraged anyone with ideas to contact him.

B. STAPLES UPDATE

Mayor Bellamy said she was charged with sending a letter to Staples requesting a written response regarding the building's signage, landscaping and pedestrian amenities by December 31, 2006. On January 2, 2007, she received confirmation from Ms. Mylissa Tsai that Staples had received the letter and was developing a response. She read the following letter which was received today from Mr. Ted Frumkin, Vice-President, Real Estate, Staples: "Since Staples arrived in Asheville, we have made great efforts to consider and include input from city residents, our neighbors and various special interest groups regarding our store. I am writing to update you on our response to your letter. We are excited to share that we plan to enhance our property with a new landscaping design. A detailed plan will be available shortly. It incorporates a majority of the suggestions recommended by the local landscape designer hired by our Asheville charity partner, Quality Forward. The design will include a green screen along the brick wall to soften the look from the street, which has been the source of comment. The new landscaping will also enhance the experience of those pedestrians who use the sidewalk along our store. We are confident that Asheville residents will be pleased with the design. It is Staples policy to work with each community that we enter when coming up with a building design and site plan. We have and will continue to adhere to the building codes of the communities where we do business including Asheville. As you are aware, our real estate and construction teams worked closely with the city building officials and design review board of Asheville in the design and construction of our store. We gladly made changes to our original design to meet their input and satisfy their requirements. We received all required permits and approvals in the construction of our store, its signage and surround areas. We seriously considered all input from the citizens groups in Asheville before deciding on a final plan of action. We feel that even the most drastic changes to our building and signage will not satisfy every citizen. In exploring the request to change our signage, we found that it would require significant investment. Therefore, we do not plan to change a sign that was approved by the city, and according to our local lawyer, is in compliance with all of Asheville codes. It is a privilege to be a part of the Asheville community. Contrary to some of the recent publicity, our store is enjoying strong sales and good comments from our local customers. Our store has created jobs and benefits small businesses, students and educators in Asheville. We will continue to focus our efforts on contributing to the greater good of Asheville - by fostering small business growth, supporting youth and education, encouraging recycling, and more. Since we believe well-received, we are happy to work with you to announce this news. Please feel free to call me at (508) 253-0542 or Mylissa Tsai in our Public Relations Department at (508) 253-4648 with any questions."

It was the consensus of City Council to schedule a closed session with our City Attorney to discuss the City's options in bringing the sign into compliance with our existing ordinance.

C. PRESENTATION FOR PUBLIC ARTIST OF THE YEAR PROGRAM

RESOLUTION NO. 07-15- RESOLUTION TO ACCEPT THE GUIDELINES FOR THE "PUBLIC ARTIST OF THE YEAR" COMPETITION OF THE PUBLIC ART BOARD

Mr. Kenn Kotara, Vice-Chair of the Public Art Board, said that the Public Art Board is requesting City Council's approval of a resolution to accept the guidelines for the "Public Artist of the Year" competition of the Public Art Board.

The Public Art Board unanimously approved the establishment of the "Public Artist of the Year" competition that will recognize an artist or group of artists that have significantly contributed to public art in Asheville. The program will result in the commissioning of an art piece designated for a prominent location in Pritchard Park specifically designed for public art.

The artwork will be valued at $10,000 or more and will be located at the west end of the Pritchard Park that is high in pedestrian traffic and utilizes the existing outdoor space framed by the park's architecture. Funds to support the project have been generated from an outside funding source.

PROS:

- Recognizes the significant contributions of the arts and artists on the creatively unique culture of Asheville
- Contributes to the city's art collection
- Enhances the appeal of Pritchard Park and improves the western gateway to the downtown area
- Encourages involvement of local businesses and corporations in the city's public art program and its process
- Demonstrates the commitment of the city to support the arts and artists in the region and community

CONS:

- Lack of inclusion of all artistic genres

This recommendation is keeping with the City of Asheville Strategic Plan by contributing to the: (1) "Livability" of Asheville by recognizing the importance of the arts and artists on the life of the City of Asheville; (2) "Sense of Place" of Asheville and the need to educate citizens and visitors of its uniquely artistic and creative character and contributions of local citizens through the arts; (3) "Vibrancy" of Asheville's art scene and its commitment to the development and enhancement of the public art collection; and (4) "Participation" of Asheville citizens in the pubic art process as programmatic and financial contributors.

This is a Deed of Gift to the City of Asheville from generous individuals and businesses from the Asheville community.

The Parks and Recreation Department recommends City Council approval of a resolution to accept the guidelines for the "Public Artist of the Year" competition of the Public Art Board.

Mr. Kotara then said that the Public Art Board facilitates the duties and responsibilities of the Public Art Program as outlined in the Public Art Master Plan, to include: (1) provide public art in public buildings and public spaces; (2) promote Asheville as an "arts destination" and use public art as a major attraction for cultural tourism and economic development; (3) educate the citizens and visitors about the local culture and history through art; and (4) encourage the use of public art projects.

The Public Art Board (1) raises funds to match City of Asheville appropriations; (2) approves subject matter of public art; (3) administers the procedure for the selection of public art to include public input meetings and staff review; (4) recommends to City Council the acceptance of gifts; (5) inventories public art to insure conditions and standards are met; (6) recommends maintenance, repair and deaccessioning when appropriate; and (7) recognizes the significant contribution of artists to the culture and economy of Western North Carolina.

The goals of the Public Artist of the Year Program is to (1) recognize the significant contributions of artists to the life of visual arts and public art in Asheville and Western North Carolina; (2) commission site-specific artwork at Pritchard Park in the first year, and additional locations throughout the City of Asheville in subsequent years; (3) collaborate with regional arts agencies; (4) respond to Asheville's unique sense of neighborhood culture; and (5) enhance he concept of Pritchard Park.

The site design will be in the heart of downtown Asheville; in a high pedestrian and vehicular traffic area; will utilize existing outdoor space framed by the park's architecture; and will be in the western gateway into downtown Asheville.

The budget for the Public Artist of the Year program will be $10,000, which will include estimated costs, artists' fees, fabrication, insurance, shipping, transportation, and documentation of the work.

The selection criteria includes (1) Western North Carolina resident for at least one year; (2) demonstrate creative, innovative approach in comparable projects; (3) understanding of locale's sense of place; (4) openness to working collaboratively with project team members and city staff; and (5) ability to complete a project of this scale.

The selection process will include (1) submission of a Request for Qualifications (RFQ) to include a letter of interest; description of conceptual approach to this project; resume/vitae; images of past work; and references; (2) three member Selection Panel consisting of local artist/administrator, local business owner, regional/state artist/administrator will interview three finalists; (3) Selection Panel recommends one artist/artist team, and one alternate to the Public Art Board for review and approval; (4) Public Art Board recommends "Public Artist of the Year" to City Council for approval; (5) Artist/artist team contracted to develop design for the project; (6) final design approved by Public Art Board; (7) Public Art Board recommends final design approval to City Council; and (8) artwork fabricated and installed in coordination with Public Art Board and City staff.

When Councilman Mumpower asked about the Public Art Board's Plan to raise $10,000, Mr. Kotara said that under City Resolution No. 99-133 the Public Art Board should receive $55,000 annually and we only received it one time and that was six years ago. We would like to use some of those funds, noting that any dollars that we use from that must be matched through our own fund-raising efforts, e.g., Postcards from the Ledge, and granting agencies through the Parks & Recreation Department.

Councilman Mumpower felt the guidelines for the Public Arts of the Year should include a sentence stating that the Public Art Board will be charged with the responsibility for raising half of this amount and that the City Council, through whatever means they deem appropriate, will be responsible for the other half.

Councilman Mumpower also felt that the Selection Panel should be expanded because three does not have a proper balance in assuring fairness.

Vice-Mayor Jones said she would feel more comfortable with this effort if the funds are raised before the contest is launched.

Vice-Mayor Jones said that when she interviewed members for the Public Art Board that she did not ask them about fund-raising abilities or interest. She feels like she is saddling a Board with a responsibility that not all members signed up for. She also felt trepidation about City Council approving the artist/artist team in that she didn't have that expertise. She was concerned about using taxpayer dollars for something we might not be proud of because $10,000 is probably on the low end of the scale for a good piece of public art.

Mr. Kotara felt that the $10,000 offers a chance for an artist to be very creative and the location may offer some compelling piece of artwork that helps us to reconfigure our viewpoints of what public art is. He felt that Pritchard Park is a smaller site and that $10,000 is a good amount. He wondered if next year we could offer more depending on the neighborhood.

Councilwoman Cape said that she didn't see anything in the RFQ about the artist understanding how public art has to function in the community, especially from a safety standpoint. She also felt that it needs to be clarified that this is a permanent piece of art. She was primarily concerned about the process of this and hoped that in the future that Council would have the opportunity to not have the publicity precede the City Council decision-making process. She also felt that $10,000 with collaboration with the arts community could be leveraged into a lot of other things and was also concerned about asking the Public Art Board volunteers to have to fund-raise.

In response to Councilman Davis, Mr. Kotara said that the City does have the latitude of not choosing an artist if they do not receive a design that is suitable.

Councilman Mumpower's interest in this was to make sure that we start using the clout of Asheville to recognize artists and to get some public art in Asheville. With the assistance of the Public Art Board we have one piece but we need more. The $10,000 doesn't really offer much in the form of fair compensation for a civic-minded artist's willingness to contribute to the public art of the City. But, it does represent a token of our appreciation for that contribution and it also represents an opportunity for someone to get some serious recognition as an artist. He hoped that we don't bring this to Council for approval and that we also don't take it to the Downtown Association because the danger of politicizing this comes from having too small a panel with too small of a representation. That Selection Panel should have final approval authority. Regarding the dollars, as one who brought this idea before the Council, he offered to assume personal responsibility for raising the first $10,000 and he has done so and will be prepared with that money this year when we need it. He believed that we should not ask taxpayers to fund this effort and asked the Public Art Board to be responsible for raising half of these monies and for the Council to assume the responsibility for raising the other half of the monies. That is a more fair way to treat forced taxpayer dollars.

Councilman Freeborn supported the Public Artist of the Year Program. He supported adding two more members to the Selection Panel and let them be the final approval authority on the artist.

Councilman Newman confirmed that if this goes forward in subsequent years, the arrangement will be that the City contributes $5,000 and the Public Art Board and/or other sources raise at least $5,000 more. He, too, agreed in adding two more members to the Selection Panel and let them be the final approval authority on the artist.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved to adopt Resolution No. 07-15, approving the proposal submitted with the following modifications: (1) the City of Asheville will be responsible for raising 50% of the award funds and the Public Art Board will be responsible in raising the other 50%, with exception of the first year where those funds have been raised and no contribution by the City or the Public Art Board is necessary; and (2) expand the Selection Panel to five members as chosen by the Public Art Board as defined by the Public Art Board; and (3) we conduct this activity as a 3-year pilot project and at the end of that time it be brought back to the Council for further consideration. This motion was seconded by Councilman Davis.

Councilwoman Cape asked that the motion be amended to reflect that the Public Art Board have final design approval, not City Council. Councilman Mumpower and Councilman Davis agreed to that amendment.

Upon inquiry of Councilman Mumpower, Cultural Arts Superintendent David Mitchell said that we have already received 14 submissions from a variety of very reputable artists in Asheville.

There was a brief discussion about the process on this issue and why the publicity preceded the City Council decision-making process. Mayor Bellamy felt that as policy-makers it erodes the policy-makers ability to do their job when staff steps ahead of Council and we should not have to fear an issue having reached the public eye before Council makes a decision on it. City Manager Jackson said that he would research the minutes to investigate whether this matter was approved by Council allowing the Public Art Board to move forward. In addition, Mayor Bellamy instructed the City Clerk to provide Council with the minutes when this issue was discussed.

Vice-Mayor Jones did not feel good about the process and would vote against the motion.

Councilwoman Cape is very interested in creative initiatives but she wanted to honor the process and make sure that the things that we stand for in the community are supported by the rest of Council.

At the request of Mayor Bellamy and by a show of hands, City Council unanimously supported the idea of a Public Artist of the Year for the City of Asheville.

The amended motion made by Councilman Mumpower and seconded by Councilman Davis carried on a 5-2 vote, with Vice-Mayor Jones and Councilwoman Cape voting "no."

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At 7:30 p.m., Mayor Bellamy announced a 15-minute recess.

D. OPPORTUNITIES FOR PUBLIC SAFETY PARTNERSHIP WITH HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Police Chief Bill Hogan explained opportunities for public safety partnerships with the Housing Authority and other challenges. He outlined the police service to the Housing Authority neighborhoods, with the ultimate cost of service to the Housing Authority being $1,712,596.

Over the past 12 months from December of 2005 to November of 2006, there have been City-wide 739 arrests - 334 dealers; public housing 308 arrests - 151 dealers; public housing accounts for 41.6% of the arrests; 70 habitual felon charges with 48 of the charges coming from drug arrests; past two years displaced dealers; and felony arrest = 3 hours/misdemeanor = 1.5 hours.

He then benchmarked Asheville's drug arrests compared to other cities, mainly in North Carolina.

The DEA Task Force has the following statistics: 16-month investigation; 32 people indicted - 27 arrested; facing sentences of 10 years to life; 27 kilos of cocaine seized; 6 pounds of methamphetamine seized; $750,000 US currency seized; and these were major suppliers to Asheville.

In the Housing Authority (from December 24, 2006 - January 7, 2007), the Drug Suppression Unit has the following statistics: 6 felony arrests - 5 drugs; 15 felony warrants - 12 Order For Arrest (OFA); 17 misdemeanor arrests; 16 misdemeanor warrants - 14 OFA; 31 traffic citations - 15 Driving While License Revoked; and 85 total arrests in Housing Authority neighborhoods.

The Police Department is working with the Housing Authority by (1) regular meetings to discuss strategies (ban lists, ID cards, gated community, publish arrests, tow unlicensed vehicles, lighting, cameras, litter, Are You Okay Program, etc.); (2) researching the High Point Drug Market Elimination Model; and (3) examining dedicated patrol for housing.

Future analysis and plans include patrol workload analysis and response time study; examine additional patrol beats reference response time; workload analysis of Criminal Investigative Divisions and Communications Center; examine dedicated Traffic Safety Unit (38% of workload); examine dedicated Downtown Police Unit (19% of workload); examine Police Housing Authority Unit - 2 officers 24/7 (2 Sergeants and 10 officers = $864,247); examine Police Saturation Patrol for Public Housing - 8 officers 24/7 (2 Lieutenants, 12 Sergeants and 80 officers = $6.7 Million); Public Housing Task Force (Community Oriented Government); consider Crime Prevention Officer for Task Force ($84,735); and new drug testing equipment evaluation.

Councilman Mumpower said that when he first decided he was going to confront Asheville's open air drug market, he received a lot of comments from people wanting him to be careful that the system or the dealers would come after him. About one hour prior to this meeting, he received an e-mail from the City Manager and Police Chief accusing him of endangering the safety of our officers, resulting from an incident Friday night around Midnight when he stopped at the West Asheville substation to report drug activity in Deaverview and Pisgah View. He suggested to the City Manager and the Police Chief that if he has in any way violated the law as a City Councilman he has no special privilege and they should arrest him and charge him. If he has not, bringing that up one hour before this meeting would seem to be an act of intimidation and they picked the wrong person.

He proceeded by saying that the City of Asheville is struggling with a problem of corruption - the corruption of indifference. An indifference to an open air hard drug market that is corrupting everyone's future. We must strengthen our efforts to fight back. A starting place is for you and me to hold up our hand, say enough, and get involved, somewhere, doing something to turn concern into action. Those who manage our public housing must also find the courage and resources to make that housing conditional upon responsible conduct. Our legislators must look harder at an overwhelmed and under-funded state court system that is ranked 48th in the country and fails us all in holding people accountable for their crimes. Finally, our police can't carry the day, but they must lead the way by refusing to surrender any neighborhood to drug crime. Together, we must all work to defeat those trafficking in hard drugs. Our future, for now, is in our hands - tomorrow it will be in theirs.

The reality is that we have an open air "tailgate market" for hard drugs throughout Asheville. It is consistent in all of our public housing developments and many other vulnerable

neighborhoods. The activity is visible, enthusiastic, and unafraid. We cannot maintain a police substation in our public housing developments due to vandalism and threat factors. We have closed at least two during his tenure. We are asking people to live there but we can't maintain stations there. Asheville has evolved into a regional resource for hard drugs. Our open air market offers an excellent model of Asheville's diversity. Black males street deal most hard drugs, white males and females purchase most hard drugs and illegal Hispanic aliens are the distributors of most hard drugs. The harms at all levels are profound and growing. The turning point for him personally, was that in December of 2006, we surrendered - City Council accepted that we had lost McCormick Heights Public Housing Development to thugs, drugs, and related crimes.

As Chair of the City Council Public Safety Committee and Chair of the Asheville-Buncombe Drug Commission, he has (1) raised concerns privately (closed session) and publicly with Council; (2) met with the City Manager and Police Chief to discuss concerns and realities; (3) collaborative discussion with the Housing Authority and he sensed there was an absence of urgency and concern and authentic effort; (4) a declined request to have weekly Police Department drug intervention observation opportunities - to fairly assess efforts; and (5) Plan B - find out more for himself - 30 visits in 30 days. He then said that since January 1, 2007, he made 30 random visits to public housing developments and vulnerable neighborhoods on different days and times. The following occurred: (1) he was directly solicited drugs 20 times; (2) he witnessed drug buys and active dealers 5 other times; (3) there were only 5 times where there was no visible activity; (4) the "tailgate market" was just as active at 7:00 a.m. as 7:00 p.m. or 12:00 p.m.; and (5) there was a police presence noted in 5 of the 30 visits - often with no impact. He was wearing a suit and driving the same visit for 22 of those visits and most of those dealers seemed to be operating out of residences in public housing. His conclusion is that regardless of our efforts to "try," we are failing to protect public housing and other vulnerable neighborhoods and have essentially surrendered entire communities to the destructive impacts of hard drug dealers, users, and their protectors. Our enforcement pressures on dealers and the users who fund them are criminally inadequate.

He explained the negative impacts of the open air hard drug market on our community. Our hospital system is overwhelmed with physically and mentally ill drug patients who come for community-funded patches and then return to their addiction. Our children in public housing are bombarded with dysfunctional cultural exposures to drug and thugs models behavior that they in turn bring to school with rippling harm to everyone's children. If you have your home or car broken into, the odds are that hard drugs were the motivation behind that property crime. Far too many families are being destroyed by members who become addicted to crack, pain killers or methamphetamine. Our social service and judicial systems are overwhelmed in their efforts to protect the abused and neglected children usually from home struggling with the impact of hard drugs. Our elderly, disadvantaged and working poor in public housing are forced to live in dangerous and frightening circumstances on a daily basis making a mockery of the intent and responsibilities of government sponsored housing.

He feels the solutions are (1) timely and proper funding for support for our judicial system by our state legislators; (2) make sure that public housing is only available to those who behave in civil fashion, abide by the rules of the development, and refuse to provide refuge for those who traffic in hard drugs; (3) everyone must stand up and say "enough" to the harm and turn fear and complacency into action; and (4) our police must recognize that they are failing to match the creativity, enthusiasm, and persistence of drug dealers and users and, with support from the City Council and community, renew their dedication. This solution is a City government responsibility.

He said that public safety is government job one. He did not believe that our city and police administration (1) have educated us as to the essential surrender of entire neighborhoods in Asheville and to the full extent of our hard drug problems; (2) have adequately assured the

manpower levels necessary to protect all our citizens - whether in Pisgah View or Kimberly Avenue - from the harms of an open air drug market; (3) have made appropriate requests for funding and other needed supports; and (4) have creatively, enthusiastically, and persistently responded to their mandate to enforce our laws - especially as it relates to hard drug traffic. He did believe that our city and police administration are choosing to stand behind hollow statistics that portray the real world realities of an unrestrained drug market.

He felt that City Council should provide a mandate that we will surrender no more neighborhoods to the harms of hard drugs and task our city and police administration to exert their fullest energies to determining effective intervention strategies, manpower and resource needs, and quality assurance measures that find us, this time next year, celebrating the passage of an open air drug market in Asheville.

We need to (1) pursue proactive (fully manned Drug Suppression Unit) vs. reactive (police cars driving around developments) intervention strategies; (2) look to New York and other cities who have implemented quick response harassment strategies which target users (where the money comes from) as well as dealers (where the money goes to) constantly; (3) enhance our concentrated, random, and persistent small unit actions - keep the traffic off guard 24 hours a day - everywhere; and (4) remember our goal to make buying hard drugs in Asheville so unpleasant and risky that we reduce the pool of new user recruits and save lives and our future in the process. Above all else, we need to get creative because they are smart, but so are we. We need to (1) learn from other cities; (2) administratively encourage initiative; (3) partner with bus drivers, cab drivers, service workers, Housing Authority staff, neighbors, and others to keep us informed; and (4) make sure that when people call with a drug tip that there is always a response, always follow-through, and always a tracked outcome.

These are things we can do right now: (1) We can hold a candle light vigil at Pack Square in the coming month for those who have lost loved ones to drug addiction and death, those who have been harmed by drug crime, those who live in proximity to drug crime, and all those who care. Bring us together and build the will and hope necessary to fighting back; (2) establish a Drug Action Team comprised of the Chief of Police, Sheriff, Chief Justice, Chief Judge, District Attorney, Drug Commission Chair and others. Their charge would be to find better ways to find our system of justice work better than the drug trafficking system that is currently more effective than we are; and (3) look to the people to fund it all - the users with special initiatives that create consequences that discourage the development of a new generation of addicts. We are not assigning people consequences and therefore too many people are being destroyed by hard drugs.

Having done his best to shine light on the realities of our hard drug intervention failures, the time for confrontation has now passed. If there is a need for future blame - let is be his for not acting sooner and with more dedication. What has not passed is the time of accountability. Together we must now recommit to attacking and winning against the harms of hard drugs. Our police officers have the talent and skills - if we have the will.

The following individuals spoke in support of confronting the open air hard drug market in Asheville:

Mr. John Hayes, President of the Asheville Branch of the NAACP
A parent
Mr. Chad Nesbitt
Ms. Kara Dilworth, President of the Residents Council at Deaverview Apartments
Ms. Selina Sullivan
Mr. Steven Duncan

Mr. David Nash, Deputy Director of the Housing Authority, said that the U.S. Dept. of Housing and Urban Development will only be funding 76% of the recognized needs. They are again faced with severe funding difficulties. The reality is that they won't have that much money to put in a security team in the coming year as they have in the past. He thanked City Council for their support over the years and thanked the police officers and Police Chief for their efforts to help control crime in public housing. We support a request for additional funding for police officers to focus their efforts in public housing because safety is the number one concern of our residents.

Police Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: what is the core issue of the drug problem; should we look to the police alone to solve the drug problems; is it harder to deal with the supply or demand of drugs; and would the Police Housing Authority Unit of 2 officers 24/7 be an overlay of existing personnel or would other things be changed in response to having that added layer of presence in public housing neighborhoods.

When Councilman Freeborn asked if money and resources were not a question what would be the solution in going forward, Police Chief Hogan said that if we are looking for the police to solve all the social issues, it is a saturation patrol, but again, we can start in public housing but still need to address other neighborhoods. That is a tremendous amount of money. The reason we want to try the High Point model is because it breaks the distribution chain in a particular neighborhood and they have had success in them not coming back.

Mr. Gene Bell, Executive Director of the Housing Authority, responded to various questions/comments from Council, some being, but are not limited to: what is the core issue of the drug problem in public housing; does public housing represent concentrated poverty; are we asking the people that we are losing to drugs what it would take not to participate; and do you think there is a way for us as a community to still provide people that are not able to find work housing without concentrating them all in one location.

When Councilman Freeborn asked if money and resources were not a question what would be the solution in going forward to combat the drug problem in public housing, Mr. Bell responded that the first thing he would do would be to ensure adequate day care for the children and have everyone employed. Part of the problem would then be resolved.

Councilman Newman said that as a country we need to do more to reward work and make it obvious that the benefits of being employed clearly outweigh the benefits of not so that people don't pursue other alternatives. He would like for the City to work with the Housing Authority in looking for ways to make that clear.

Councilman Newman stated that the standard he would like to see in public housing is for mothers to know it's safe for their children to go outside and play. He believes that a lot of people live in fear and we need to provide the kind of presence so that people feel safe. The information he is looking for is how can we work to do that and what resources do we need to do that.

Councilwoman Cape said that people need all sorts of work. We need a lot of entry level jobs where people in these housing communities can work, recognizing that some women have to be at work at 6:00 a.m. and school doesn't start until 8:30 a.m. and they don't want to leave their children alone for that time. We need to work as a community to see how we can make these jobs work for these people. There is a lot of collaborative conversations that she would like to see us be a part of, e.g., Mission Hospitals is doing some summer recruiting for kids and they will be applying for the Community Development Block Grant funds for that process. The Chamber of Commerce did a job fair, but it wasn't for entry level jobs. She suggested a job fair for 8th and 9th graders about why it's worth staying in school. She challenged us to step up to

the HUB because they are interested in understanding the economic impact of public housing, jobs, and poverty in our whole economic picture. While it is a big problem, we cannot do it with police enforcement alone. There must be a multi-level approach and she is dedicated to that.

Councilman Mumpower moved to charge our city and police administration to develop in collaboration with community partners a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods. This motion was seconded by Councilman Davis.

Councilman Davis said that regarding McCormick Heights, he is pleased we are going to develop that property as mixed income housing and that is a good step towards the future. He felt that with the assets allocated, the Police Department has done a good job, but agreed that we need to get to a different place and that includes a number of facets. He thinks the Housing Authority staff is doing a good job, but there needs to be more emphasis on the maintenance of the public housing buildings. There are a lot of people doing a lot of good things, but it's just not as effective as it needs to be and we need to work harder on that problem.

Vice-Mayor Jones agreed with the idea of a comprehensive plan, but the Police Chief has said that even if it was full saturation, elimination in all neighborhoods is not possible without state and federal changes. We need bigger help. The Police Chief said that $6.7 Million would help public housing, but then just shuffle the problem around without some bigger holistic models. Mr. Bell said that he wanted everyone to work and have access to affordable day care. Even if we don't want to hear what people have to say, we need to keep those people close and listen if we are going to win. While we are not there, she thinks we have come a long way.

Councilman Newman moved to amend the motion to (1) affirm our support for Police Chief Hogan and the men and women of the Asheville Police Department, expressing our full confidence in their dedication to protect the public safety of the citizens and have confidence in their professionalism to achieve that goal; and (2) instruct our City Manager to explore opportunities to create job opportunities and ways to reduce poverty in Asheville's neighborhoods. This motion was seconded by Councilwoman Cape.

Councilman Mumpower was not willing to accept Councilman Newman's motion as a amendment because he believed we are distracting ourselves from the main motion by going off in specific areas that do not serve our chief priority, which is to charge our police and city administrators in coming up with a plan and working with others in going after our open air drug market. He clarified that he is asking that we eliminate our open air drug market, which is quite different than the entire drug problems in Asheville.

Councilman Freeborn asked for an addition to the motion amendment to instruct the City Manager to explore affordable day care as well as job opportunities. Councilman Newman and Councilwoman Cape would accept the addition into their motion amendment.

Councilman Davis felt that we should keep the motion simple and not cloud the issue with amendments.

City Manager Jackson said that we welcome putting together a comprehensive program and to work in partnership with the Housing Authority. The suggestions made fall in line with the whole holistic approach. It will be dealing with jobs and social issues, but it doesn't mean we can take care of it in one year. He interprets the general direction of Council is to work with Mr. Bell and the Housing Authority to come up with holistic comprehensive long-range strategies. There are some completely different ways to change neighborhoods, bring mixed incomes, bring pride into those neighborhoods, make them safer, and make police presence in the neighborhoods more efficient and more effective. He also suggested that there are different roles for the City to

play. We can't do it all. One thing we should do is to have a strong partnership with the City and Housing Authority. It's time for us to compile those in an overall comprehensive plan and identify where we lead, support or get out of the way.

The amended motion to amend the main motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman believed that the City did not give up on McCormick Heights. The City didn't own that property or control over the people operating it. We said that if it is going to be sold that we would like to preserve some affordable housing in that part of our community. A majority of Council is looking for ways to partner with people to do a redevelopment of that part of our community that will transform that part of our city from a place that was formerly a very isolated area of low income housing and transforming it into a neighborhood that includes housing that is affordable to lower and middle incomes with a much wider range of people from different economic backgrounds. It will be safer and it will be more economically vibrant and a contributory part of our community. Council is going to do what it takes to increase the safety of our neighborhoods through law enforcement, plus a transformation of neighborhoods, plus helping to create opportunities for people.

Mayor Bellamy could not negate anything anyone said. The reality is that we do need to increase police presence, but she didn't know at what level. The problem is if our police aren't as efficient or effective as they need to be, that is the City Manager's problem. If they need more bullet-proof vests, etc., Council is here to give them those tools. As Mayor, she wants to make sure that Council is making good policy and we are giving our police force the tools that they need. We all care about living in safe neighborhoods. The Housing Authority has put rules in place but they can't get enforcement. So when we come to a plan, she wants to make sure we listen to Mr. Bell and when we come up with a plan, the City needs to support the Housing Authority and stand behind the plan. We all care about this community and just because there was not unanimous support the amendment doesn't mean that we don't care about public housing.

At the request of Mayor Bellamy and by a show of hands, City Council unanimously supported safe neighborhoods.

Councilman Mumpower stated that we lost an affordable housing development (McCormick Heights) to crime and safety issues and he saw no concern about that from City Council. There was no call to rededicate our efforts in any way to address the loss of an entire development.

At the request of Mayor Bellamy and by a show of hands, no one on City Council raised their hands in support of an open air drug market in Asheville.

At the request of Mayor Bellamy and by a show of hands, City Council unanimously supported the elimination of the open air drug market in Asheville.

The amended main motion to (1) charge our city and police administration to develop in collaboration with community partners a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods; (2) affirm our support for Police Chief Hogan and the men and women of the Asheville Police Department, expressing our full confidence in their dedication to protect the public safety of the citizens and have confidence in their professionalism to achieve that goal; and (3) instruct our City Manager to explore opportunities to create job opportunities and affordable health care and ways to reduce poverty in

Asheville's neighborhoods carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

VI. NEW BUSINESS:

A. CONSIDERATION OF APPOINTMENTS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD, BOARD OF ADJUSTMENT, COMMUNITY RELATIONS COUNCIL, DOWNTOWN COMMISSION, ECONOMIC DEVELOPMENT ADVISORY COMMITTEE, FIREMEN'S RELIEF FUND, GREENWAY COMMISSION, METROPOLITAN SEWERAGE DISTRICT BOARD, PUBLIC ART BOARD, RECREATION BOARD, TRANSIT COMMISSION AND TREE COMMISSION

It was the consensus of Council to instruct the City Clerk to (1) prepare the proper paperwork to reappoint Ken Kaplan; and (2) arrange the following interviews for vacancies on the Alcoholic Beverage Control Board: Wiley Neal Evans, DeRothea G. Williams and William C. Dickason.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Lee McElrath (Alternate). Vice-Mayor Jones said that she would investigate the attendance process for Alternate members on the Board of Adjustment prior to filling the second vacancy.

It was the consensus of Council to instruct the City Clerk to arrange the following interviews for vacancies to the Community Relations Council: Martha Swindell Brown, Sharon West, Craig White, Amanda Hendler-Voss, Clare Hanrahan, Michael Vavrek, Ira Naiman and Shirley Schultz.

It was the consensus of Council to instruct the City Clerk to (1) prepare the proper paperwork to reappoint Peter Alberice, Jesse Plaster, John Rogers and Guadalupe Chavarria; and (2) readvertise for one month in order to give the Downtown Commission the opportunity to see if there are some people that possess certain qualities that would be helpful for the Commission; and (3) advise Council of the specific requirements for members and include those qualifications necessary in the advertisements.

At the request of Sustainable Economic Development Advisory Committee Chairman Chuck Tessier, it was the consensus of Council to instruct the City Clerk readvertise for two months for the vacancies on that Committee.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Leesa Gibbs to the Firemen's Relief Fund.

After Vice-Mayor Jones said that City Council would need a formal letter from Mr. Jack Saye requesting the Greenway Commission be expanded and that Mr. Yuri Koslen (who did not apply to serve) be appointed, it was the consensus of Council to instruct the City Clerk to (1) prepare the proper paperwork to reappoint Phyllis Styles; (2) arrange the following interviews for vacancies on the Greenway Commission: Glen Locascio, Hartwell Carson and Dawa Clark.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mayor Terry Bellamy to the Metropolitan Sewerage District Board.

It was the consensus of Council to instruct the City Clerk to (1) prepare the proper paperwork to appoint Harry Harrison; and (2) arrange the following interviews for vacancies on the Public Art Board: Julie Calhoun-Roepnack and Lisa Messa.

It was the consensus of Council to instruct the City Clerk to arrange the following interviews for vacancies on the Recreation Board: Scott Barnwell, Carolyn Stanberry and Adam Pittman.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to appoint Yuri Koslen and reappoint Hanna Miller, Andrew Goldberg, Ryan Pickens and Karen Austin to the Transit Commission.

It was the consensus of Council to instruct the City Clerk to (1) call Ms. Catherine Shane to see if she would be interested in serving and if so, prepare the proper paperwork to appoint Ms. Shane; and (2) arrange the following interviews for vacancies on the Tree Commission: Bill Hascher, Laura Uberbacher and Mary Carol Koester.

B. APPOINTMENT OF LIAISON TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

It was the consensus of City Council to prepare the proper paperwork to appoint Councilwoman Cape as liaison to the Sustainable Advisory Committee on Energy and the Environment.

C. RESOLUTION NO. 07-16 - RESOLUTION ALLOCATING $670,000 IN HOUSING TRUST FUND LOANS FOR AFFORDABLE HOUSING DEVELOPMENT

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy for the rest of the meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution allocating $670,000 in Housing Trust Fund loans for affordable housing development.

The following three Housing Trust Fund applications have been evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at the January 8 meeting. Currently over $1.35 million is available in the Housing Trust Fund. The requests are summarized below.

1. Carolina Cornerstone Construction; 27 Jeffress Ave; $50,000 HTF loan; 1 unit

Terms: 2% interest, 2 year term; up to $30,000 available as a soft second to eligible homebuyer

Strengths: The applicant has extensive affordable housing construction experience. The developer is doing this job at cost (i.e. no profit or developer fee) to make the home affordable to a low-income employer and his family who are being displaced from a mobile home park.

Concerns: CCC has less experience as a developer, but this is a small project and construction represents most of the work.

2. Mountain Housing Opportunities; The Glen Rock; $500,000 HTF loan; 60 units

Terms: 2% annual interest payments, with principal repayment deferred for 20 years

Strengths: MHO has successfully developed several similar Tax Credit projects in Asheville. The proposed rents are exceptionally affordable, with some units being affordable to households with

income below 40% AMI. Tax credit regulations require long-term affordability. This affordable housing will be part of a larger redevelopment plan on this site which weeks to connect the revitalizing River Arts District and the Southside Community.

Concerns: The project is contingent on tax credit approval in July 2007. However, if tax credits are awarded, the development will then likely proceed successfully.

3. Tim and Wendy Vorst; 4 Haywood Terrace; $120,000 HTF loan; 4 units

Terms: 2% interest, 30 year term

Strengths: The developer has an excellent track record with Housing Trust Fund projects, with timely completion of projects and rents remaining affordable. The estimated development costs are low and the developer is contributing significant equity to the project.

Concerns: The units are not particularly energy efficient and long-term affordability (beyond the required 3 years) will not be guaranteed.

Pros:

- Assists with the development of 85 units of affordable housing;
- Completed projects will increase the tax base by over $4.5 million

Cons: None

Staff recommends approval of the HTF loans listed above.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-16. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 196

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 22, 2006 - January 11, 2007: Charter Communication (Water), Lane Godsey (Water), Marcie Swoveland (Parks & Recreation), Britt Jacobs (Police), Noel Calloway (Sanitation), Alan Robinson (Water), Jennifer N. Briggs (Police) and Chad Hockenberry (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Vice-Mayor Jones adjourned the meeting at 10:08 p.m.

Leesha Lipe
CITY CLERK

MAYOR

Friday – January 19, 2007 - 12:45 p.m.
Saturday - January 20, 2007 - 8:30 a.m.
Municipal Building - Asheville, NC

Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

Mayor Bellamy welcomed everyone to the City Council retreat. She then introduced Mr. Andy Atkinson who will be the facilitator for this meeting. He in turn reviewed the agenda, the role of the facilitator and the ground rules.

At 1:03 p.m., Councilman Newman moved to go into closed session (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; County of Buncombe. The statutory authorization is contained in G.S. 160A-318.11 (a) (3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 1:55 p.m., Councilman Freeborn moved to return to the formal meeting and continue the closed session on January 20, 2007, if needed. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Chief Financial Officer Ben Durant gave the financial overview. He explained the quarterly report for fiscal year through December 2006. Since the first quarter budget report, the General Fund has been amended five times, resulting in an overall increase in the budget of $3,131,265.

Regarding revenues, through December 31, 2006, the City has collected $28,759,482 in General Fund revenue, which represents approximately 36.3% of the total General Fund revenue budget. At this point in the prior fiscal year, the City had collected $23.55 Million in General Fund revenue, which represented approximately 31.5% of the revenue budget. Based on current trends, staff anticipates that Fiscal Year 2006-07 year-end revenue will exceed budget by $1,635,051.

Regarding expenditures, General Fund expenditures through December 31, 2006, total $38,451,127 or 47.2% of the budget. At this point in the prior fiscal year, expenditures were at $35.84 Million or 47.0% of the budget. Based on current trends, staff anticipates that Fiscal Year 2006-07 year-end expenditures will come in under budget by $1,049,872. The budget savings are primarily attributable to normal attrition and other managed cost savings that occur throughout the year.

Regarding Fund Balance, the City has budgeted $2.22 Million in Fund Balance in Fiscal Year 2006-07. This includes $593,987 budgeted to cover prior year encumbrances that rolled over from Fiscal Year 2005-06, along with $1,628,872 appropriated in the current year. However, revenues are expected to exceed budget by $1.63 Million and expenditures are projected to come under budget by $1.05 Million. This result will produce a combined positive effect of $2.68

Million, which will more than offset the $2.22 Million in budgeted Fund Balance. Therefore, based on year end revenue and expenditure estimates for Fiscal Year 2006-07, unreserved fund balance is projected to increase by $462,064 to $24,253,932, which will equate to 30.1% of estimated year-end expenditures.

The Fund Balance analysis is that the final audited, unreserved Fund Balance for the General Fund on June 30, 2006, was $23,791,868 or 31.0% of year-end expenditures. $2,222,859 in Fund Balance has been appropriated to balance the Fiscal Year 2006-07 revised budget. As a result, the revised Fiscal Year 2006-07 budget shows a decrease n Fund Balance to 27.2% of expenditures. However, based on year end revenue and expenditure estimates for Fiscal Year 2006-07, Fund Balance is now projected to increase by $462,064 to $24,253,932, which will equate to 30.1% of estimated year-end expenditures. The City's Financial Management Policy recommends the City maintain a Fund Balance equal to 15% of the current-year budget expenditures.

At the request of City Manager Jackson, and after a short discussion, it was the consensus of Council to acknowledge that City staff has met their financial goals with the cost reduction program and approved the City Manager accelerating their recruitment process.

Mr. Durant then reviewed the following enterprise funds: Water Fund, Civic Center Fund, Parking Fund, Transit Fund, Golf Fund, Stormwater Fund and Festivals Fund. In addition, he reviewed the following major capital projects: Azalea Park; Aston Park; Memorial Stadium and Mountainside Park Renovations; Reed Creek Greenway; Reid Center Renovations; Richmond Hill Park; I-26 Amboy Road Greenway Extension to Hominy Creek Park; New Fire Stations (Old Haywood & Rocky Ridge Roads); Grove Park Traffic Improvements; Fiscal Year 2006-07 General Street & Sidewalk Program; Amboy Road Greenway Connector - TEA 21; Haw Creek/Avon Road Sidewalks; Patton Avenue Sidewalk; and the Civic Center Arena Roof. He then reviewed with Council the investment report.

After Mr. Durant reviewed with Council the long-range (six-year) financial planning, noting that this review is to give Council just a first glance and is not final by any means, he responded to various questions/comments from Council, some being, but are not limited to: why do we have ballfield lights at UNC-Asheville; how much, including labor and materials, does the City spend on streets and sidewalks; update on the Clingman Avenue Streetscape Plan; options for fleet replacement; are we not investing any additional funds in greenway development until the next three budget years; do we track how many people use the tennis courts and ballfields and if they are not being actively used, could we use that property for something different; and request for an update on the Parks & Recreation Facilities Master Plan, with inclusions of softball fields, a rugby field, a BMX Bike Park and a roller derby.

It was the consensus of Council to clarify that they want to spend a minimum of $400,000 for the next six years for on-going maintenance on the Civic Center.

Vice-Mayor Jones said that we are facing a child obesity crisis and she would like to see more playgrounds in the budget.

Mayor Bellamy said that City Council will have the opportunity to add/delete things to the Capital Improvement Plan during the budget process.

Mr. Durant reviewed the forecast for next year. He said the Fiscal Year 2007-08 revenue projects are as follows: (1) Property Taxes: Based on current year tax base information received from Buncombe County and growth trends in recent years, staff is projecting a 3.5% increase in property tax revenue; (2) Sales Tax: During the first half of the current fiscal year, sales tax revenue has grown by 9.0%. The N.C. League of Municipalities expects that sales tax growth will

slow to 5.0% for the remainder of this fiscal year, and that this growth rates will continue into Fiscal Year 2007-08; (3) Investment Earnings: Based on Fiscal Year 2006-06 investment earnings, and collections to date in the current fiscal year, staff is projecting a $312,500 increase in this revenue source; and (4) Charges for Services: Staff is projecting a 5.0% increase in Fiscal Year 2007-08. Most of this growth is the result of an increase in the fire protection charge paid by the Town of Biltmore Forest based on its post-revaluation property values. The Fiscal Year 2007-08 expenditure projects are as follows: (1) Personnel costs: Staff is currently projecting a 7.0% increase in personnel costs. The budget projections include a 1% cost of living and a 3.0% average merit increase for employees. The projections also include an additional $450,000 to fund year two of the market basked pay plan adjustment. Another factor affecting personnel costs is the budgeting of a full year's worth of costs for 22 positions (18 firefighters and 4 development review staff) that were only budgeted for half the year in Fiscal Year 2006-07; (2) Operating Costs: Budget projections include a 3.0% increase in operating costs to account for increases in supply and material costs; and (3) Capital Reserve/Debt Service Funding: Based on the long-range Capital Improvement Plan, budget projections include a 3.0% increase in pay-as-you-go funding compared to the adopted Fiscal Year 2006-07 budget. Please note that the revised Fiscal Year 2006-07 budget includes $2.5 Million in one-time capital funding that Council approved in October of 2006. Staff is also recommending that $2.0 Million in Fund Balance be appropriated in Fiscal Year 2007-08 for high priority capital needs, but this appropriation is not included in the financial forecast. He then explained the long-range revenue and expenditure projections as follows: (1) long-range revenue projections are based on historical trend data and assume that the economy continues to expand at a modest pace; (2) long-range expenditure projections assume that the City will continue to move toward full implementation of the market-based pay plan that was begun in Fiscal Year 2006-07. For that reason, personnel costs show a 6% increase in Fiscal Year 2008-09 and Fiscal Year 2009-10; and (3) The only capital improvement project in the draft Capital Improvement Plan that is expected to have a significant impact on future operating budgets is the construction of Fire Station 12. Eighteen additional firefighters will be needed to staff this station once it is complete. The costs for these additional firefighters, however, is not included in the financial forecast at this point due to the uncertainty surrounding annexation timetables and possible legal challenges that may delay the effective date of the annexation. Once the Annexation Services Plan is adopted by Council, staff will update the financial forecast to include both the revenues and expenditures connected to the annexation.

In response to Councilman Newman, Mr. Durant said that 65% of the City's budget is personnel costs.

Councilman Newman understands that personnel it is an operational aspect, but with all the infrastructure needs and the need for good employees, he encouraged the City Manager to manage personnel costs as best as he can.

When Mayor Bellamy asked to look at alternatives for firefighters, Councilman Freeborn said that the City Council Revenue & Finance Committee is looking at that. Vice-Mayor Jones asked City staff look at the variety of options available.

Upon inquiry of Mayor Bellamy, Assistant City Manager Jeff Richardson said that staff will perform a financial analysis on a separation allowance for firefighters and report back to Council.

Regarding Council's Strategic Plan, City Manager Jackson said that one year ago Council set strategic goals with community input and we have come a long way on some of those issues. He asked Council to work on that framework and let staff know if they are going in the right direction with key projects. Council needs to determine where they want to be one year from now. Staff will take Council's priorities and start working through what are the most prevalent,

common interest things and then work through to where Council wants to be at the end of the year.

Councilwoman Cape distributed to Council goals and strategies the Sustainable Economic Development Advisory Committee would like Council to consider.

City Council discussed the policy topic prioritization and goal setting. Mr. Atkinson compiled Council's issues as follows and gave six dots to each Council Member and asked them to place one dot by their most important issue for this year (numbers after each issue signifies how many Council Members supported that issue), noting that just because an issue did not receive a vote or did not reach the top five, did not mean that it is not an on-going issue for City staff:

Asheville Civic Center - 1; Bus shelters and benches - 0; Parking for downtown - 2; Bathroom kiosks for downtown - 0; Traffic management - 2; Planning & Zoning issues (a) One Stop Permitting; (b) How much regulation; and (c) Unified Development Ordinance - 3; Enforcement of existing laws - 0; Curtail active open air drug market - 3; Use public safety as an economic tool - 0; Elimination of aggressive panhandling and other issues with homeless - 1; Provide tax relief for Asheville families - 3; Maintain Fund Balance - 0; Funding of non-profits - 0; Implementation of employee salary pay plan - 2; Inequity of retirement for firefighters - 0; Water issue with State/County - 0; Consolidation with County - 1; Energy and the environment ("Green Construction") - 5; River District - 0; Housing issues - 3; Funding stream for Transit System - 4; Cooperation/partnership with County - 1; Jobs - 2; Basic City services improvement - public safety, streets, etc. - 2; Sidewalks and greenways - 5; and Cleaner/litter - 1.

The top three issues were: Sidewalks and greenways; Energy and the environment; and Funding stream for Transit System. Council was given an additional two dots to come up with five issues, which resulted in the following: Planning & Zoning - 2; Curtail active open drug market - 3; Tax relief for Asheville families - 5; and Housing issues - 4.

The five top issues were as follows: Sidewalks and greenways; Energy and the environment; Funding stream for Transit System; Tax Relief for Asheville families; and Housing issues.

After considerable discussion about whether Council wanted to focus on the top five issues just arrived at or to update their goals and visions, it was the consensus of Council to reaffirm City staff's continuance to work on their goals and visions. City Council then reviewed each goal and updated it when necessary. Throughout the updating, discussion surrounded youth programs; an improved Civic Center website; an awareness and educational component of ordinances; expansion of community policing; attention on downtown maintenance/cleanliness; the need to put sidewalks where appropriate; fully leveraging funds to create greenways, etc.; redevelopment issues; pursue downtown parking; partner with other agencies, e.g., Chamber of Commerce; visualization technology tools; collaborate with Buncombe County on a variety of issues; land use policies, in particular, farm land and tailgate areas; funding strategies for transit; annexation; building incentives; guiding principles of the Unified Development Ordinance; addressing the issue of where new housing needs to be; equitable distribution of amenities for neighborhoods; traffic calming/pedestrian safety; traffic modeling to enhance future planning; long-term tax relief; comprehensive housing policy, e.g., public housing issues, HOPE 6, collaboration with public housing; establish an ambitious energy conservation goals; maintaining greenspace preservation as housing growth continues; economic development modeling; private incentives for energy conservation; Performing Arts Center; Greenway Master Plan update; explore bikeways where possible; expand employment opportunities for City employees regardless of educational level; and collaborate on a regional basis, e.g., Hendersonville water sales, continuing to work together on public safety, and transfer development rights.

At 5:25 p.m., Mayor Bellamy said that the City Council retreat will continue at 8:30 a.m. on January 20, 2007.

Saturday – January 20, 2007 - 8:30 a.m.
Municipal Building - Asheville, NC

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

Mayor Bellamy welcomed everyone to the continuation of the City Council retreat.

Each Council explained their priorities for the year as follows:

Mayor Bellamy:

- Dollar-Wise Program
- Breast cancer awareness
- You Are Important Initiative
- Mayor's Committee for Youth
- Uniform Pilot Project
- Recruitment Roundup
- Women in Leadership
- Elected Women's Initiative
- We Grown Our Own
- Mayor's Committee for Housing
- Bonding Options

Councilman Mumpower:

- For Our Kids Program
- Top-A-Stop Program
- Job One Program in Shiloh
- Drug Commission
- Elimination of Open Air Drug Market
- Uphold responsibilities as a conservative representative
- Memorial Stadium

Councilman Newman:

- Energy Conservation Goal
- Incentives for the private sector around green building
- Living Wages Policy and help foster that in the business community (earned income tax credits)
- More funding for greenways and sidewalks
- Civic Center move forward
- Possible to restore racing in the Asheville area
- Political parties involvement in City elections

- Help businesses comply with recycling
- More funding for Pedestrian Plan
- Leverage MPO funds for sidewalks and greenways for 2009-15 Councilman Davis:

- Civic Center image improvement
- Memorial at the Asheville Speedway
- What is urban vs. suburban
- Work to attract athletic events
- Feasibility study to restore racing in the Asheville area
- Be a bigger player in the bio-tech area
- River District improvements (e.g., boat ways)
- Lack of employer health care
- Visualization of recycling containers in City Hall

Vice-Mayor Jones:

- Enhance current initiatives
- Help working people afford to live (e.g., tax relief and affordable housing)
- Collaboration with the County
- Clean-Up efforts
- Child abuse issues (raise awareness of sexual preditators on the internet)
- Look at ways to reduce diabetes - (e.g., school lunches)

Councilman Freeborn:

- Continuing Airport development (racetrack, economic development)
- Bus stops on our state roads
- MPO funding for greenways and sidewalks
- Transit route study
- Building and strengthening regional transportation partnerships
- Follow through on independent Airport Authority

Councilwoman Cape:

- Support community initiatives
- How can we be a part of climate dialogue (e.g., energy efficiencies, alternative energies)
- Balance development and conservation
- Work with builders who are willing to build larger bus stops
- Recycling bin contest
- Matching kids and people (e.g., Room at the Inn Program)
- Housing initiatives
- Visualization in terms of using tools of technology to be better communication
- Youth Fairs
- Child care issues
- Additional green building in Asheville
- Civic Center
- Discussion of Lexington Avenue
- River District

Discussion surrounded the need for better communication between Council Members. Several ideas were discussed, e.g., Council to make a note of what they did in a week and pass it out at the Tuesday council meeting for update information only; and use of e-mail for updates

only with no debate. Council Members did indicate that they supported the Mayor meeting monthly with Council Members one on one. It was the consensus of Council that each Council Member make their own commitment to the best communication style that fits them, with the goal of sharing the most relevant information. It was also the consensus of Council to (1) receive a synopsis of the City-County meetings from the City Manager; and (2) receive a copy of the Mayor's weekly or monthly schedule.

Discussion surrounded how the Council's priority items would come before full Council. Several examples of scenarios were discussed as well as suggestions. After discussion, it was the consensus of Council that in order to place an item on the agenda that the idea go through a committee, if relevant, the City Manager or the Mayor. The committee is the place for Council to have dialogue with staff and start fleshing out the ideas. Regardless of whether there is a relevant committee or not, the idea will be placed on Council's agenda for a presentation to see if Council is interested in pursuing it.

It was affirmed by City Council that (1) Council can't direct City staff, but only give direction to the City Manager, City Attorney and City Clerk, and then only by 2/3's majority of Council; (2) Council can ask questions of department directors and express their opinions to them; and (3) if it is other than brief, simple information requests, any meetings or conversations with department directors should be requested through the City Manager.

Vice-Mayor Jones felt that this is a topic that needs to be discussed in the new City Council orientation.

Mayor Bellamy said that it is her responsibility to decide what to put on the agenda. She has instituted a process that when Council asks for an issue to be placed on the agenda, it is put in a file and she will schedule it on an agenda. In addition, she has instituted a procedure whereby the first Friday of each month the City Clerk will send each Council member a draft of what is coming before Council that month.

Mayor Bellamy said that Council will know when the strategic plan items will be on the agenda after the strategic plan is adopted by Council, which should be in February.

It was the consensus of Council to notify the Assistant City Manager on all operational and service requests.

After discussion regarding the Council/staff roles, it was the consensus of Council to ask that the City Manager to make sure that his staff is properly briefed on Council's power and endorsement of Council to set boundaries and at any time they feel that they are being told what to do, that they are safe in standing up for their position and that the City Manager and Council will back them up.

City Manager Jackson said that his department directors have had extensive discussions on understanding of the roles and limitations. One thing is the Council priority list is very gray in that staff runs into the problem of whether an item is a Council Member's priority or if it is one of Council's overall goals. We want to keep the overall goals moving but at the same time staff doesn't want to be a hurdle or an impediment or even to appear like that because sometimes they don't know how far they can go. They spend hours on a case by case basis because there are no hard-fast rules. So the more Council can articulate these issues the more clarify it will be for staff for to interpret Council's wishes as well as possible.

At 10:14 a.m., Mayor Bellamy announced a 10-minute break.

Discussion surrounded Council meeting time management issues. Several suggestions were identified, e.g., Council be succinct in their questions; Mayor asking that the discussion is irrelevant and focus on the issue; Mayor announcing that the meeting is running too long and for Council to be brief in all comments; Mayor to announce that each topic be no more than a specific number of minutes for Council debate; Council does not have to explain why they voted the way they did; Mayor can sensor a Council Member; Council does not need to take a disproportionate amount of time if they feel they are in the minority; a system where Council Members push a button and the Mayor will call on them in order; ration equally the debate time; if a Council Member is not passionate about an issue, just cast the vote; and have the Mayor look at the different items and make a best guess about how much time it will take to move through those - then the Mayor can say on each item that Council try to spend no longer than so many minutes on the question and then at the end of that time, the Mayor could say are we ready to vote or spend a little more time on that.

Mayor Bellamy said that she will call on Council Members who raise their hand to speak.

At the suggestion of Mayor Bellamy, it was the majority of Council's wishes to end the Council meetings at 10:00 p.m.

Mayor Bellamy also asked that Council not put staff in the middle of the debate. If it is a direct question to staff, then the Mayor will call upon them.

Councilman Davis said that the reality is that we all got elected and are representing constituents. Let's cherish that time, talk wisely and keep your eye on the clock.

City Attorney Oast said that a mechanism in City Council rules is a motion to call the previous question. A Council Member can move to call the previous question after a motion has been made and after there has been at least 20 minute of debate and every member of Council has had an opportunity to speak once. After the motion is made to call the question, it should be seconded by 2/3's majority of Council (which motion is not debatable), however, the practice that we follow is not unusual and unless an objection is raised, the debate is closed.

After City Council discussion on the City Council Subcommittee review, it was the consensus of Council to continue the City Council Subcommittees for another year.

At the request of Vice-Mayor Jones, City Manager Jackson said that staff will e-mail Council all the City Council Subcommittee agendas and staff reports prior to the subcommittee meeting.

Upon inquiry of Mayor Bellamy, each Council Chair of each Council Subcommittee committed to remaining Chair of that Subcommittee until the end of the year when the entire Council starts the Board/Commission member and liaison process.

Councilman Newman wondered if it would be relevant for the City Council Revenue & Finance Committee to take a lead role in the budget process. It was the majority of Council's decision to continue the budget process in its current fashion.

After City Council discussion, it was the consensus of Council to schedule the following Council forums on the 5th Tuesdays, beginning January 30, 2007: Bele Chere, Civic Center, Film Commission, and the Homeless. Council's role will be to listen. City Council affirmed to structure the meeting where it is time limited.

Mayor Bellamy ended the retreat with the following quote by Marianne Williamson: "Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond

measure. It is our light, not our darkness that most frightens us. We ask ourselves, Who am I to be brilliant, gorgeous, talented, fabulous? Actually, who are you not to be? You are a child of God. Your playing small does not serve the world. There is nothing enlightened about shrinking so that other people won't feel insecure around you. We are all meant to shine, as children do. We were born to make manifest the glory of God that is within us. It's not just in some of us; it's in everyone. And as we let our own light sine, we unconsciously give other people permission to do the same. As we are liberated from our own fear, our presence automatically liberates others." Mayor Bellamy adjourned the meeting at 11:32 a.m.

Keisha Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – January 23, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

II. PRESENTATIONS & REPORTS:

III. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 16, 2007**

B. **RESOLUTION NO. 07-17- RESOLUTION APPOINTING COUNCILWOMAN ROBIN CAPE AS THE LIAISON TO THE ENERGY AND ENVIRONMENT COMMITTEE**

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C. **RESOLUTION NO. 07-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT TO TILMAN AND SABRINA JACKSON FOR A PRIVATE RESIDENTIAL SEWER LINE**

Summary: The consideration of a resolution authorizing the City Manager to convey an easement over a portion of city-owned property in the East Riverside Redevelopment Project to Tilman and Sabrina Jackson.

Tilman and Sabrina Jackson have requested an easement over a portion of City-owned property in the East Riverside Redevelopment Project Area for a private residential sewer line.

The City owns property (a portion of PIN 9648.10-25-8823) located between Tolula Lane and Choctaw Street and Town Branch approximately 400 feet west of McDowell Street. The current and anticipated use of the portion of the property impacted by the sewer is for park green space with plans for an improved greenway path along Town Branch.

Tilman and Sabrina Jackson purchased property from the City adjacent to the greenway parcel in March, 2006 and are planning to erect a single family dwelling. Due to the location of water lines and sewer lines the requested easement would provide the most direct and efficient

route to the sewer main. The easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the City from constructing a greenway path or planting trees which is the proposed use of the City's property.

The City recently obtained an appraisal of its property in the amount of $130,000 reflecting a per square foot value of $1.72. The easement comprises an area of approximately 1,165 square feet. The easement value is calculated at 50% of the land value rendering an easement value of $1,001.90 rounded to $1,000.

Pros:

- The easement will enable the Jacksons to proceed with construction of a new home on their property which will increase the tax base, generate economic activity, further smart growth objectives of urban densification and provide needed housing.
- The easement will provide the most practical and efficient access to the public sewer.

Con:

- The disadvantage is the land within the easement area (1,165 sq. ft.) cannot be built upon or planted with large trees

Approval of the resolution will authorize conveyance of the easement to Tilman and Sabrina Jackson for the purpose of a private residential sewer line.

Community Development, Parks & Recreation and Water Resources staff recommends adoption of a resolution authorizing the City Manager to convey an easement over a portion of city-owned property in the East Riverside Redevelopment Project to Tilman and Sabrina Jackson.

RESOLUTION BOOK NO. 30 – PAGE 198

D. RESOLUTION NO. 07-19 - RESOLUTION REAPPOINTING LEESA GIBBS AS A MEMBER OF THE FIREMEN'S RELIEF FUND

RESOLUTION BOOK NO. 30 – PAGE 199

E. RESOLUTION NO. 07-20- RESOLUTION REAPPOINTING MAYOR TERRY BELLAMY AS A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

RESOLUTION BOOK NO. 30 – PAGE 200

F. RESOLUTION NO. 07-21 - RESOLUTION REAPPOINTING HANNA MILLER, KAREN AUSTIN, ANDREW GOLDBERG, RYAN PICKENS AND APPOINTING YURI KOSLEN TO THE ASHEVILLE TRANSIT COMMISSION

RESOLUTION BOOK NO. 30 – PAGE 201

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE INTENT TO PURCHASE 8.45 ACRES ON OR NEAR HUNT HILL PLACE AND ARDMION PARK DRIVE, HAVING AN ADDRESS OF 56 HUNT HILL PLACE AND BEING GENERALLY KNOWN AS McCORMICK HEIGHTS

Mayor Bellamy said that his public hearing was originally scheduled for January 9, 2997, but continued, at staff's request, to this date. At the request of City staff, and in order for staff to continue their on-going due diligence, it was the consensus of Council to withdraw this public hearing and reschedule at a later date.

In a similar matter, Mayor Bellamy said that many people had attended this meeting with the understanding that City Council would consider relocation assistance funds for the tenants of McCormick Heights.

City Manager Jackson said that staff recommended postponing action on the relocation assistance funds until after the due diligence, regarding the City's intent to purchase McCormick Heights, by City staff was completed, whether the deal was consummated or not. Council does have the option to amend the 2006 Consolidated Annual Action Plan at this meeting for that issue because in the public hearing notice, it included a proposal for housing assistance to tenants of McCormick Heights Apartments. The public hearing for the other amendments to the 2006 Consolidated Annual Action Plan is scheduled for this meeting as well.

Councilman Mumpower questioned the appropriateness of creating a plan of relocation assistance before we have some certainty about the City's purchase of the property. He questioned if our offer to relocate the residents was predicated on our purchasing the property and if there are questions about our ability to purchase the property, would that not alter our willingness to spend taxpayer dollars to relocate residents if the property is purchased by an alternate developer.

Mayor Bellamy said that regardless of whether the City purchases the property or not, some tenants cannot afford to move on their own. She cited the instance where the tenants of a Merrimon Avenue home were forced to move and the City assisted them with relocation, even though the City did not purchase the property.

Councilwoman Cape's understanding is that the City considered purchasing the property because the Housing Authority is going to shut that apartment complex down. So, regardless of whether the City steps in or not, the tenants are being told they have to move out.

After it was determined that a June 30, 2007, date was the eviction date of the tenants, Councilman Davis said that there is time for the City to put more thought into a relocation assistance proposal.

Vice-Mayor Jones said that the City will not walk away from their commitment to help tenants with their relocation.

Community Development Director Charlotte Caplan said that staff had considerable discussion with the Affordable Housing Coalition and with the Housing Authority about the likely needs for assistance, and this was predicated on the City buying the property. This is the package of assistance that we felt appropriate to recommend to Council under the circumstances of the City purchasing the property. The City contract with the Affordable Housing Coalition to manage this process. They would go door to door and describe what they have to offer and offer their services. They would then meet one on one with every tenant at the tenant's convenience and explore the tenants housing needs, financial needs and suggest appropriate housing options for that tenant. There is a range of housing options available depending on the tenant's

circumstances. A lot of the tenants already have Section 8 vouchers which are transferable to other property. Also, the Housing Authority has sufficient housing units in their public housing for anyone to move into and the Affordable Housing Coalition is knowledgeable and skilled at locating other rental opportunities. After establishing the tenant's general needs and options, they would then help them in their search for new rental accommodations. The Affordable Housing Coalition will also check their choice of rental accommodations to make sure that it is decent and safe and that the lease terms are appropriate. The actual cash assistance to each tenant is proposed to be as follows: (1) a fixed amount for the actual physical move of $500 or if the tenant wants to use a commercial moving company and it might be more than $500, then the actual cost of a commercial move; (2) up to two months of security deposit; (3) the first months' rent (which always has to be paid in advance) and under this package we would pay the tenants share of that first month's rent and Section 8 would pay their share, if the tenant has a Section 8 voucher; (4) we would pay for connection transfer fees for essential utilities, e.g., electricity, gas, telephone and cable TV (if they already had those); (5) other essential expenses, e.g., like an application fee, pet deposit, adaptation for making a unit accessible for disabled person; and (6) the City would pay to the Affordable Housing Coalition a fee for administering this entire program of $400 per tenant. Our initial estimate was $85,000, however, we have increased that to a maximum limit of $120,000. This is based on actual tenant needs and it is not a flat amount per tenant and not a cash handout to the tenant - an actual reimbursement of what it costs to move that tenant.

Upon inquiry of Councilman Freeborn, Ms. Caplan said that there are 40 tenants.

Councilman Newman wondered if the City decides not to purchase the property, will the tenants have to be gone from that property by June 30, 2007. If that date is firm, then it would make sense for the City to help with relocation assistance regardless of whether the City purchases the property for redevelopment or another developer purchases. But if we are not sure that date is firm, then perhaps the City should hold off until that need arises.

City Manager Jackson said that representations were made by the Housing Authority that it was their intent to sell by the end of the calendar year and to give notice immediately for relocation into other public housing properties. It is their intent to sell, if not with the City, then with another buyer for the property at the earliest possible schedule. They have direct financial incentives to go ahead and bring closer to this operation regardless of who the eventual purchaser would be.

Councilwoman Cape's concern was the relocation package was predicated on the City buying the property. She would like to talk about an overall general policy and what role the City plays. If we play this role as we look towards purchasing the property, it would make perfect sense for us to take this role. But should the City not purchase the property, then we need to look at the larger conversation about what role the City does play, because these people need help, and how do we apply that in general terms, instead of specific terms each time. If a developer comes along, what role will they play. The Community Development Block Grant funds is an exact way we can help, but we do need to look at overall general policy rather than the specifics.

Councilman Davis agreed with Councilwoman Cape and wondered if the City does help with relocation, there is not much incentive for a developer, other than the City, to come in and help with relocation.

Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council, and Ms. Julie Brown, McCormick Heights tenant, individually spoke to Council about the need to provide relocation assistance to the residents sooner rather than later.

Mr. Fred English didn't want to see anyone living in rundown homes, but was concerned about the money. He suggested City Council investigate a similar proposal that is going on in Woodfin where we can lease the property for $1 a year.

Mr. Alan Ditmore, Vice-President of the Asheville Homeless Network, said that to tear down houses of any kind cannot be good for the homeless and there are environmental reasons not to tear down structures. He suggested the apartments be converted into mixed income housing and auction off the empty apartments as condominiums so people will have an investment in the area.

In response to Vice-Mayor Jones, Mr. David Nash, representing the Housing Authority, said that if the transaction doesn't go forward, the property is probably looking at foreclosure. If the City decides not to purchase the property, most likely the property will have to close within the next few months. He also noted that in terms of options for the tenants, none of them want to move in public housing at this point, but he hoped they will consider public housing as an option and they can move in within 2 months.

In response to Councilman Newman, Ms. Caplan said that if Council approves funding at this meeting, they have a drawn up contract ready to go with the Affordable Housing Coalition and we would tell them to go ahead and meet necessary expenses for tenants starting tomorrow.

In response to Councilwoman Cape, Mr. Nash said that if the tenant plans to move from McCormick Heights to public housing, we do not have resources to help people move their belongings from one development to another and we would need to have their first month's rent and any utility deposit. We allow security deposits to be paid over-time, so that is not an upfront cost. If the tenants do move to public housing, then we would not need all the assistance and would not need for the Affordable Housing Coalition to mediate in most cases.

Because the majority of Council supported including the City's relocation assistance to tenants at McCormick Heights in the public hearing to amend the 2006 Consolidated Action Plan, Mayor Bellamy asked to be excused from participating in the following public hearing due to a conflict of interest, noting that she supported the City's relocation assistance for tenants at McCormick Heights. Councilman Freeborn then moved to excuse Mayor Bellamy from participating in this portion of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE 2006 ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

RESOLUTION NO. 07-22 - RESOLUTION APPROVING AMENDMENTS TO THE 2006 ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

Vice-Mayor Jones opened the public hearing at 5:51 p.m., noting that the comments made earlier in Public Hearing Item "A" would be considered during this portion of the meeting.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution amending the City's 2006 Consolidated Annual Action Plan. This public hearing was advertised on January 12 and 19, 2007.

Neighborhood Housing Services of Asheville has restructured its organization and activities in response to changes in the housing market that are making it increasingly difficult for

the agency to continue building quality, affordable, single-family homes. As a result, it has withdrawn from several Community Development Block Grant (CDBG)-funded new construction activities. In order to meet the U.S. Dept. of Housing and Urban Development (HUD) spending targets, it is advisable for the City to immediately re-allocate part of these funds to new, fast moving, activities that will reduce our balance of unspent CDBG funds by at least $200,000 over the next three months.

At its meeting on January 8, 2007, the Housing and Community Development Committee considered several funding proposals and recommended three new activities for CDBG funding. A list of the amendments is as follows:

A. Proposed New Allocations:

1. $200,000 to Neighborhood Housing Services (NHS) for direct homeownership assistance.
2. $86,000 to Buncombe County for a mental health crisis stabilization center at 277 Biltmore Avenue.
3. $40,000 for the installation of benches at about 30 city bus stops.

B. NHS Projects Proposed for Cancellation:

1. Infrastructure and new housing construction on Bradley Street.
2. New housing construction on scattered sites, city-wide.
3. Housing development on Brotherton Avenue.

The public hearing notices included an additional proposal for housing assistance to tenants of McCormick Heights Apartments. As a result of the earlier discussion, relocation assistance to the tenants of McCormick Heights will be included in the amount of $120,000.

The CDBG funds made available from canceled NHS projects are more than sufficient to fund the new projects. Remaining funds will be allocated through the normal process for the 2007 Action Plan.

Pros:

1. Recaptures CDBG funds from canceled projects.
2. Allocates funds to new fast-moving projects which will enable the City to comply with HUD regulations for timeliness in spending.
3. Assists NHS in carrying out its new operating plan.
4. Addresses the goals of the City's Consolidated Housing and Community Development Plan, the Strategic Operating Plan, and the 10-Year Plan to End Homelessness by:
    a. Providing affordable homeownership for at least 10 households city-wide.
    b. Assisting in the creation of a crisis stabilization center for homeless and other individuals with mental illnesses.
    c. Enhancing city transit services.

Cons:

1. Reduces the potential pool of funds available for allocation through the normal competitive process for Fiscal Year 2007.

Staff recommends adoption of a resolution amending the City's 2006 Consolidated Annual Action Plan.

Vice-Mayor Jones closed the public hearing at 6:00 p.m.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved to adopt Resolution No. 07-22, including an appropriation of relocation assistance funds for residents at McCormick Heights as outlined by Ms. Caplan, in an amount not to exceed $120,000. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt that City Council jumped into considering purchasing McCormick Heights without having all the variables, and in his view, Council is doing it again with this relocation assistance. He felt that $120,000 to move 40 people is a lot of money. He was also concerned about the City providing for cable TV hook-up. He suggested Council wait until the staff's due diligence is done before consideration of relocation assistance. The City does not have the experience in the community to throw people out in the streets and that will not happen here.

Councilman Newman asked for a friendly amendment to the motion that the City not pay for the transfer of cable TV. Councilman Freeborn and Councilwoman Cape accepted the friendly amendment.

The motion made by Councilman Freeborn to amend the City's 2006 Consolidated Action Plan with the three amendments outlined above by Ms. Caplan and the inclusion of relocation assistance funds for residents at McCormick Heights as outlined by Ms. Caplan (with the exception that the transfer of Cable TV not being paid for by the City) in the amount not to exceed $120,000 carried on a 5-1 vote, with Councilman Mumpower voting "no."

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

RESOLUTION BOOK NO. 30 – PAGE 202

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 723 FAIRVIEW ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING INCLUDING SHARED PARKING WITH A CITY RECREATIONAL FACILITY

ORDINANCE NO. 3433 ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 723 FAIRVIEW ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING INCLUDING SHARED PARKING WITH A CITY RECREATIONAL FACILITY

Mayor Bellamy said that this public hearing was originally scheduled for January 9, 2007, but continued, at staff's request, until this date.

Mayor Bellamy opened the public hearing at 6:10 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located on 723 Fairview Road from RS-8 Residential Single-Family High Density District to Office II District/Conditional Zoning for a proposed office building including

shared parking with a City recreational facility. This public hearing was advertised on December 29, 2005, and January 5, 2007.

Ms. Cogburn said that the subject properties are located within the City limits, at 723 Fairview Road and an adjoining parcel, and include all the property at 723 Fairview Road (.09 acres) along with the parking for City of Asheville recreation facilities (to the west). The property at 723 Fairview Road currently contains two (2) structures used for multi-family housing and two (2) accessory structures. The property is surrounded on three (3) sides by institutional and recreational facilities owned by the City of Asheville. All surrounding properties are zoned RS-8 (Residential Single-Family High Density District) and where not used by the City of Asheville the properties are single-family residential in nature.

The property owners, FamProp, LLC, and the City of Asheville, are requesting that the property be rezoned from RS-8 to Office II/Conditional Zoning to allow for the reuse of the existing residential structures for offices. The City of Asheville has committed to enter into a lease agreement (should this rezoning be approved) with FamProp, LLC, in order that the offices can utilize the existing parking for the adjacent ballfields at the Murphy-Oakley Center. 723 Fairview Road currently contains two residential (multi-family) structures that would be utilized for offices (approximately 6,862 square feet) under the conditional zoning request. A shed and carport on the property are also part of this application and if used would be used in conjunction with an office use. The application proposes that the conditional zoning limit the use of the buildings to office use (excluding medical offices and clinics).

Access to the buildings is via an asphalt drive that is largely located on a platted right-of-way immediately west of 723 Fairview Road. This access would continue to be utilized for handicapped parking and deliveries. All other parking would be located on the adjoining parcel owned by the City of Asheville. This parking is mostly empty during normal business hours as it services the recreational facilities which are largely utilized in the evenings and on weekends. Access to this parking area is via an existing asphalt driveway on City of Asheville property.

Existing trees on the parcels are shown as remaining. Additional vegetation will be provided to meet City of Asheville landscape standards in the proposed parking area.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. One of the Technical Review Committee (TRC) conditions for the project was that the developer work with City staff to direct automobile traffic into the site in a safe manner for ingress and egress from Fairview Road.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed project utilizes shared parking to satisfy parking needs/standards, thus preserving existing vegetation and eliminating the need for grading of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The developer will utilize existing residential structures and retain the residential character and appearance of these structures. The developer will work with the City of Asheville Parks and Recreation and Planning Departments on additional plantings adjacent to the ballfield parking area (buffer for adjacent single-family homes).

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

As stated before, the developer is renovating existing residential structures for office use. These structures are in harmony with the character of other residential structures in the immediate area. The property is otherwise surrounded by institutional or recreational uses.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

This conditional rezoning supports the following goals of the City of Asheville: (1) Promoting the adaptive reuse of buildings in an effort to protect neighborhood viability and residential architecture; and (2) Allowing for appropriately scaled non-residential uses to be permitted in appropriate locations in residential areas.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The proposed use is located along City of Asheville Transit Route 12 and is located within .3 miles of the intersection of Fairview Road and I-240. All city services are available to this development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The size of the office development should produce little traffic.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The proposed retention of the existing structures supports the residential character of the surrounding Oakley neighborhood although introducing a new use into the area.
- This rezoning would introduce office use into a residentially zoned area.
- The shared parking arrangement is environmentally and economically sound.
- The developer has proposed restrictions on the use of the property restricting it to only office use (excluding medical offices or clinics that would be high traffic generators).
- The developer has met twice with the Oakley Neighborhood Association to discuss his plans for the use of the property.

This conditional zoning request was recommended for approval by the Planning and Zoning Commission (unanimously) and only one person spoke (in favor) of the zoning request.

The standard conditions are as follows:

1. The project shall comply with all conditions outlined in the TRC staff report.
2. All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets.
3. All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
4. At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits.

Mr. Clay Mooney, landscape architect for Families Together, explained some of the key aspects of the project and why it warrants Council approval.

Mr. Henry Mitchell, President of the Oakley Neighborhood Association, said that they are in unanimous support of this conditional zoning.

Mayor Bellamy closed the public hearing at 6:17 p.m.

When Councilwoman Cape questioned why Council wasn't given an overall plan for this property since the project has come before Council two other times, City Attorney Oast said that it may have been an evolutionary process.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3433, to conditionally zone 723 Fairview Road from RS-8 Residential Single-Family High Density District to Office II District/Conditional Zoning for a proposed office building including shared parking with a City recreational facility conditions, subject to (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (5) the use of the property be restricted to office use (excluding medical offices and clinics). This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 219

D. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED IN THE MAIN ENKA VILLAGE AREA FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3434- ORDINANCE TO REZONE PROPERTY LOCATED IN THE MAIN ENKA VILLAGE AREA FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:20 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to rezone property located in the main Enka Village area from RM-16 Residential Multi-Family High Density District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on January 12 and 19, 2007.

Ms. Tuch said that on October 16, 2006, a letter from the Enka Park Commission was received in the Planning & Development Department; this letter outlined a request from the Commission to rezone the main Enka Village community from RM-16 to RS-8, citing a desire to retain the community's existing character. Two other portions of the historic neighborhood located on Lake Drive and Hillcrest Street are already zoned for single family residential (RS-2 and RS-4 respectively). The main Enka Village is comprised exclusively of single family homes on smaller lots where the majority of these 87 lots are a little less than a quarter acre (or more). These lots would comply with the RS-8 development standards and the reason for the RM-16 zoning is not apparent but is consistent with the zoning requested by Biltmore Farms for the Biltmore Lake residential community.

The letter from Enka Park Commission also requested the creation of an overlay zoning designed to reflect and enforce existing deed restrictions. The majority of those restrictions would be enforced through the RS-8 zoning designation but the RS-8 zoning would not provide clear restrictions against duplexes which may be established as a Use-by-right-Subject-to-Special-Requirements (USSR) in the RS-8 zoning district. As a USSR, duplexes may be established but must meet a number of architectural and design restrictions as well as a separation requirement of 300 feet between all other multi-family structures. These restrictions were designed to control the appearance and total number of duplexes in single family districts in order to prevent a change in neighborhood character. As a result, the RS-8 zoning designation does appear to afford an appropriate amount of protection to the character of the existing main Enka Village neighborhood.

RM-16 was established to provide a full range of multi-family housing types along with limited institutional, public, and commercial uses that would serve a high density area. It is intended that this district be located near employment centers, shopping facilities, roads and other infrastructure capable of handling the demand generated by high density residential development.

RS-8 was established to provide for a high density per acre of single family dwellings where public infrastructure is sufficient to support such development, and to stabilize the district's existing residential character in areas of existing high density single family development while promoting a suitable environment for single family living.

On December 6, 2006, the Asheville Planning and Zoning Commission reviewed the rezoning request and voted unanimously to approve the proposal (no discussion).

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- RS-8 zoning will not render existing lots non-conforming
- Setbacks are the same for both the RM-16 and RS-8 zoning districts
- RM-16 allows the establishment of multiple units on a single lot (multi-family)
- RS-8 is restricted to single family homes (unless pursuing a duplex as a USSR)

Staff recommends approval of the rezoning request for all 87 lots from RM-16 to RS-8.

Mr. Alan Ditmore, Vice-President of the Asheville Homeless Network, spoke against this rezoning in that it will reduce the potential of affordable housing supply.

The Chair of the Enka Park Commission, spoke in support of the rezoning, noting that the entire Village is basically low income housing.

Mayor Bellamy closed the public hearing at 6:29 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3434, rezoning all 87 lots identified in the Exhibit "A" map attached to the ordinance, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 224

E. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED AT 346 DEPOT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3435- ORDINANCE TO REZONE PROPERTY LOCATED AT 346 DEPOT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 6:29 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property located at 346 Depot Street from RM-16 Residential Multi-Family High Density District to Commercial Industrial District. This public hearing was advertised on January 12 and 19, 2007.

This parcel is located at the corner of Depot Street and Bartlett Street. The sloping lot has an existing building under renovation. The small area at the rear of the property that is zoned RM-16 was purchased from the City of Asheville in 2005. The staff report at that time noted the inclusion of artist studios and apartments in the building. The change in zoning will allow parking at the rear of the building to support the uses in the building.

The original action by City Council exchanged the property but did not address the owners anticipated use of the property under the existing zoning of RM-16 Residential Multi-Family High Density District. The rezoning is required to use the lot for these purposes. The area along Depot Street and the nearby river side areas are expected to transition to a mixed-use and arts district. Several lots to the south of the subject property along Depot Street were rezoned to Urban Place in April, 2005. This rezoning was accompanied by a master plan to build a new mixed-use structure on the site and restore the Glenrock Hotel. A total of 110 units were approved in the master plan along with a limited amount of non-residential uses.

The RM-16 District is established as a buffer zone between higher density commercial areas and lower density residential uses. Limited non-residential uses including institutional and commercial uses are allowed to complement the primary function of the district as a residential area. Residential density is 16 units per acre.

The Commercial Industrial District is established to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale and warehousing, retail sales and office uses. Residential density is 16 units per acre.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The rezoning will allow the full range of uses for the entire lot and not separate out the back half because of the split zone.
- The sale of the original lot addition was approved by the City Council to be combined with the Depot Street parcel.
- The zoning change will support the adaptive reuse of the existing building on the parcel.

The Planning and Zoning Commission at their January 3, 2007, meeting voted 7-0 to recommend the zoning change. Staff also recommends approval of the rezoning application.

Mayor Bellamy closed the public hearing at 6:31 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3435, noting that the request is reasonable based on information provided in the staff report and as stated in the recommendation. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 228

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO THE BILLBOARD STANDARDS

Mayor Bellamy said that the public hearing on this matter was held on January 9, 2007, and action continued until this date in order to give the City Attorney time within which to respond to some of Council's concerns. At the request of City Attorney Oast, Councilman Mumpower moved to continue this matter until February 13, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

G. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN ADAPTIVE RE-USE OVERLAY DISTRICT

ORDINANCE NO. 3436 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN ADAPTIVE RE-USE OVERLAY DISTRICT

Mayor Bellamy opened the public hearing at 6:33 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville creating an adaptive reuse overlay district. This public hearing was advertised on January 12 and 19, 2007.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the *Asheville City Development*

Plan 2025 through the creation of an overlay district that allows for and provides incentives for adaptively reusing valuable buildings. Asheville has a stock of fine older buildings that greatly contribute to the City's quality of life and urban character. Due to design, location, and/or condition, these buildings may become functionally obsolete for use under their current zoning. An example of this is might be a very large older home on a large lot in a single family zoning district; the home may be too large for continued use as a single family home and the only value it may have for the owner is through demolition of the house and subdivision of the site into several lots. Adaptively reusing the building and lot in their current arrangement for multifamily and/or limited office uses may well be a much better option for the owner, neighborhood, and City relative to the subdivision option.

The overlay district would "overlay" a selected portion of an existing zoning district, allowing supplementary incentives and requirements to apply to the property covered by the overlay district. The City has 10 other zoning overlay districts, including those addressing historic preservation, downtown design review, the Blue Ridge Parkway, and manufactured housing.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

The Planning and Zoning Commission considered this code amendment on January 3, 2007, and recommended approval of this amendment by a unanimous vote of 7-0.

Pros –

- Several goals and strategies of the 2025 Plan will be implemented.
- A wider range of land uses would be available to existing buildings, likely extending their useful life.

Con –

- Neighborhoods may regard these overlays as a form of encroachment.

City staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville creating an adaptive reuse overlay district.

Mayor Bellamy closed the public hearing at 6:35 p.m.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: what is difference of this overlay and spot zoning; what process would someone have to go through if they wanted to use this overlay; who will determine where this tool will be used; and would the overlay usually apply to a street or neighborhood.

Vice-Mayor Jones would like to see the request go through the Planning & Zoning Commission prior to coming to City Council.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3436. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 23 - PAGE 232

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-23- RESOLUTION ESTABLISHING FAIR REUSE VALUE AND SET A PUBLIC HEARING TO CONSIDER APPROVING THE SALE CONTRACTS WITH MOUNTAIN HOUSING OPPORTUNITIES INC. FOR TWO PARCELS ON RALPH STREET AND CHOCTAW STREET IN EAST RIVERSIDE

Due to a conflict of interest, and at the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from participating in this portion of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Mr. Ed Voss, Real Estate Manager, said that this is the consideration of a resolution establishing fair reuse value and setting a public hearing to consider the Sale and Redevelopment Contracts with Mountain Housing Opportunities, Inc. for parcels on Ralph Street and Choctaw Street in East Riverside.

On September 26, 2006, City Council accepted the Statement of Qualifications of Mountain Housing Opportunities, Inc. and the Green Family (MHO) and authorized the City Manager or his designee to negotiate a contract for the sale and redevelopment of two parcels in East Riverside pursuant to the Request for Qualifications issued by the City on May 19, 2006. Contracts have been negotiated with MHO for Ralph Street and Choctaw Street and the parcels have been appraised by BRB Appraisal Associates:

- The Ralph Street parcel is 3.8± acres and steeply sloped from Ralph Street to Town Branch with some flattening on each end. A greenway easement will be reserved along Town Branch. The recommended Fair Reuse Value based on appraisal is $274,000.

- The Choctaw Street parcel is 5.92± acres and varies from steeply sloped along the street fronts to moderate slope and nearly level in the middle of the property. The parcel is bisected by Town Branch and a greenway easement will be reserved here also. The recommended Fair Reuse Value based on appraisal is $426,000.

On January 10, 2007, staff reviewed the contract terms with the City Council Planning & Economic Committee and the Committee referred the contracts to City Council for approval.

Economic Development staff recommends adoption of a resolution establishing fair reuse value and setting a public hearing to approve the contracts with Mountain Housing Opportunities, Inc. for two parcels on Ralph Street and Choctaw Street in East Riverside.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-23. This motion was seconded by Councilman Davis and carried unanimously.

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VI. NEW BUSINESS:

VII. OTHER BUSINESS:

Councilman Freeborn said that at the January 16, 2007, meeting Council instructed our staff to develop a comprehensive plan to eliminate the open air drug market in Asheville and part of that motion was language that offered support for our Police Chief and the Police Department. He reiterated his personal support for the tremendous effort our police officers do for our community in terms of public safety and what they do day-in and day-out in terms of combating drugs. It is a hard issue to deal with on a street level, considering we do not have adequate beds for the amount of people being arrested on a daily basis, we do not have adequate sentencing, we do not have adequate job opportunities for people, and we do not have adequate child care. He hoped we can continue that support for our officers.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

Closed Session

At 6:54 p.m., Councilman Mumpower moved to go into closed session in order to consider the qualifications, competence, performance, character, fitness, and conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. sec. 160A-318.11 (a) (3); and (2) to prevent the disclosure of information that is confidential pursuant to 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. sec. 160A-318.11 (a) (2). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:50 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:50 p.m.

Kesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – February 13, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 7:58 p.m.); Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Jones led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. OPEN TENNIS CHAMPIONSHIP

Councilwoman Cape recognized Ms. Laura Loftis, Aston Park Tennis Manager, who was awarded, on behalf of the City of Asheville, the 2006 Adult Tournament of the Year Award from the US Tennis Association.

B. PROCLAMATION PROCLAIMING FEBRUARY, 2007, AS "BLACK HISTORY MONTH"

Councilman Newman read the proclamation proclaiming the month of February, 2007, as "Black History Month" in the City of Asheville. He presented the proclamation to Mr. Johnny Hayes, President of the Local NAACP, who briefed City Council on the history of the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "F" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 19, 2007, AND THE REGULAR MEETING HELD ON JANUARY 23, 2007

B. RESOLUTION NO. 07-24 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY EXCESS RIGHT-OF-WAY ON HAYWOOD STREET IN EXCHANGE FOR A RIGHT-OF-WAY OVER A PORTION OF REAL PROPERTY ON ROBERTS STREET

Summary: The consideration of a resolution authorizing the Mayor to convey excess right of way on Haywood Street in exchange for a right of way over a portion of real property located on Roberts Street.

The City and Urvana, LLC (Urvana) have negotiated an exchange of excess right-of-way on Haywood Street for a right-of-way easement across real property located on Roberts Street.

The excess right-of-way property is along the south side of Haywood Street at its intersection with Roberts Street comprising 661.3 square feet and includes a retaining wall which the City maintains. The conveyance to Urvana would reserve an easement to the City for access to the wall for maintenance. A portion of the building owned by Urvana encroaches onto this parcel

The property to be exchanged by Urvana is a 32.5 square feet portion of (PIN 9638.08-98-0734) a 0.19 acre parcel on the west side of Roberts Street at its intersection with Haywood Street. A portion of the sidewalk encroaches onto this parcel.

The value of the excess right of way to be exchanged is estimated at about $1,015 and the estimated value of the property to be received is around $104 based on an extrapolation from the tax value of the adjoining land. The difference in value between the two properties is about $911, rounded = $900. Urvana has offered cash payment of $900 as part of the exchange.

Pros:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will retain sufficient right-of-way for public safety and access fir maintenance of the retaining wall.
- It will facilitate the renovation of the building by resolving the encroachment issues.

Con: There are no negative impacts.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on January 19, 2007.

Approval of the resolution will authorize the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Economic Development staff recommends adoption of a resolution authorizing the Mayor to convey excess right of way on Haywood Street in exchange for a right of way over a portion of real property located on Roberts Street.

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C. RESOLUTION NO. 07-25- RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON MCDOWELL STREET TO CHSA BUILDING PARTNERSHIP

Summary: The consideration of a resolution authorizing the Mayor to convey land on McDowell Street to CHSA Building Partnership in the amount of $17,400.

On January 9, 2007, City Council authorized advertising for upset bids pursuant to a bid from CHSA Building Partnership in the amount of $17,400. The advertisement was published on January 19, 2007, and no upset bids were received.

Disposal Parcel 152 is a 0.08 acre rectangular shaped lot on the east side of McDowell Street about 450 feet south of the intersection with Choctaw Street. The land slopes upward from McDowell Street to the rear line. It is covered with natural vegetation consisting of grass, small trees and brush. The parcel is zoned Institutional and the character of the surrounding neighborhood is primarily medical offices. The highest and best use for the subject parcel would be assemblage with an adjoining parcel.

CHSA owns the adjoining property where the medical offices of Carolina Hand Surgery Associates, P.A. are located. The proposal would combine Disposal Parcel 152 with property owned by CHSA for potential expansion of the existing development.

Approval of the resolution will authorize the sale of the property to CHSA Building Partnership.

Pros:

- The sale will be at fair market value as established by the tax appraisal and the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- It will facilitate expansion of existing development.

Con: There are no negative impacts.

Economic Development staff recommends adoption of a resolution authorizing the Mayor to convey land on McDowell Street.

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D. RESOLUTION NO. 07-26 - RESOLUTION AUTHORIZING CATALINA COURT IN THE SAND HILL ROAD AREA TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution authorizing Catalina Court in the Sand Hill Road area of Asheville to become a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Catalina Court is a developer-constructed street that has an average width of 24 feet and a length of 0.12 miles. Transportation and Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Catalina Court will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council adopt a resolution authorizing Catalina Court in the Sand Hill Road area of Asheville to become a publicly maintained street.

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E. RESOLUTION NO. 07-27 - RESOLUTION SETTING A PUBLIC HEARING DATE ON FEBRUARY 27, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 341 ROCKWOOD ROAD

Summary: The consideration of a resolution setting a public hearing date for voluntary annexation of property located at 341 Rockwood Road.

Crown/Asheville, LLC has petitioned the City of Asheville for the annexation of one lot located at 341 Rockwood Road in South Buncombe County (off of Airport Road) containing a total of approximately 1.93 acres. The area, while contiguous to other non-contiguous ("satellite") properties in the City of Asheville, is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. It is recommended that the public hearing date be February 27, 2007. Should City Council decide to proceed with this request, the effective date for the annexation would be April 30th of 2007.

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

City staff recommends City Council adopt a resolution setting a public hearing date on February 27, 2007, for voluntary annexation of property located at 341 Rockwood Road.

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F. RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

This item was removed from the Consent Agenda for an individual vote.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEM PULLED OFF THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 07-28 - RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

In 1992 the Asheville Regional Housing Consortium was certified by the Department of HUD as an entitlement jurisdiction for the HOME Program. Asheville is the Lead Entity of the Consortium. Since 1992 the Consortium has received in excess of $15 million for the production of housing affordable to low-income families in Buncombe, Henderson, Madison and Transylvania Counties. Federal regulations require the Consortium to be recertified with HUD every three years, in order to remain an entitlement jurisdiction. All required documentation for recertification must be submitted to HUD by June 30, 2007.

Pros:

- Asheville will remain Lead Entity of the Consortium.
- The Consortium will continue to receive HOME Program funds for the production of housing affordable to income-eligible families.
- The Consortium will remain an agency with regional cooperation in addressing affordable housing needs.

Cons:

- The Consortium will be without a Lead Entity and its certification as an entitlement jurisdiction will be in jeopardy with the Department of HUD.

Community Development Division staff recommends adoption of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

Councilman Mumpower said that as of today the national debt is $8.7 Trillion and felt it was irresponsible for the federal government and HUD to be sending this money that they don't have.

Councilman Newman spoke about the need for regional cooperation and this is a very successful regional partnership.

Councilman Newman moved to adopt Resolution No. 07-28. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. CIVIC CENTER COMMISSION PRESENTATION REGARDING THE CIVIC CENTER CAPITAL IMPROVEMENT PLAN

Mr. Max Alexander, Chair of the Civic Center Commission, said that City Council approved a five year Capital Improvement Plan (CIP) for the Civic Center at their December 12, 2006, meeting. At that time, Councilman Mumpower requested the Civic Center Commission review the plan and make comments they felt were appropriate concerning it.

At their January 15, 2007, meeting the Civic Center Commission unanimously approved the following as their response. Staff has added the estimated cost of each project.

The Civic Center Commission would first like to congratulate City Council for taking action to provide for a specific CIP action plan for the venue. At the same time, the Commission would request City Council consider broadening the scope of projects to include additional work on the Thomas Wolfe Auditorium (TWA), to include.

- Inspect the TWA roof: This could be completed at little or no cost to the City.
- Repair TWA roof as warranted: Staff is currently repairing it as part of their ongoing maintenance effort. No major problems are currently known to exist but the inspection noted above would assist in determining its overall condition and future repair costs.
- Repair interior ceiling and walls of TWA: Inspection should be the first step before proceeding. Because of scaffolding needed to reach the ceiling, the cost for this could be $8,000 to the City. Actual repair costs depend on the inspection report. Previously staff have been told that a wide cost range is possible depending on plaster condition.
- Replace TWA carpet: Depending on final carpet selection, the cost could be $45,000.

Other suggested Civic Center CIP items include:

1. Inspect the venue's fire alarm system: The alarm system is inspected every six months at present at a cost of $600 per inspection. The cost for a completely new system could range as high as $500,000.
2. Provide a weatherproof storage area for any new chairs purchased: Up to $50,000 could be needed depending on final design.
3. Accelerate replacement of arena lighting: No additional cost to the City for this project, which is currently estimated at $250,000, if the City chose to reprioritize it.

The total cost for the above projects and inspections total approximately $105,000. If it were added to the first year's CIP budget, the new total would be $465,000. Any additional monies required due to inspection of the TWA roof, fire alarm system or TWA plaster are not included.

The Civic Center Commission recommends City Council consider the additional CIP projects and approve them as part of the overall Civic Center CIP plan.

Mr. Alexander responded to various questions/comments from Council, some being, but are not limited to: has the Fire Department raised concerns over the Civic Center's fire alarm system; is there a potential to just replace the carpet in the high traffic areas vs. the entire auditorium; and does the Civic Center Commission have ready access to the Civic Center Director and the City Manager.

When Councilman Mumpower asked what other items the Commission would like to bring to City Council, Mr Alexander said that they have made a tremendous amount of

recommendations to the Civic Center Director and would like to implement (1) a customer and promoter satisfaction system; and (2) a driving utilization strategy to the Civic Center.

Councilman Mumpower felt we need to have the Civic Center Commission as a filtering system first on items affecting the Civic Center.

In response to Councilman Freeborn about how this will affect the Civic Center CIP, City Manager Jackson explained that he would prefer to have the opportunity to meet with the appropriate staff for responses and would be able to respond back to Council in approximately two weeks. In terms of carpeting, lighting, etc. we don't see that in the current year's budget as a priority, but it is something that we intend to go back through the Commission and then to the Council as we look in out-years to adjust the schedule.

Councilman Freeborn asked if Mr. Alexander had any suggestions in moving the dollars of the existing Civic Center CIP and reallocating those to pay for these recommendations. Mr. Alexander responded that that was not the charge given to the Commission; however, a suggestion might be to possibly lease some capital equipment vs. purchasing.

It was the consensus of City Council to instruct the City Manager to report back to Council on the suggestions made by the Civic Center Commission, along with the suggestion of leasing vs. purchasing capital equipment.

In response to Councilman Newman, Mr. Alexander said that the Commission is pleased that City Council has moved forward with implementing both the entire deferred maintenance plan and the facility upgrades (totaling approximately $15 Million).

Councilman Newman moved to (1) support implementing both the entire deferred maintenance plan and the facility upgrades, totaling approximately $15 Million (which are identified on the full project list); (2) instruct the City Manager to take into consideration the specific recommendations by the Civic Center Commission; (3) affirm our support of the capital budget presented in December, 2006, which is roughly $400,000 a year; (4) partner with Buncombe County and our State legislators in order to expedite the deferred maintenance and basic improvements; (5) ask for authorization for a 1-cent hotel occupancy fee to help address these needs at the Civic Center; and (6) support the efforts to study the financial viability of a new performing arts center in downtown on City-owned land or elsewhere in downtown. This motion was seconded by Councilman Davis.

Councilwoman Cape wanted to make sure that as we look at a new performing arts center that we partner with those folks as well in helping us with the Thomas Wolfe and the Civic Center in the process.

There was a brief discussion about approaching our legislators and County Commissioners with a specific tax request or asking them to assist us with a revenue source. Councilman Newman said that we are asking for dialogue and the 1-cent hotel occupancy fee is our best idea. He would be open to other ideas on how to finance as long as they are fair and don't unfairly burden the middle class and working families in Asheville.

The motion made by Councilman Newman and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Mumpower voting "no."

~~**RESOLUTION BOOK NO. 30 - PAGE**~~

B. ALCOHOLIC BEVERAGE CONTROL BOARD GOALS & OBJECTIONS FOR 2007

Alcoholic Beverage Control (ABC) Board Chair Charles Worley presented Council with a short summary of the contributions from the ABC system to the City over the past several years. The ABC system serves the City to control and regulate the sales of alcoholic beverages inside the City limits. Under state law, the profits of the system are distributed to the City and County.

Since the end of 2004 fiscal year, sales have grown over $2.8 Million resulting in a substantial increase in distributions to the City and County. In 2004, the City's distribution was $258,150; in 2006 it was $480,876, and increase of 86%. Results for the first half of this fiscal year reflect a 30% increase to date in profits of the system. Working capital in the system has increased by 22%, creating a solid platform for operations in the future.

At the same time we are working to improve operations and profitability, we are also being proactive in dealing with alcohol education and abuse. By law, we are mandated to distribute a minimum 7% of the net profits to programs that deal with alcohol education and rehabilitation. Our distributions to these programs have increased by over 25%. In addition, we participate in programs to prevent the sale of alcohol to underage individuals partnering with the N.C. ABC Education Division and national organizations. We have instituted training programs with our mixed beverage permitees to responsibly serve the public and prevent underage drinking.

While we are working hard to streamline our operations and become more efficient, we are also looking to the future and planning to be able to better serve our customers and benefit the City.

We are in the process of decentralizing our wholesale mixed beverage outlet functions to give our business customers a greater choice in how they do business with us as our mixed beverage sales have increased 31% since 2004. As a part of this decentralization, the hours available to our business customers have also increased.

We have engaged in a long-range planning process utilizing the demographics of the area, sales and growth patterns, and other factors to enable us to plan stores of types and in locations that will better serve our customers and the City. It recently became necessary to replace our Long Shoals Road sore due to the re-widening of Long Shoals Road and we are set to re-open a newly constructed store on Long Shoals Road next month. Our Biltmore store, so heavily devastated in the Biltmore Village flood of several years ago, was recently sold (although we are continuing to lease the building for the short-term) and we are actively seeking replacement property upon which to construct a new store in a location more convenient to our customers.

Our Merrimon Avenue store, long the most profitable of all of our customers, is in the process of undergoing extensive remodeling so that we can better serve our customers on the north end of the City. We have recently acquired property on Tunnel Road to serve as a site for the replacement of the existing Tunnel Road store. That store is now on the market with proceeds from the sale expected to be reinvested in the construction of a new store at the recently acquired site. The new location will, again, better serve our customers and provide easier access, especially during peak business seasons along Tunnel Road.

Our long-range plans have identified the need to better serve our customers in west Asheville and we have acquired property out New Leicester Highway upon which we can build a new store in the coming years. While we are not ready to begin the construction of a new store at this time, we see that process beginning in the next several years as growth continues to occur along that corridor.

Our goal is to continue to serve the City of Asheville and its citizens and residents by continuing to make our operations more efficient, by developing stores that better service the

customers, and by making certain that alcohol is served responsibly within the City of Asheville, whether through sales at the ABC stores or through sales at mixed beverage outlets. We are committed to making our mandated distributions of profits for alcohol education and alcoholism and/or substance abuse treatment programs to those organizations that can best produce results for the benefit of the public.

The next few years will see substantial changes in the ABC system in Asheville as we move forward with our plans to continue improving efficiency, educating our citizens, meeting the needs of our customers, and serving the City of Asheville.

In response to Councilman Davis, Mr. Worley said that they are not aiding in the effort of Buncombe County's new detox center. Even though he didn't think their distributions can be for capital improvements, he would be happy to talk further with Councilman Davis to see if there is a way they can assist.

In response to Councilman Mumpower about how the City of Asheville can help the ABC system, Mr. Worley said that the ABC Board has sold two of their stores and under the State law, those funds are considered part of their income, in terms of the mandated distribution. This City Council can allow them to exclude that from the income so that it can be put back into capital. A request will be coming before Council requesting City Council to exclude those funds received from the sales of those stores, so that those monies in total can be put back into the construction and acquisition of the new stores. City Attorney Oast said that this request will be on the agenda soon.

C. DISCUSSION OF SCHOOL BOARD PROCESS

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, outlined the School Board process for the two vacancies. It was confirmed by City Council that candidates must live in the City limits and live in the Asheville School District. The deadline for applications will be February 27, 2007, the interviews will held on March 20, 2007, and the appointments will be made on March 27, 2007.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR SUNSET PARK FOR THE EXPANSION OF THE EXISTING RETAIL BUILDING AND ASSOCIATED SITE UPGRADES

Vice-Mayor Jones announced that this public hearing will be re-advertised for February 27, 2007.

B. PUBLIC HEARING TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD

RESOLUTION NO. 07-30 - RESOLUTION PERMANENTLY CLOSING A PORTION OF VANCE GAP ROAD

Vice-Mayor Jones opened the public hearing at 6:16 p.m.

Mr. Richard Grant, Assistant Public Works Director, said that this is the consideration of a resolution to permanently close a portion of Vance Gap Road. This public hearing was advertised on January 19, 26 and February 2 and 9, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Brian Cauthren on behalf of Zealandia Holdings, LLC has requested the City of Asheville permanently close a portion of Vance Gap Road that runs between their properties (also known as Old Chunns Cove Lane).

Public Works Department staff has researched and determined this portion of Vance Gap Road is not City maintained. Closure of this portion of street will not deny any of the adjoining property owners' reasonable means of ingress and egress as Zealandia Holdings, LLC owns all adjoining property along the portion requested to be closed.

The Greenway Commission reviewed this request and said that Vance Gap Road is not in the general path of the greenway plan, so closing this road should not affect the greenway plan for this area. However, the Greenway Commission does want to keep that option open to be used as a greenway. He did talk with Mr. Cauthren and he is more than willing to sit down and discuss a possible easement for a greenway, which will connect with the other sections.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt a resolution to permanently close a portion of Vance Gap Road.

Vice-Mayor Jones closed the public hearing at 6:18 p.m.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

City Attorney Oast said that the resolution before Council does not address a greenway easement and if Council would like that assurance, he suggested Council continue the matter until that language is inserted in the resolution.

Mr. Cauthren said that they are open and willing to grant the City an easement across the property as worked out by both parties at some point.

City Attorney Oast said that the law allows the City to retain easements for utilities and not necessarily for greenways. If Council is satisfied with Mr. Cauthren's verbal promise to grant the City a greenway easement at a negotiated location, he could work with that.

Councilman Freeborn moved for the adoption of Resolution No. 07-30, noting the verbal assurance that Mr. Cauthren will grant the City a greenway easement at a negotiated location. This motion was seconded by Councilman Mumpower and carried unanimously.

C. **PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE WAL-MART EXPANSION LOCATED AT 1636 HENDERSONVILLE ROAD, FOR THE EXPANSION OF THE EXISTING RETAIL BUILDING AND ASSOCIATED UPGRADES**

ORDINANCE NO. 3437- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE WAL-MART EXPANSION LOCATED AT 1636 HENDERSONVILLE ROAD, FOR THE EXPANSION OF THE EXISTING RETAIL BUILDING AND ASSOCIATED UPGRADES

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Jones opened the public hearing at 6:26 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of the issuance of a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades.

On July 27, 2006, the petitioner Wal-Mart Stores, Inc., submitted conceptual site plans for a proposed store expansion, interior remodel and associated site upgrades at their south Asheville location in the Forest Ridge Shopping Center. It was determined that this project would reviewed as a Level III project because the total expansion area exceeds 25% of the building size threshold for a Level III project (refer to Section 7-5-9(a)(1)b.). Additionally, the overall size of the development requires that the project be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures. These development standards address building design, architectural compatibility with the surrounding area, landscaping, pedestrian safety and public enhancements.

The project site is located in south Asheville off of Hendersonville Road in the Forest Ridge Shopping Center (City Exhibit 3 - Aerial Map). The property consists of approximately 23 acres and is zoned HB (Highway Business). The majority of properties surrounding the site are also zoned HB (Highway Business) and consist of a mix of commercial and office uses. Two single-family dwellings, also zoned HB, exist along Peachtree Road, to the north of the site.

Primary access to the development is via a signalized intersection on Hendersonville Road. The site can also be accessed from Peachtree Road, which borders the north side of the property. A fairly large amount of mature vegetation exists along Hendersonville Road, portions of Peachtree Road and along the perimeter of the existing service area on the south side of the

property. These vegetated areas will serve as credit towards meeting some of the landscape requirements and will only be disturbed for the installation of sidewalks and supplemental plantings that are necessary to comply with the Unified Development Ordinance (UDO) standards.

The Forest Ridge Shopping Center currently consists of an 81,922 square foot Wal-Mart store and 19 retail spaces consisting of 83,245 square feet. The project proposes the following (City Exhibit 3 - Site Plan and Façade Upgrades) (City Exhibit 4 - Site Designs):

Existing Wal-Mart Store:	81,922 square feet
Building Expansion (includes Front and South Side expansion for loading area)	38,078 square feet
New Store Total:	**120, 000 square feet**
Existing Retail Spaces:	83,245 square feet
Demolition of 7 spaces:	15,409 square feet
Rebuild of 3 spaces:	7, 320 square feet
New Retail Space Total:	**75, 156 square feet**
Total Shopping Center:	**195, 156 square feet**

In addition to the store expansion areas noted above, the entire site will be upgraded and brought into compliance with the overall development standards outlined in the UDO and also with the supplemental design standards for large retail structures (a total of 160 points must be achieved.)

Items of Interest

- Parking is shown at a rate of 4.09spaces/1000 square feet for a total of 491 parking spaces for the Wal-Mart development. Parking at a rate of 4.0spaces/1000 square feet for a total of 391 spaces is dedicated towards the remaining strip center. Combined is a total of 792 spaces that falls within the City of Asheville's minimum number of spaces required (558) and the maximum number of spaces allowed (976).
- The parking lot layout will incorporate the use of several retaining walls ranging in height from 3-feet to 8-feet in height. The parking lot in front of the Wal-Mart store will sit above the parking lot associated with the strip retail center.
- Enhanced parking lot landscaping is proposed for the entire site (including the existing service area for the development along the south side of the property.)
- New enhanced architectural façade and other exterior building and site upgrades illustrate compliance with the supplemental development standards outlined in Appendix 7-F with a possible total of 165 points. Some enhancements noted: sidewalks with pedestrian seating areas along the front façade, installation of transit shelter along Hendersonville Road, and pedestrian connections to Peachtree Road and Hendersonville (to be provided per the Technical Review Committee (TRC) conditions.)

On August 21, 2006, the TRC reviewed and approved Wal-Mart's initial proposal with conditions. The applicant requested several postponements of the review by the Planning and Zoning Commission in order to allow additional time to address some of the TRC conditions. Upon review of the revised plans staff noted a significant change in the alteration of the parking lot and felt it necessary to bring the project back before the TRC for review and comment. Subsequently, on November 21, 2006, the TRC reviewed and approved the project subject to all conditions outlined in the staff report.

Section 7-16-2(c) of the UDO states that the Asheville City council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on

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evidence and testimony received at the public hearing or otherwise appearing in the record of case.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The project site is already developed and is currently supporting a large retail development. Grading of the site will be necessary to build the project, as proposed. A fair amount of grading will occur within the existing parking area located in front of the existing Wal-Mart store where the main building addition, strip center addition and new parking lot layout is proposed.

   It should be noted that the amount of existing impervious surface area is being reduced with the redevelopment eliminating the need for improvements to the current stormwater system that serves the development.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The project site is already developed and currently used as a large retail development. The proposed project and associated site upgrades will greatly enhance the shopping center and is likely to add to the value of adjoining or abutting properties. Additionally, required landscaping and buffers will shield the project from less intensive uses.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The project site and those properties adjacent to it are all zoned Highway Business district and consist of a wide range of uses and a mixture of both small and large scaled buildings. The project proposes an enhanced building façade and site upgrades that increases it's compatibility with the immediate and surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This development supports the *Asheville City Development Plan 2025* objectives concerning infill development and the adaptive reuse of properties through flexible development standards. It also implements the strategy of permitting more intense commercial and office developments in locations where adequate public facilities exist.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

Development of the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. Review of the conceptual plans by various City departments has found that adequate sewage and water utilities are available for the proposed expansion.

Additionally, the site is served by two bus routes, one along Hendersonville Road and one that loops through the shopping center parking lot. The site plan proposes construction of two bus shelters, one in the parking and one at the bus stop on Hendersonville Road.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to create additional traffic congestion or increase traffic hazards. The overall size of the development did, however, warrant submittal of a Traffic Impact Analysis (TIA) that will require modifications and lengthening of the right hand turn-lane on Hendersonville Road.

On December 3, 2006, the Asheville Planning and Zoning Commission reviewed the proposed development and made a positive recommendation (6-0 vote) to approve the project subject to the conditions outlined by staff and with the following conditions: 1) the developer shall provide a pedestrian connection from the bus stop on Hendersonville Road to the shopping center, and 2) the developer shall provide enhanced security in the lower lot due to its physical separation from the upper parking lot and building site.

Subsequent to the Planning and Zoning Commission meeting the developer contacted the City Engineering and Building Safety departments to address the topography constraints in providing a pedestrian connection from the bus stop on Hendersonville Road to the shopping center. Together, it was determined that a 5-foot sidewalk incorporating 5-foot landing pads at regular intervals could be provided along the driveway entrance road to the edge of the lower parking lot where internal sidewalks would than provide a connection to the shopping center. This appears to satisfy the Planning and Zoning Commission's condition noted above. Details concerning security in the lower parking lot will be addressed during the final review by the TRC.

Pro's

- Staff has not received any negative comments from the public regarding this development proposal.
- The overall size of the "renovated" Wal-Mart building (120,000 sq. ft.) is well below the average size of most new Wal-Mart's constructed today (averaging up to 180,000 sq. ft.)
- All existing perimeter vegetation will be preserved and will continue in providing an effective buffer to adjacent less intense commercial uses.
- A reduction in the overall existing impervious surface area eliminates the need for changes to the existing stormwater management on site.
- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the shopping center making the development more compatible with the surrounding area.
- Since the Planning and Zoning meeting, the applicant has revised the application to include upgrades to the exterior façade of the entire shopping center so that it is architecturally compatible with the proposed Wal-Mart façade.

Con's

- Existing topographic changes between Hendersonville Road and the shopping center make it difficult to provide a fully handicap accessible pedestrian connection from the street to the building.
- The building expansion and renovation of the existing parking lot will create the need for several interior retaining walls resulting in a split level parking area. The retaining walls, however, will be screened with vegetation masking the height of the walls.

Staff recommends approval of the project, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; and (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review.

In addition, a request has been received today regarding a portion of Peachtree Road. Said request, by Nettlewood Professional Park, is to upgrade Peachtree Road it in lieu of placing sidewalks on the south side of Peachtree. The purpose behind that is to have a more consistent design of that road going into the Nettlewood development. Staff has looked at that feels comfortable that the road upgrade would be preferable to the pedestrian upgrade because we have other ways to get in and out of the site from a pedestrian standpoint.

Mr. Ashley Storey spoke in support of the expansion, upgrade and renovation of not only the Wal-Mart store, but portions of the Center as well. Even though he felt that the development did not have to be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures, they did accumulate more than the 160 points that would have been required, had it applied.

Mr. Alan Johnson, engineer with Freeland and Kauffman Inc. working on behalf of the applicant, said that the existing site does not meet or come close to the current City of Asheville standards. There is a fair amount of existing vegetation and landscaping around the perimeter of the site and we are working not to impact those areas (Applicant Exhibit 1 - Landscape Plan). There are also two existing stormwater ponds that front Hendersonville Road that will remain in use. Even with the existing site constraints, it is our opinion that the site plan incorporates the site standards and does comply with Appendix 7-F. Wal-Mart will be expanded by demolishing approximately 15,000 sq. ft. of retail shops and about 7,300 sq. ft. of new retail shops will be built. The retail shops that will remain will stay operational during construction and they will receive exterior renovations. With the proposed upgrades, we are eliminating over 250 parking stalls. With this reduction, we will add a lot more pervious coverage on the site. A key aspect of this project is the expanding off the front of the Wal-Mart and the fact that the existing parking lot is sloped at 4% towards Hendersonville Road. In order to address this concern, we created tiered parking. We propose a parking lot through the middle of the parking field and within the island will be two retaining walls which the highest point being approximately 8 feet. With the tiered system, the parking field in front of Wal-Mart will be graded and constructed to the City standards. The western portion of the parking field (the area in front of the retail shops that remain) will receive an asphalt overlay and will be brought up to City standards by implementing and constructing new interior islands. There will be some grading in the rear of the development

(southern area) and the remaining areas behind the retails as well as behind Wal-Mart will receive an asphalt overlay. A concern that was raised was the issue of security, specifically on the lower section of the tiered wall in the parking field. In an effort to address this concern, we will provide plenty of security cameras that will be placed all around the property. In addition, all the on-site lighting will be upgraded to provide the appropriate illumination and adequate safety while adhering to the City's standards. A feature we incorporated with this upgrade is pedestrian connectivity. We have proposed a 5-foot sidewalk that will run down the center of the parking island as well as the areas where the retaining walls are. The retaining walls will be designed with stairs in three areas to allow for additional connectivity throughout the site. There will be direct sidewalk connectivity from the Wal-Mart entrance to the existing Hendersonville Road signal. There will be sidewalks and the necessary landings constructed along the north side of the existing access drive at the signal. There will also be direct sidewalk connectivity from the Wal-Mart entrance to the Peachtree Road right-of-way. These direct connections will have a safe street crossing as all on-site crossings will consist of stamped asphalt. That is a visual and audible stimulus enhancement to alert drivers. We have also worked with the City's Engineering Department on off-site sidewalk locations. Sidewalks will be provided along the east side of Hendersonville Road from the southernmost point of the property north to the Peachtree Road intersection. A sidewalk will also be provided along Peachtree Road fronting the property and a connection will be made to the existing sidewalk on the north side of Peachtree Road. There will be two bus shelters that can be accessed via sidewalks. Other off-site improvements will consist of the lengthening of the right turn lane on Hendersonville Road, providing new pedestrian signals, and upgrading of the landing areas at the existing signal. We are providing a great amount of landscaping on site. We will preserve existing vegetation and also create adequate buffers. We will eliminate parking along the north side of the property (along Peachtree Road) to provide a 30-foot buffer. All retaining walls that will be constructed on site will be screened with vegetation. This development reduces the amount of pervious coverage on the site. The site goes from the existing .3 acre of interior greenspace to over an acre of interior greenspace. He urged City Council to support this project.

Mr. Jim Gallagher, architect for the applicant, discussed the Wal-Mart elevations (City Exhibit 4).

Mr. Fred English, resident in Haw Creek, felt that we don't need this Wal-Mart as there are others around Western North Carolina. He felt we needed to take care of our local businesses.

Mr. John Spake read a letter from Mr. Richard Grant, Member Manager of Nettlewood Associates LLC (Neighborhood Exhibit 1) which reads in part "As we understand it, the current proposal adds a sidewalk with curb and gutter to the southern edge of Peachtree Road, but does not address the northern edge, the width of the road nor the resurfacing of the road. It is our recommendation and desire to see that the applicant not be required to add a sidewalk to this section of Peachtree Road, but in turn be required to upgrade Peachtree Road to as close to a standard width of a two-lane City street and provide for curb and guttering on both edges of the Peachtree Road. This improvement would be much more beneficial to the applicant's project and the surrounding properties. ... We would ask that upon approval of this project, City Council amend staff's recommendation to delete the requirement for a new sidewalk along Peachtree Road and instead require the applicant to widen Peachtree Road to the maximum width allowed by the existing ROW with the installation of curb and gutter on both sides of the road and the resurfacing of the road from Hendersonville Road to where Peachtree Road enters the Nettlewood property (the point of prior improvement). Said letter was signed by Nettlewood Associates, Beverly-Grant, ABC Pediatrics, Asheville OBGYN, Med Oasis, Biltmore Associates, Healthcare Business Consultants, AG Edwards & Sons, Lawson Chiropractic, Southern Community Bank, eRx/Allwin Data, Charter Communications, Skidmore Harris & Burlingham, Spake Real Estate, Academy of Asheville, and Lifehouse Apartments/VOA.

After rebuttal, Vice-Mayor Jones closed the public hearing at 6:52 p.m.

Councilwoman Cape requested shade trees along the pedestrian amenities. In addition, for this to be a pedestrian friendly aspect, we need to make it easy for people to walk. Therefore, she also requested stairs be constructed on the lower tier parking area near Hendersonville Road in addition to keeping the sidewalk and landings on the north side of the property.

Councilman Mumpower asked the developer their thoughts about Nettlewood's recommendation to delete the sidewalk requirement along Peachtree Road and in turn upgrade Peachtree Road. Mr. Storey said they followed staff's recommendation which was not to upgrade Peachtree Road. They have not done any engineering studies or cost factors to determine if that is feasible to do because they have been working on what staff recommended - curb and gutter and sidewalk on our side of the right-of-way on Peachtree Road. They would be happy to talk with the adjoining land owners but because of the uncertainty, they requested that the Road upgrade not be a condition of the conditional use permit.

Councilman Mumpower moved for the adoption of Ordinance No. 3437, granting a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review; and (7) that the requirement for the sidewalk along Peachtree Road be waived if, upon further evaluation, the applicant is willing to upgrade a section of Peachtree Road. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Councilman Newman for a friendly amendment to address the concerns of Councilwoman Cape, Mr. Shuford suggested the condition that the developer and Planning staff explore other ways to make a more direct and safe pathway from Hendersonville Road to the lower level of the parking lot area and in addition that any of the pedestrian ways be treated with landscaping in a manner that would provide shade. Councilman Mumpower and Councilman Davis both accepted this friendly amendment.

Councilwoman Cape felt that the friendly amendment is not strong enough. City Council's job is to state the conditions upon which we are interested in partnering with the developer on this project and we want pedestrian amenities adequately addressed.

Councilman Newman felt the condition should be flexible and maybe the way the site plan is designed is the best and safest way. There may be a shorter route, but there may be some people that would prefer to walk longer than to have to walk up steps.

In response to Councilman Newman, Mr. Shuford suggested that if stairs would be provided in that location to try to make a more direct connection, then it be in addition to what is being proposed here, opposed to something that would be a trade-off. It would need to be reviewed by both our Building Safety Department and our Engineering staff with regard to whether that would be something that would have a lot of use and would be safe.

Councilman Newman re-worded the prior friendly amendment to ask Planning staff and the developer to explore whether there is a more direct pedestrian access that can be added to the development to enhance pedestrian safety and quality access to the site from Hendersonville Road to the lower level of the parking lot area. And if it is staff's determination that it is a feasible connection (doable, practical, safe and is a true amenity that has some merit with regard to pedestrian access to the property), then City Council expects City staff to insist the developer install said access. In addition, that any of the pedestrian ways be treated with landscaping in a manner that would provide shade. Councilman Mumpower and Councilman Davis both accepted this re-worded friendly amendment. Mr. Storey felt confident that they could sit down with City staff and review the factors and respond in the spirit of what Council is saying. Mr. Johnson said that they would continue to work with staff and if it is doable, they will make it happen.

Councilman Mumpower felt that safety above all else should lead the way and trusts that City staff will make that a primary consideration.

In response to Councilman Newman, Mr. Shuford said that there appears to be some negotiation between Nettlewood Associates and the developer about the upgrade of Peachtree Road. If they can work out an arrangement that is satisfactory that enables Peachtree Road to be improved, then City staff would certainly sign off on that. If they cannot work out that situation, then the developer will do what is shown on the site plan, which is the sidewalk and curb and gutter on a portion of Peachtree Road.

The motion made by Councilman Mumpower and seconded by Councilman Davis granting a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review; (7) that the requirement for the sidewalk along Peachtree Road be waived if, upon further evaluation, the applicant is willing to upgrade a section of Peachtree Road; (8) to ask Planning staff and the developer to explore whether there is a more direct pedestrian access that can be added to the development to enhance pedestrian safety and quality access to the site from Hendersonville Road to the lower level of the parking lot area. And if it is staff's determination that it is a feasible connection (doable, practical, safe and is a true amenity that has some merit with regard to pedestrian access to the property), then City Council expects City staff to insist the developer install said access; and (9) any of the pedestrian ways be treated with landscaping in a manner that would provide shade, carried on a 5-1 vote, with Councilman Freeborn voting "no."

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At 7:40 p.m., Vice-Mayor Jones called for a brief recess. After the recess, at 7:58 p.m., Mayor Bellamy arrived at the meeting.

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR A RESIDENTIAL DEVELOPMENT CONSISTING OF 162 SINGLE AND MULTI-FAMILY DWELLINGS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 8:00 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 Single and multi-family dwellings.

The Asheville City Development Plan 2025 states that infill development offers another method for implementing the City's Smart Growth vision. There are hundreds of vacant and under-developed properties scattered throughout the City and there are numerous developed properties that are ripe for redevelopment.

Another important goal of the City's Smart Growth program is the protection of open space and other natural areas. The positive aspects of open space preservation are many and include environmental benefits such as the preservation of native plant communities, the protection of wildlife habitat, increased water quality, and reduced erosion control. Protecting and restoring connections between parks, riparian corridors, greenways and other important ecological areas is a key concept for conservation development and ecosystem management. Networks of preserved open spaces and riparian corridors can also help to shape and guide urban form. Approximately 36.2 acres of the site is to be retained as contiguous open space of areas greater than two acres with large areas in the hillside area (>2,200 ft.) preserved as such. Additional open space is provided as isolated pockets surrounding the developed areas. The total impervious surface of the project is limited to approximately 16 acres according to the submitted site plan. The development is to include a park with public access along Beaverdam Road, and an existing structure within this area is proposed to be converted into a community building/museum.

Lastly, the comprehensive plan encourages development that designs landscapes to absorb stormwater instead of carrying it off-site in storm sewers. The proposed development incorporates a number of best management practices including vegetated inceptor swales and rain gardens to treat and maintain stormwater onsite.

One of the objectives of the Strategic Operating Plan (SOP) is to promote strategies that encourage sustainable, high density, infill growth. Although this development is considered low density at less than 2 units per acre and is a greenfield development, it does propose a more sustainable development pattern that balances other goals. Additionally, the SOP supports planning that ensures transportation choices; a bus shelter will be placed in the proposed park along Beaverdam Road that may be reached from connections within the neighborhood.

This review concerns a proposed 162 single and multi-family neighborhood with development standard bonuses for number of dwelling units per building, setbacks, sidewalks and road modifications (City Exhibit 3 - Aerial Map). Pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO), development standard bonuses for residential zoning districts are reviewed as a conditional use.

The subject site is located in north Asheville, the vast majority of which is located within the City of Asheville's corporate limit, at 77 Elk Mountain Scenic Hwy (City Exhibit 3 - Site Plan). A small portion of the subject property is located within unincorporated Buncombe County. The only development proposed in the County's jurisdiction is a small portion of a driveway. The subject property consists of 17 parcels totaling approximately 82.7 acres in area. Two of the lots are zoned RS-2 (Residential Single-Family Low Density District), and the other 15 lots are zoned RS-4 (Residential Single-Family Medium Density District). The subject site is surrounded almost entirely by low density residential development and the Asheville Country Club (west).

The RS-2 zoning district was created to establish a low density for single-family dwellings and other compatible uses in recognition of environmental constraints such as, but not limited to, steep slopes, impervious soils, high water tables, and flooding. It is also the intent to preserve the general welfare by protecting important resources such as, but not limited to, watersheds and view sheds. In addition to recognizing environmental constraints and preserving important resources, the district is also intended to stabilize and protect the district's residential character while promoting a suitable environment for single-family living. The RS-4 zoning district was created with the same intent, but to establish a higher density at 4 units per acre and to support opportunities for other non-residential uses normally required to provide the basic elements of a balanced and attractive residential area.

Early in the application process, the developer held a separate neighborhood meeting on December 14, 2006, to help communicate the proposed development plans to the community. Despite these efforts, staff has continued to receive numerous phone calls, e-mails, and other correspondence expressing a wide variety of technical and non-technical concerns throughout the review process.

The proposed development is classified as a "Planned Community" allowed under State statutes which allows for a different form of home ownership not commonly considered in Asheville. The community will appear and operate much like a single family neighborhood but without individual lot ownership. Instead, all property beyond the individual structures will be owned and managed by a homeowner's association. This affords the developer more freedom in designing the layout of the community to achieve a comparable number of units while preserving additional open space and reducing infrastructure costs. The underlying zoning of RS-4 would not normally permit this form of development; however, Section 7-16-2(d)(17)(c.) of the UDO provides that, *in order to promote exceptional development projects, the city council may permit the alteration of development standards for projects that exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood.* Through the various site plans, the applicant must demonstrate that the proposed development provides a minimum of three "exceptional development" features. The applicant has chosen to meet this requirement by incorporating the following standards into the project design:

- Higher quality building design
- Building design and orientation sensitive to surrounding neighborhood context and/or community heritage
- Enhanced stormwater management
- Pedestrian orientation and amenities (proposed to be restricted to residents only)
- The inclusion of transit facilities

At their December 18, 2006, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in their staff report. However, certain aspects of the project continued to be explored with various city departments including building safety and engineering. At the TRC hearing, the applicant agreed that the proposed roads, with the exception of the areas indicated as driveways, would be public and built to city standards with the understanding that the applicant would continue to investigate the possibility of a gated community with private roads to be maintained by the homeowner's association. Furthermore, because of the existing topography, the applicant has proposed to deviate from standard sidewalk design but would still have to comply with all applicable state accessibility and building code standards which becomes significantly more challenging when proposing private roads and rights-of-way. Prior to Planning & Zoning Commission meeting, the applicant's designers did meet with representatives from the Building & Safety Department and, ultimately, were able to successfully demonstrate the project's ability to comply with the state's accessibility code while maintaining private roads and rights-of-way. The City of Asheville does allow private roads provided they are designed and built to public road standards; however, while there are no technical standards expressly prohibiting the use of gates, Planning staff did continue to advise the applicant that the recommendation beyond TRC would be that the roads and sidewalks remain open for public access regardless of the road status.

At the January 3, 2007, meeting of the Planning and Zoning Commission, a large number of residents came out to express concerns and opposition to the proposed development. The primary concerns voiced included:

- Density and scale
- Increased traffic/insufficient road infrastructure
- Decreased quality of life
- Devaluation of property
- Pedestrian and bicycle safety
- Restricted access (lack of connectivity to community)
- Increased stormwater runoff and erosion control
- Protection of endangered species

After significant public comment and detailed comments from the developer and the developer's counsel, the Commission deliberated at length and, after 2 failed motions, ultimately voted to approve the project (5-2) subject to the conditions recommended by staff with the following modifications:

- Eliminate condition #9 – that all roads and sidewalks remain open for general public access (no gates).
- Add new condition - explore the staff recommended Edgedale Dr./Tsali Trail access point for suitability as an emergency access only or investigate other more suitable locations for a third access.
- Add new condition - that the stormwater management measures be improved beyond those currently proposed.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety. Although all minimum technical standards appear to have been met the City's Standards and Specifications manual encourages connectivity of streets for safety and improved access and where permitted, a pedestrian connection to adjacent development may be required for increased pedestrian safety. The applicant is proposing to restrict access to the new roads and sidewalks and by not allowing open public access so it removes the opportunity for improvements to traffic congestion and pedestrian safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The applicant has proposed a number of measures that will lessen the environmental impact on the project site. By clustering development, the proposed design decreases the amount of grading that will need to occur in order to accommodate the development while preserving a greater amount of overall open space. Over one-third of the property will be preserved as contiguous open space of areas greater than two acres. Additional open space is provided as isolated pockets surrounding the developed areas. It should be noted that a traditional subdivision would most likely result in a greater loss of forested areas, an increase in the amount of grading, lessen the likelihood for project amenities and would not require site plan review by the Planning and Zoning Commission or City Council.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The master plan displays a topographically sensitive design that preserves a significant amount of open space including preserved buffer areas around the perimeter of the site; additionally, the applicant has stated that the homes will be highly detailed and constructed with high quality materials. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed development is a low density development of detached and attached single family homes and, as such, would integrate well with other single-family residences in the area. Additionally, a significant amount of open space is being preserved on the site effectively mitigating the mass of some of the larger structures through buffering and distance separation.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The application of exceptional development standards and proposed site features supports several goals and objectives as described in both the *Asheville City Development Plan 2025* and the *Strategic Operating Plan*. However, staff remains concerned over the applicant's desire to restrict access to the proposed roads and sidewalks through gates or other means which would reduce the projects attractiveness in terms of community connectivity and integration which is also a goal of the *ACDP 2025*.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The development will gain access from Wild Cherry Road, Elk Mountain Scenic Hwy., and Tsali Trail. Additional fire access points will be provided from Elk Mountain Scenic Hwy., Wild Cherry Rd., and Killian Rd. A bus shelter is being provided in the proposed park along Beaverdam Rd. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact analysis has been prepared and submitted to the city engineer for review. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard. Alternative locations for the third access point (Tsali Trail) are possible and can be considered.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- A significant amount of the site will be preserved and undisturbed.
- Extensive trails and sidewalks would be provided connecting residents of the new development to the larger community.
- A transit shelter will be provided.
- Low Impact Development (LID) measures are proposed to aid in managing stormwater quality.
- A community park is proposed along Beaverdam Rd.

Cons:
- Project will require modifications to site development standards including number of dwelling units per building, setbacks, stormwater, sidewalk, and road design.
- Applicant wishes to gate the community and prevent public access to roads and sidewalks which, if approved, would negatively impact pedestrian and vehicular connectivity.

Staff concurs with the Planning & Zoning Commission and recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those listed below. Additionally, staff recommends approval to the development standard modifications listed above.

Staff would also recommend that Council consider the issue of whether the roads and sidewalks should remain open for public access. Should Council feel that this is not feasible, then staff would recommend that other options be explored including, but not limited to:

- Keep sidewalks open for public access (but not roads)
- Require other off-site improvements to aid in pedestrian safety
- Manage public access for vehicles by allowing the gates to be open from sun-up to sun-down and at any time as requested by emergency management officials.

Mr. Craig Justus, attorney representing the developer/applicant, (Applicant Exhibit 1) believed that this is an exceptional site design for this property. It is the position of City staff that they meet all seven standards for a conditional use permit. We are, however, asking for a few modifications. The City's 2025 Plan sets out many goals for development of the City and this project meets many of those goals. The only major point of difference between us and staff is whether this community should be gated. He said the Thoms family has owned this property since 1943 and though all those years this property has been a private estate. We are trying to maintain the private estate nature of this piece of property. We believe this project is the golden goose for the City of Asheville and this project should be approved because it enriches the community and the City of Asheville.

Mr. Kent Smith, CEO of Golden Development Resources, (Applicant Exhibit 2) said that Thoms Estate is a new standard for development. He looked for a viable way to develop the property and not compromise its integrity as a private estate in the process. This is a very attractive development plan that preserves greenspace. They developed a plan and met with the neighborhood. A number of their concerns are not necessarily as it relates to this development plan but about the City's ability to provide services for them and any additional homes. There is a need for refinement of the guidance that is provided to the development community. Regarding the concern of stormwater, our stormwater system controls the stormwater at a higher level than is being currently controlled. We will increase the value of the homes on a per unit basis through open space and the introduction of amenities, which is reflected in their price point. He noted that those things lose their value if they become available to the public at large. Our plan consists of (1) pedestrian-oriented streets, sidewalks and trails; (2) preserved open space - (a) stream and wildlife corridor has been preserved; (b) 36.7 acres of open space (44.5%); and (c) preserved open space is associated with the preserved historic structures on site; (3) environmentally sensitive design (e.g., stormwater management and preservation of steep slopes); (4) 5.28 acre of green space along Beaver Creek (community park) and restoration of the Killian House (circa 1834) as a community building; (5) 5 less acres of pavement; and (6) lower density. He showed a comparison of their plan and an alternate plan. The alternate plan is a plan that can be done with approval at the TRC level only. The alternate plan has zero green space and is a classic residential subdivision and the stormwater is controlled with pipes, discharging into Beaverdam Creek. Regarding traffic, they have two access points - one on Wild Cherry Road and one on Elk Mountain Scenic Highway. In order to keep people from driving through the development's residential neighborhood, they want the development to be gated. In the event of emergency access, even with gates, any emergency vehicle operators can open those gates and leave them open for alternate emergency access. We are replacing over a mile of new water and sewer lines which will benefit the residents on and off the site. The two access points - one on Tsali Trail and one off Wild Cherry that they don't know why they are required. We would like the ability to eliminate those two access arteries, which will receive tremendous support from the neighborhood. Alignment with 2025 consists of (1) managing stormwater and runoff to better-than-predevelopment standards; (2) preservation of open space; (3) green building techniques (clustering of homes preservation of green space, using environmentally sensitive materials and building practices); (4) adaptively reuse existing onsite structures; (5) provide area for public transportation and a transit shelter; (6) design home layout to minimize impervious surface; (7) provide a public park on Beaverdam Road; (8) historical preservation of Killian House; and (9) encourages walking and biking. He urged Council's approval for (1) two access points (specifically eliminating the access point onto Tsali Trail); (2) removal of fire access easement over Dickerson Lane; (3) removal of sidewalk requirement on Tsali Trail (allows existing

vegetation to be preserved); (4) private streets and controlled access; and (5) setup a task force to evaluate sustainable development and a means to encourage it.

Mr. Robert Dungan, attorney representing Mr. and Mrs. Pearlman, Ms. Cathy Mills, Ms. Virginia Mills, Mr. Ed Fisher and Ms. Susan Phillips, believed that City Council should not approve this conditional use permit as designed because it fails to meet many of the conditional use permit standards. Regarding Condition No. 2, if the staff feels that a traditional subdivision would most likely result in a greater loss of forested area and more grading, an exhibit demonstrating a legally compliant "traditional subdivision" should be submitted to demonstrate this finding. He said the green spaces in the plan are isolated and not contiguous. In addition, what will be the maintenance costs be to the City of the public park and the Killian House. Because there will be increased water flow, there should be forested corridors through the runoff areas. Regarding Condition No. 3, if the staff finds that developer will commit to high quality architecture, then a guarantee of "high quality" needs to be part of the conditions of approval. At a minimum, a package of design guidelines should be submitted to prove this finding. Regarding Condition No. 4, the proposed site is inconsistent with the pattern of development of Beaverdam and Elk Mountain Roads. Regarding Condition No. 5, the proposed site is inconsistent with smart growth policies, the goals of City Council, and transit supported development. In the City of Asheville 2025 Plan, Land Use Goal III, it says the City should permit and encourage transit supportive density (8-16 units per acre minimum) along and adjacent to major corridors and at logical transit nodes. The majority of the density is too far to support transit. They would have to move the density to where it can support transit. In the City of Asheville 2025 Plan, Land Use Goal V, it says the City should encourage the construction of affordable housing throughout the community. In the City of Asheville 2025 Plan, Land Use Goal IX, Strategy 5, it says the City's open space standards should require the connection of open space areas where feasible. The green spaces should be contiguous habitat in order to provide environmental corridors for habitat circulation. And, in the City of Asheville 2025 Plan, Land Use Goal X, Strategy 1, the City should revise its subdivision regulations to require pedestrian, where feasible, vehicular connections within the subdivision and between the subdivision and adjacent property. A gated entry will facilitate access, but negate neighborhood connectivity which contradicts the goals of the 2025 Plan. Regarding Condition No. 6, the bus shelter is required for this project, but the site, as proposed, does not support this facility because the majority of the density of the site is too far away from the facility to make effective use of it. In addition, he questioned whether a project three miles from the City center qualifies as infill development. Regarding Condition No. 7, there were some questions about traffic off of Kimberly as to how many of those people drive up and use Town Mountain Road to get to the City as opposed to use Beaverdam Road, and whether or not there was any attention in the report to the traffic coming out of the Asheville Country Club and the numerous golfers. He felt City Council should turn down this development as designed. The developer should reconsider his design and make changes, such as move the majority of the density toward Beaverdam Road; connect the undisturbed habitat with the undisturbed forest corridors; design guidelines for the architecture that we would know what is coming; no gates on the development; delete the park; and keep the floodplain with the homeowners association maintaining it or use it as an alternate ingress/egress point opposed to Wild Cherry Road.

The following individuals spoke against the conditional use permit for various reasons, some being, but are not limited to: entrance will be cut directly across from 66 Elk Mountain Scenic Highway, causing depreciation of property values and destroying peace and privacy; during build-out the roads will be subject to heavy equipment, construction traffic, excessive use, problematic accidents, problems with passage of school bus traffic, and endanger lives of children; grave concern for bicyclists who use Elk Mountain Scenic Highway to access the Blue Ridge Parkway; the entrance should be located at the entrance of the Killian House property; the Killian House entrance is only 6/10 of a mile from the Beaverdam Fire Department; there are 4 existing hard surface entrances to the Thoms property from Elk Mountain Scenic Highway that could be used for emergencies; suspicion that the City rebuilt a bridge on Wild Cherry Road and

widened the bridge on the proposed subdivision side; we are endanger of losing our value of place; no gated community because gates are designed to keep the community out and are built to market to wealthy people who are coming from other places who are afraid of crime; increased water runoff for people south of the development, therefore, request City verify the developer's hydrological engineering so flooding does not worsen; development is being built very close to a floodplain area; increased traffic on area streets, possibly even with gridlock on Kimberly Avenue; both Elk Mountain Scenic Highway and Beaverdam Road are already hazardous to pedestrians and bicyclists; the developer should be required to install sidewalks around the entire perimeter of the property, especially around the property abutting Elk Mountain Scenic Highway; connection of the walkway south of Tsali Trail to Beaverdam Drive and the proposed Beaverdam Greenway; speed of traffic on Elk Mountain Scenic Highway is too high; proposed development homes will shadow existing modest homes; eliminate entrance on Tsali Trail; proposed density is excessive and places too much burden on the existing infrastructure; placing the bulk of the high density near the existing single-family homes depreciates property values; only the residents of the development will benefit from the greenspace; the actual number of units that could be built on Thoms Estate property of 83 acres may be somewhere between 100 and 140; traffic analysis is flawed in that none of the entrances are clearly indicated on the site plan; request for City to prohibit gated communities; existing traffic corridors cannot accept the additional traffic from development of the Thoms Estate; in the immediate future, other developments are proposed or have been approved that will increase the population, traffic and infrastructure requirements in Beaverdam even more; the development holds no tangible amenities for the existing communities; residents at the top end of Beaverdam Road are concerned about how they will be evacuated in an emergency, e.g. flash flood; request for a moratorium on building large subdivisions in Beaverdam Valley until the roads, water and sewer systems are upgraded to handle the additional stress; since there is no hope to widen Beaverdam Road, Elk Mountain Scenic Highway, Kimberly Avenue and Merrimon Avenue, the City should work with the County to adopt a policy with a long range prospective of traffic before consideration of the Thoms Estate development; and the history of the Thoms Estate has been an open Estate until the current owner has taken residence:

Mr. Jerry Sherrill, resident on Elk Mountain Scenic Highway
Mr. Brad Brock, resident of lower end of Wild Cherry Road
Mr. Sean O'Connell, resident on Edgedale Drive (Neighborhood Exhibit 2)
Ms. Susie Berl, representing the Creekside Homeowners Association
Ms. Julie Roepnack, resident on Elk Mountain Scenic Highway
A resident on Wisteria Drive
Mr. Gerald Green, resident on Cumberland Avenue
Dr. Robert Phillips, resident on Wisteria Drive
Ms. Elaine Light
Ms. Nickie Marmo, resident on Beaverdam Road
Ms. Julie Niwinski, resident on Wild Cherry Road
Mr. Don Cole, resident on Robinhood Road
A resident on Brooklyn Road
Ms. Mary Jo Simpson, resident on Wild Cherry Road

Mr. Bill Wescott spoke in support of the conditional use permit. He felt the developer is restoring a beautiful piece of property, especially with the preservation of the Killian House. This is a high quality development. He hoped that some of the issues could be resolved because the gated and traffic issues are not peculiar to this Thoms Estate development.

Mr. Sam Wheeler, resident on Tsali Trail, spoke in support of the development because there is no perfect development. The issue of gates is purely an economic issue.

Ms. Francie Talley, resident on Wild Cherry Road, spoke about the need for a walking/ biking trail on Beaverdam Road as development increases. Being able to use alternative ways of transportation is an environmental necessity.

Mr. Craig Justus noted that change is very emotional. Developers who build in the community need to know what is expected of them and they do meet those requirements. This project is 33% less density than what the City's ordinance allows on this piece of property. There are technical standards that say residential lots shall abut a public street or a private street, built to public standards. Throughout the ordinances, there are references to allow private streets in the City of Asheville. There is no written policy that says the City is going to prohibit gated communities. The developer has presented a plan and has spent a lot of money in anticipation of a great project that preserves a lot of open space and he is asking for private roads and a gated community to control access. Unless the development drives the need to have connectivity, City staff has not said that connectivity is required as a manner of normal operation of the roads in that area. We have dealt with the connectivity situation regarding emergency vehicles. The developer is dedicating a park to the City in order to conform to the City's Greenway Plan. The development standard variation they are asking for is clustering to preserve open space. He urged Council to approve the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 9:58 p.m.

Throughout discussion, Mr. Pennington responded to several questions, some being, but are not limited to: will there be only one construction entrance throughout the build-out; why was the cluster approved which was so close to a road; what kind of buffer is around the clustered area and around the entire perimeter of the property; did the City's bridge upgrade have anything to do with this project or was it normal maintenance; does this development represent smart growth; and does the Town of Biltmore Forest have a policy prohibiting gated communities.

In response to Councilman Freeborn, Mr. Pennington said that in order for the developer to proceed with the alternate plan without Council approval the property would have to be a major subdivision with review by the TRC for all applicable codes. This property does have hillside areas greater than 220 feet which regulate grading and the amount of density you can have. Also, when you subdivide there are certain lot frontages you have to have and abut a public street or a street built to City standards. Staff only evaluated the plan before Council and not the alternate plan. If the developer goes through TRC with a major subdivision element and if they met all of their density requirements and the grading allowances, then it is something that could be reviewed before that body as a major subdivision.

Upon inquiry of Councilman Mumpower, Mr. Pennington said the developer has proposed some best management practices in relation to vegetated inceptor swales, rain gardens and other storm control devices to maintain water on-site.

In response to Councilman Mumpower, Mr. Pennington said that we do not have a formal policy restricting people from putting in gated communities. The statement in the Technical Standards Manual states "the City discourages the use of cul-de-sac and encourages connectivity of streets for safety and improved access. Where permitted, a pedestrian connection to adjacent development may be required." Planning & Development Director Scott Shuford also responded that we discourage gated communities where we can, but we do not have anything in our Code to prohibit them. "The Ramble" is a gated community with private streets that meet the City's standards.

When Councilman Mumpower asked if Tsali Trail could be eliminated as an access, Mr. Pennington said the entrance at Tsali Trail was originally proposed to line up with Edgedale Drive. There was an outcry from the neighbors about the impact of having that line up. Then

there came a proposal from former Traffic Engineer Anthony Butzek to shift that westward so it would be closer to Elk Mountain Scenic Highway, and by doing that, it might have lost its intent.

Regarding the public parking being proposed, Councilman Mumpower asked if the City has reviewed the cost factors, or if there is even a need for a park that size in a floodplain. He wondered if this will be a City benefit or a liability. Mr. Pennington responded that this is in the conception phase and he didn't believe it has been discussed with the Parks & Recreation Department.

Councilwoman Cape hoped that this development is not an either/or situation - either Council approves the developer's plan or they build the alternate plan. She didn't hear the neighbors say they wanted to drive through the new community, only that they wanted to walk in this new community and be neighbors. Mr. Pennington noted some options that might aid Council in reaching a compromise regarding the issue of whether the roads and sidewalks should remain open for public access. Should Council feel that this is not feasible, then staff would recommend that other options be explored including, but not limited to: (1) keep sidewalks open for public access (but not roads); (2) require other off-site improvements to aid in pedestrian safety; and (3) manage public access for vehicles by allowing the gates to be open from sun-up to sun-down and at any time as requested by emergency management officials.

Councilman Davis asked if other growth in the area was considered in the traffic study. Ms. Gay Sprague, Sprague & Craig Consulting Engineers in Greenville, S.C., said that City staff did ask her to review the TIA because the current Traffic Engineer conducted the study before he became employed by the City and that would be a conflict of interest. The City's ordinance requires background traffic be included and the new approved development was included in this study. There was an assumption of a very steady rate of growth on the road (which included the new approved development). The City's ordinance requires that analyses be done by standard methodologies and those were used in the study and all the results came out at an acceptable level of service.

In response to Councilman Davis, Mr. Shuford said that we knew that there was an effort to provide some level of community access to the area for a park. But, this is the first we heard that it was going to be a public park. As a result, we don't have the analysis to say that is something that we as a City can take on. That's not saying it's not something extremely desirable either. As far as that component is concerned, if Council wants to move forward, he will try to craft a condition for Council, or if Council wants to postpone action, staff will get more information.

Mr. Smith said that the controlled access to the community is in the minds of the consumers and at this price point is an added element of security. If it is the consumer's perception, it is their reality and they will pay more for it. We had no intention of offending anyone by the introduction of the gates. We did it with the hope we could reduce the density and increase the value. He was not opposed at all to evaluate locations (Tsali Trail and Wild Cherry Road) to find a good, safe spot along Elk Mountain Scenic Highway to where we could have pedestrian access so they could enjoy some of the open areas and some of the common amenities that are available there.

Councilman Davis hoped that Tsali Trail could be used for possibly a pedestrian access, but felt it should be eliminated as a vehicular access.

When Councilman Newman asked Mr. Dungan if he was concerned that if Council did not approve this plan, with conditions, that the alternate plan could be built without City Council approval, Mr. Dungan replied that he was not concerned in that he didn't think they can get that many units on the property once they have to meet all the City's requirements.

Councilman Mumpower moved to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; and (9) a minimum of two pedestrian access points onto the development. Said motion died for a lack of a second.

Councilman Mumpower said that this is a city and it has to grow. If people don't want property to be developed, then they must purchase it or otherwise accept the fact that City Council does its best with smart growth, which consists of trying to be fair and even-handed. Personally he doesn't like gated communities, but that's not his role. His role is to look at our governing ordinances and determine if they have met the criteria and did we set up a filtering process that they had a reasonable chance of getting through. Then we make a decision on whether they tried to make a good faith effort to do something with their property within the restraints of our governing ordinances. He does find that they do meet the seven conditional use standards.

Upon inquiry of Councilman Freeborn, Mr. Smith said that they had no problem with eliminating the access point onto Tsali Trail.

In response to Councilman Freeborn regarding the long-term costs associated with the public park, Mr. Smith said that they never got into defining exactly what that park was. It seemed like a logical use of the land. We have let it evolve along the way. He would like the opportunity to evaluate whether putting in some kind of a conservation easement or something that might foster a wildlife habitat or something like that makes sense, but he wasn't sure what that is at this point.

When Councilman Freeborn asked what the price point would be, Mr. Smith said they haven't finished the pricing structure, but suspected they would range from approximately $400,000-1,000,000.

In response to Councilman Freeborn, Ms. Sprague said that the intersection at Merrimon Avenue and Beaverdam Road is currently at a level of service "C" and in the build out year (2010), with the other developments in the area and some regular rate of growth, it will be a level of service "D".

Councilman Freeborn said that before the project is built out, he feared that people will before Council asking that more public dollars be spent on that intersection. He felt this is a model project, but not on a road that is already at a level of service "C". He feels this will be a burden on our community. He can understand that a gated community will drive the price point, but we have other high end communities in Asheville at the same price point that are not gated.

We need to make it clear to the development community what exactly it is that we want, because we are growing as a community and we do have infill issues. This isn't the kind of infill that we want to see, but the essence of the project is what we want to see.

Councilwoman Cape said that the International Traffic Engineers have just come up with a traffic analysis that level of service is not an adequate way to talk about traffic. She would like City Council to direct its staff to look at traffic analyses that makes a difference in our community, not just on level of service.

Councilman Cape moved to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) There be two accesses to the project - one at Elk Mountain Scenic Highway and one on Beaverdam Road, with the Killian House being a gatehouse to be maintained by the developer; (10) accessibility for pedestrian and bicyclists amenities through the community; and (11) move the parking in the multi-family area so that they are internal to the project. This motion was seconded by Councilman Davis.

Councilman Mumpower felt that the elimination of the Tsali Trail as an access point should be added as a condition, as well as some language regarding the public park and making it our option to whether we accept it or not.

When Councilman Mumpower asked what risk factors are involved in the application of our ordinances on an arbitrary basis, City Attorney Oast responded that we may be at risk of having the City Council decision overturned.

Regarding to the access on Beaverdam Road, Mr. Justus said that one problem was with the site distance. In fact the entrance on Beaverdam Road was the developer's first choice. But, the former City Traffic Engineer didn't think it was a good idea.

Councilwoman Cape requested that we have an analysis of whether or not an entrance onto Beaverdam Road is safe and if so, to recommend that.

With regard to the access on Beaverdam Road, Mr. Shuford said that there are a lot of constraints and a lot of consequences of trying to access directly onto Beaverdam Road as opposed to utilizing Wild Cherry Road, ranging from environmental consequences to some of the site distance issues. From staff's standpoint, taking into account the former City's Traffic Engineer's comments, staff is comfortable with two access points.

Councilwoman Cape and Councilman Davis both agreed to delete condition nine from their motion because of the constraints of accessing directly onto Beaverdam Road.

Councilwoman Cape and Councilman Davis both agreed to include a condition to eliminate Tsali Trail as an access point.

Councilwoman Cape felt it was important for the developer preserve the Killian House. It is an asset to the entire community, including the development. City Attorney said we know we want a greenway through that property. As far as preserving the property or dedicating it as a public park, that is an issue we don't have enough information on to make a decision. Therefore, he suggested a condition that the developer dedicate a greenway through that property and that the Killian House and the associated acreage be offered to the City as a park. We then have the option of not accepting it and if for reasons satisfactory to us (like it's too expensive and we don't accept it), and that if the developer chooses to use the property in another way, it comes back to City Council as a modification to the conditional use permit.

Councilwoman Cape and Councilman Davis both agreed to include a condition to get a greenway through that property and that the Killian House and the associated acreage be offered to the City as a park.

Mayor Bellamy called for a vote on the following motion, which was made by Councilwoman Cape and seconded by Councilman Davis: Motion to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) accessibility for pedestrian and bicyclists amenities through the community; (10) move the parking in the multi-family area so that they are internal to the project; (11) eliminate Tsali Trail as an access point; and (12) the developer dedicate a greenway through that property and that the Killian House and the associated acreage be offered to the City as a park. Said motion failed on a 2-5 vote, with Councilwoman Cape and Councilman Davis voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn, Councilman Mumpower and Councilman Newman voting "no."

Mayor Bellamy didn't feel the project meets the seven conditional use permit standards, with at least two of those standards not met being Condition No. 2 and Condition No. 7. She didn't feel the stormwater issues were addressed adequately. She felt the density on the developer's plan is located where it is because of the slopes and the alternative plan did not take into consideration any of the steep slopes. She was concerned that the issues raised today by the neighborhood are the same issues they expressed months ago, thus raising a concern of a neighborhood that is inclusive and inviting. There are some larger issues City Council will need

to address. Our subdivision ordinances were created at a time when we needed the extra development in our community so we were open to a lot of different changes. Now that we are doing a lot of infill development, it is a problem and that ordinance needs to be addressed sooner rather than later. In addition, our steep slope ordinance will be coming before Council soon. She personally doesn't support gated communities, however, a few months ago the Housing Authority said that a solution to their issues is a gated community and Council felt that was okay. We do need guiding principles to the UDO. We need to tell developers what the core values are that we want as a City Council. We need to decide what development and growth do we really want to occur and we also need to talk to the County about their land use ordinances and their desire for growth.

It was the consensus of City Council to instruct the City Manager to continue working on the issues raised by Mayor Bellamy.

Vice-Mayor Jones explained why she felt that Condition No. 4 and Condition No. 7 were not met by this project.

When Mayor Bellamy asked if the developer would be willing to review the concerns and try to address them, Mr. Justus replied "yes", but Council will need to give them guidance on which items they which addressed. Because, due to time constraints, he didn't have the opportunity to state that the developer will be doing better than what is existing now with stormwater. In terms of traffic, the experts, including the City's Traffic Engineer, said there will be no problem with traffic and if at the TRC stage they would have imposed something upon them, they would have negotiated with that. They are willing to talk about traffic issues, but are uncertain who to talk to.

Mr. Shuford said that City Council has given staff a lot of input and we know what the issues are. We can start to address several of the issues. Another option would be to refer this back to the Planning & Zoning Commission for consideration and input on the specific issues.

After a brief discussion, Councilman Mumpower moved to reconsider this conditional use permit. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Mumpower and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting "no."

Councilman Mumpower moved to table this conditional use permit for an indefinite period of time. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Mumpower and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting "no."

City Attorney Oast said that the public hearing will be re-advertised with notices being sent to the appropriate abutting property owners. He noted that City Council can re-open the public hearing when this matter comes back before Council, allow the public to comment only on the new information presented.

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 175 MARIETTA STREET FROM INSTITUTIONAL DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING IN ORDER TO REVIEW ACCESS FOR A FUTURE COMMERCIAL DEVELOPMENT

At the request of the petitioner, due to illness, Councilman Davis moved to continue this public hearing until February 20, 2007. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO THE BILLBOARD STANDARDS

Mayor Bellamy said that the public hearing on this matter was held on January 9, 2007. At the request of City Attorney Oast, Councilwoman Cape moved to continue this matter until February 27, 2007. This motion was seconded by Councilman Davis and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-29- RESOLUTION SETTING A PUBLIC HEARING DATE ON MARCH 20, 2007, ON AN ECONOMIC DEVELOPMENT AGREEMENT AND VOLUNTARY ANNEXATION FOR BILTMORE PARK TOWN CENTER

Summary: The consideration of a resolution fixing the date for a public hearing on an annexation agreement and voluntary annexation for Biltmore Park Town Center.

Biltmore Park Town Center is a proposed high-density, mixed use development project in south Buncombe County. The development program consists of approximately 200,000 sq. ft. of retail/dining; a 50,000 sq. ft. 15-screen cinema; 100,000 sq. ft. of new office space; 150 room hotel; approximately 264 housing units (175 rental/89 condo); and 1,850 spaces of structured parking. The estimated capital investment for the project is $123-130 million. Job creation of 1,200 new jobs is expected at build-out. Construction employment is estimated to create 300 jobs. The developer has requested consideration being given for this investment and its early annexation in the form of an economic development grant agreement.

The project offers a number of important public benefits, and the developers have agreed to an immediate voluntary annexation of the project area, approximately 35 acres, which is currently not in the City.

The economic development grant in consideration of immediate voluntary annexation is to be paid in 5 annual installments, which take into account the prospective tax revenues (property, sales, etc.) from the property coming to the City, beginning with calendar year 2008.

Pursuant to NCGS 160A-31, petitions for voluntary annexation must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in NCGS 160A-31.

This project will require two actions, both of which are interdependent on each other for City involvement:

1. Approval of voluntary annexation agreement; and
2. Approval of economic development agreement.

The parties have agreed in concept to the terms outlined above, and the respective staffs are working out the details. These two interdependent agreements may be combined into one document. The law requires a public hearing on ten days notice for the voluntary annexation. Council also holds public hearings for economic development incentive agreements. These will be scheduled to coincide.

Pros:

- Provides for orderly growth of City and growth of tax base through acceptance of appropriate areas into corporate limits where owners desire annexation.
- Provides new economic development anchor opportunity for the City, by providing new City area to attract new employers and jobs, including construction jobs for extended periods.
- $123 million increase to City tax base at project build-out.
- Meets the City of Asheville's definition of Smart Growth: "...makes efficient use of land, fully utilizes urban infrastructure...promotes variety of transportation & housing...protects architectural & environmental character of the City through compatible, high quality, & environmentally-sensitive development practices...implemented through effective policies, regulations, capital projects & incentives"
- Increase Asheville's efforts to develop Sense of Place and additional destinations to enhance tourism and length of visitor stays and increased visitor spending.
- High density mixed use and structured parking reduces land use by 23 acres.

Con:

- Marginal increase in service costs.

March 20, 2007, is the date recommended for the public hearings on this matter. Should City Council decide to proceed, the effective date of annexation would be April 30, 2007.

City staff recommends City Council adopt a resolution fixing the date for a public hearing on an annexation agreement and voluntary annexation for Biltmore Park Town Center.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-29, setting a public hearing for March 20, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 210

VII. OTHER BUSINESS:

Councilman Freeborn explained how the community can help Vance Elementary School to raise funds for worthy causes.

Councilman Mumpower presented the new Drug Commission poster for January-February, 2007. He also announced a short program on Thursday, February 22, 2007, sponsored by the Drug Commission - Shine Some Light on the Harms of Hard Drugs and encouraged the community to participate.

Mayor Bellamy announced a play at the Reid Center on Sunday, February 18, 2007. After that, the Department of Corrections Secretary will participate in a fund-raising dinner for the renovations at the Reid Center.

Councilwoman Cape briefed Council on a national conference she attended which looked at different ways in our community of health, land use planning, climate protection, etc. and the partnerships around those issues.

Mayor Bellamy briefed Council on a meeting she recently attended (which was the reason why she arrived at the Council meeting late) which dealt with the issue of supporting our court system with additional funding from our governor and our legislators. In conjunction with this issue, Councilman Mumpower explained the "48 Faces of Harm" program.

The following claims were received by the City of Asheville during the period of January 12-25, 2007: Ethel Pack (Transit Services), Kyle Gerhardt (Police), Latessa Johnson (Fire), Susan Kreidler (Transit Services), Judith Cavallo (Water) and Jamie Jones (Police). The following claims were received by the City of Asheville during the period of January 26 - February 8, 2007: Gayle Battles (Water), Andrew Pomeroy (Water), Mary L. Grile (Water), Ted Tolbert (Water), Fire Department (Water) and Pamela I. Norfleet (Water). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with a Complaint on January 31, 2007, which is generally described as follows: Devon Nemire-Pepe vs. City of Asheville. The nature of the proceeding is a complaint for personal injury as a result of a broken and missing piece of sidewalk and/or curb. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Helaine Greene, presented City Council with information of a salvage yard currently operating in the River District and squarely within a 100-year floodplain. She believed that this type of business poses a serious public safety hazard should the area ever be flooded again. City Manager Jackson updated City Council with a report shared with Ms. Greene.

At 11:51 p.m., Councilman Freeborn moved to continue this meeting, in order to hold a closed session, until Friday, February 16, 2007, at Noon, in the Council Chamber located on the 2nd Floor of the City Hall Building. This motion was seconded by Councilman Mumpower and carried unanimously.

Friday – February 16, 2007 - Noon

Continuation of Regular Meeting of Tuesday, February 13, 2007

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

Mayor Bellamy said that this is a continuation of the regular meeting held on Tuesday, February 13, 2007, and was continued until this date in order to hold a closed session.

At Noon, Councilwoman Cape moved to go into closed session for the following reason: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe. The statutory authorization is N. C. Gen.

Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 12:57 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

At 12:58 p.m. Mayor Bellamy called the Council meeting back to order.

Mayor Bellamy said we come back after discussion of the Judges decision on our legal challenge to the Sullivan Acts. It is the decision of Asheville City Council to appeal to the Supreme Count. Mayor Bellamy said Asheville is being treated differendy so this action is necessary.

Mayor Bellamy said public meetings will be announced for education and input.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 1:01 a.m.

Kusha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – February 20, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Coms

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", "I" and "J" were removed from the Consent Agenda for individual votes.

At the request of Councilwoman Cape, Consent Agenda Items "E" and "F" were removed from the Consent Agenda for discussion.

At the request of Mayor Bellamy, Consent Agenda Item "M" was removed from the Consent Agenda for an individual vote.

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 13, 2007,**

B. **RESOLUTION NO. 07-31 - RESOLUTION AUTHORIZING WARREN HAYNES DRIVE, SAVANNAH WOODS COURT AND SABIAN COURT, IN THE SAND HILL ROAD AREA OF ASHEVILLE, TO BECOME PUBLICLY MAINTAINED STREETS**

Summary: The consideration of a resolution authorizing Warren Haynes Drive, Savannah Woods Court & Sabian Court, in the Sand Hill Road Area of Asheville, to become publicly maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Warren Haynes Drive, Savannah Woods Court & Sabian Court are developer-constructed streets that have an average width of 25 feet and a length of 0.42 miles, 0.09 miles and 0.04 miles respectively. Transportation and Engineering Department staff inspected these streets and found them to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Warren Haynes Drive, Savannah Woods Court & Sabian Court Catalina Court will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council approval of a resolution authorizing Warren Haynes Drive, Savannah Woods Court & Sabian Court, in the Sand Hill Road Area of Asheville, to become publicly maintained streets.

RESOLUTION BOOK NO. 30 - PAGE 214

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE PREUSSER RESEARCH GROUP AS PART OF A NIGHT TIME SAFETY BELT ENFORCEMENT PROJECT

This item was removed from the Consent Agenda for an individual vote.

D. BUDGET AMENDMENT TO RECEIVE THE PREUSSER RESEARCH GROUP GRANT TO PAY OFFICERS TO WORK WITH SUPPLEMENTAL ENFORCEMENT ACTIVITIES RELATED TO THE NIGHT TIME SAFETY BELT ENFORCEMENT PROJECT

This item was removed from the Consent Agenda for an individual vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

This item was removed from the Consent Agenda for an individual vote.

F. BUDGET AMENDMENT TO RECEIVE THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM GRANT TO ASSIST THE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

This item was removed from the Consent Agenda for an individual vote.

G. RESOLUTION NO. 07-34 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR HIGHWAY SAFETY GRANT FUNDS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program for highway safety grant funds and the associated budget amendment in the amount of $10,000.

The City of Asheville Police Department (APD) serves as a regional liaison under the North Carolina Governor's Highway Safety Program, and as a part of this commitment receives an annual grant of $10,000 to cover expenses associated with its participation. The $10,000 grant this year will fund the purchase of computer equipment or traffic safety programs and travel expenses associated with the regional liaison duties. There is no local match of funds required for this grant.

The APD currently participates in the North Carolina Governor's Highway Safety Program Highway Safety campaigns. In order to facilitate better participation and efficiency of highway safety initiatives, a regional law enforcement network was created to enhance communication and effectiveness. The Asheville Police Department promotes highway safety statewide by designating a member of the department to serve as the regional liaison for GHSP Region 8 (Western North Carolina).

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the cost of obtaining the needed computer equipment and to cover the travel expenses incurred as a result of the liaison position.

Cons:

- Dedicate the man-hours for the officer charged with the liaison duties to accomplish the goals stated in the grant contract.
- The city will have to bear the cost of maintaining the equipment.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program to provide an officer to act as the Regional Law Enforcement Liaison which requires funding for travel expenses (the remainder of the grant amount would be utilized by the Police Department to purchase computer equipment to assist officers in conducting traffic safety related business); and (2) an associated budget amendment in the amount of $10,000.

RESOLUTION BOOK NO. 30 - PAGE 218

H. ORDINANCE NO. 3440 - BUDGET AMENDMENT TO RECEIVE THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM GRANT FUNDS FOR A HIGHWAY SAFETY GRANT

Summary: See Consent Agenda "G" above.

ORDINANCE BOOK NO. 23 - PAGE 247

I. RESOLUTION APPROVING PARKS & RECREATION DEPARTMENT'S LIST OF CO-SPONSORED EVENTS FOR 2007

This item was removed from the Consent Agenda for an individual vote.

J. RESOLUTION ANNOUNCING PARTICIPATION IN THE ASHEVILLE-BUNCOMBE CLEANLINESS COLLABORATION

This item was removed from the Consent Agenda for an individual vote.

K. RESOLUTION NO. 07-37 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ASHEVILLE CONVENTION AND VISITORS FOR BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY ON A WAYFINDING TASK FORCE

Summary: Per City Council's direction, staff is working toward implementing a comprehensive wayfinding and signage program for the Asheville area. The wayfinding program aims to address several identified City Council goals: 1) improving signage into and out of City parking facilities; 2) providing information kiosks in the downtown; 3) removing sign clutter and obsolete signage; 4) improving directional signage for residents and visitors.

The City has joined with the Convention Visitors Bureau (CVB) to develop the Partnership on Wayfinding Task Force. This task force includes City of Asheville Staff, CVB staff, and representatives from other municipalities, Buncombe County, and the NCDOT. The Task Force is in the process of hiring a consultant to develop a master plan and oversee the project through implementation. The CVB, as contracting agency for the Buncombe County Tourism Development Authority (TDA), is willing to take the lead role in administering the contract.

The estimated overall cost for the wayfinding program is between $750,000 and $1,000,000. This initial estimate is for all expenses from master planning through sign installation. The proposed City of Asheville contribution to this effort is $75,000. The remainder of the funding (approximately 90%) will be sought from the TDA Product Development Fund as well as other municipalities and the County. Although the TDA funding is not yet secured, the TDA board has shown a strong interest this project.

City staff proposes moving ahead with the partnership for wayfinding by taking the following steps: 1) Set aside $ 75,000 from the City's parking fund, because of the strong parking component in the wayfinding program. 2) Develop an interagency agreement with the TDA that specifies the cost-sharing arrangement and roles and responsibilities. 3) Continue to take a lead role in defining the scope of the project.

Staff is of the opinion that this arrangement is beneficial to the City. The initial investment of $75,000 will be followed by about ten times that amount in initial investment in the community, while accomplishing identified City goals. If the City took on responsibility of just providing the parking deck signage, the cost could reach the amount of the City match proposed for the whole program.

As part of the wayfinding master plan, the consultants will be asked to quantify the ongoing costs associated with the program. City Council should be aware that once a signage program is in place there will be additional costs associated with maintenance, upkeep, and sign replacement. The City is likely to be asked to take on maintenance responsibility of the signs within the City limits.

Staff will ensure that the wayfinding master planning process includes ample opportunities for input from stakeholders, City Council, and the public. The goal is to have a signage program that reflects the character of the community.

City staff recommends City Council approve the resolution authorizing the City Manager to sign an agreement with the Tourism Development Authority in the amount of $75,000.

RESOLUTION BOOK NO. 30 - PAGE 220

L. RESOLUTION NO. 07-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH MOTOROLA INC. FOR THE 800 MHZ RADIO PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Motorola, Inc., in the amount of $1,023,184, for the 800Mhz Radio project.

After successfully upgrading our public safety radio system to a fully-digital system, staff's final task is to fully enable roaming. Two technology options were available to the City to fully enable seamless roaming, and staff has chosen the "Simulcast" option as the least risky and most beneficial approach to complete this project, particularly given the environmental uncertainty due to the Sprint/Nextel/FCC 800 Mhz band reconfiguration currently underway.

The benefits of the 800 Mhz work that has been completed thus far include:

- Increased transmission security
- Improved officer safety through better console identification
- Ability to be part of the State's VIPER system, allowing better communication during significant future events
- Better building coverage, thus improved officer safety

Funding for this contract will come from the $1.32 million in Capital Improvement Program (CIP) funding that City Council has approved for radio system upgrades over the last two fiscal years. Staff anticipates, based on vendor deadlines, that work can be complete by October of 2007.

Pros:
The benefits of this contract will include:

- Finish project utilizing Council approved budgetary dollars
- Seamless roaming for *all* radios
- Fewer "radio busy" due to the technical nature of Simulcast solution

Con: Risks present in this project are the normal risks associated with modification of a production public safety technology system. Risk mitigations will include utilization of experienced contractors and formal project and change management methodologies.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with Motorola, Inc., in the amount of $1,023,184, for the 800Mhz Radio project.

RESOLUTION BOOK NO. 30 - PAGE 223

M. RESOLUTIONS MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FOLLOWING EVENTS: (1) THE MOUNTAIN SPORTS FESTIVAL ON MAY 4-6, 2007; (2) THE ASHEVILLE DOWNTOWN ASSOCIATION'S DOWNTOWN AFTER 5 EVENTS ON MAY 18, JUNE 15, JULY 20, AUGUST 17 AND SEPTEMBER 14, 2007; (3) THE FOURTH OF JULY CELEBRATION ON JULY 4, 2007; (4) THE 76TH ANNUAL CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS PICNIC ON JULY 19-20, 2007; (5) THE GOOMBAY! FESTIVAL ON AUGUST 25-27, 2007; (6) THE LEXINGTON AVENUE ARTS AND FUN FESTIVAL ON SEPTEMBER 9, 2007; (7) THE FIESTA LATINA FESTIVAL ON SEPTEMBER 22, 2007; (8) THE 11TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 22, 2007; (9) THE ASHEVILLE GREEK FESTIVAL ON SEPTEMBER 28-30, 2007; AND (19) THE ASHEVILLE GRIZZLIES HOME HOMES ON VARIOUS DATES DURING THE SUMMER OF 2007

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

C. RESOLUTION NO. 07-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE PREUSSER RESEARCH GROUP AS PART OF A NIGHT TIME SAFETY BELT ENFORCEMENT PROJECT

D. ORDINANCE NO. 3438 - BUDGET AMENDMENT TO RECEIVE THE PREUSSER RESEARCH GROUP GRANT TO PAY OFFICERS TO WORK WITH SUPPLEMENTAL ENFORCEMENT ACTIVITIES RELATED TO THE NIGHT TIME SAFETY BELT ENFORCEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Preusser Research Group for a total grant package of $200,000 and an associated budget amendment in the amount of $73,000.

The Preusser Research Group has awarded the City of Asheville Police Department (APD) a total grant package of $200,000 as a part of its Night Time Safety Belt Project. The grant funds equipment and overtime salary expenses associated with establishing an expanded night time seat belt enforcement program that includes a two-week campaign period each quarter. Enforcement activities will occur on five nights during each of the two-week periods for a total of forty (40) nights throughout the year.

The grant funds will be shared among several local agencies as a result of the law enforcement partnership that has been established for the purpose of increasing safety belt usage through night time safety belt checkpoints. The highway safety and checking station equipment, totaling $84,969, will actually be purchased by Preusser Research Group and distributed to APD. APD along with Biltmore Forest Police Department, Woodfin Police Department, Buncombe County Sheriff's Office, North Carolina State Highway Patrol, and the Buncombe County District Attorney's Office will utilize this equipment for night time checking stations. At the end of the project, some of the equipment will be distributed to the participating agencies to assist them with their own future checking stations.

The remaining $115,031 is to be utilized to fund officers to work the checking stations. $73,000 will be allocated to the City of Asheville to provide funding to pay overtime for this supplemental enforcement. The remaining $42,031 available to pay officers will be distributed by the Preusser Group to the three other agencies participating in the enforcement campaign and to subsidize the Buncombe County District Attorney's Office.

Additionally, the Preusser Research Group will fund significant paid media to film a public service commercial with a local focus. It will be aired on the local television stations and will promote the safety and quality of life of citizens in this area. Funding for this paid media portion will be provided by Preusser Research Group and paid separately from the $200,000 grant amount.

There is no local match of funds required for this grant. The budget amendment is only for the $73,000 allocated to APD for overtime expenses.

The APD feels strongly about highway safety and regularly supports activities to enhance the safety of all residents and visitors to Asheville. The grant opportunity between the City of Asheville and Preusser Research Group is an opportunity to influence safety belt usage among thousands of motorists in this area. As a result, more lives may be saved and fewer serious injuries sustained from tragic motor vehicle crashes.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pros:

- Reimbursement revenue to cover the cost of paying officers to work the supplemental enforcement campaigns over the course of the year.
- Be awarded a substantial amount of highway safety enforcement equipment with no purchase cost to the city.
- No local match of funds required.

Cons:

- Dedicate the man-hours needed to accommodate the needs of this project. It is anticipated that APD will need to provide ten (10) officers each night of the campaign for each of the forty (40) nights of enforcement activities.
- The city will have to bear the cost of maintaining the equipment.

City staff requests City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the Preusser Research Group to purchase highway safety enforcement equipment for the police department and to fund officers to work this supplemental enforcement project during 2007; and approve the associated budget amendment in the amount of $73,000.

Mr. Tim Peck felt it was inappropriate that in order for Asheville citizens to obtain the law enforcement they desire they have to gathering up substantial private contributions to supplement police officers paychecks. In addition, he felt the decision on whether to wear a seatbelt is his and it is not the role of City government to create "behavior change."

Mr. Bill Fishburne spoke against adoption of this budget amendment in that it is selling law enforcement. He felt we have better uses of police officer's time than seatbelt checks.

Rev. Christopher Chiaronmonte wondered if the City of Asheville is buying justice by accepting private money from a private organization.

Police Chief Bill Hogan pointed out that the Preusser Research Group was hired by the National Highway Traffic Safety Administration to administer the grant so it is not a private company. He explained that the Police Department is a full-service police department. Thirty percent of our call for service and workload is related to traffic enforcement and traffic crash investigation. Anything we can do to reduce traffic crashes reduces our workload, plus more importantly it saves lives and reduces injuries. In addition, this is not taking police officers off the street, but it is an extra duty assignment. He also noted that a lot of crime has been deterred from traffic stops.

Councilman Mumpower felt this creates an unfair reputation of the Police Department as being heavy-handed and is a distraction at a time when we have a lot of other problems, e.g., speeding in neighborhoods, open air drug market. In addition, he felt that we should not accept any money from the federal government because of the staggering federal deficit.

In response to Councilwoman Cape, Police Chief Hogan explained the Police Department's policy regarding off-duty employment by our police officers.

Councilman Freeborn moved for the adoption of Resolution No. 07-32. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 216

Councilman Freeborn moved for the adoption of Ordinance No. 3438. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 243

E. RESOLUTION NO. 07-33 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

F. ORDINANCE NO. 3439 - BUDGET AMENDMENT TO RECEIVE THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM GRANT TO ASSIST THE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment of in the amount of $175,000.

The Asheville Police Department (APD) has received a grant from the North Carolina Governor's Highway Safety Program (GHSP) for equipment to outfit a dedicated traffic unit. The total amount of the grant is $175,000, which includes $131,250 in grant funds from GHSP and a required 25% City match of $43,750.

This grant will allow the City to fully outfit a dedicated traffic unit of five officers for traffic enforcement, accident reduction, community traffic education, and overall improved public safety. The grant includes fully equipped police vehicles and special traffic investigation and enforcement equipment. The equipment, training and technology provided in this grant will enhance the police department's ability to conduct traffic crash reconstruction and traffic homicide investigation. This is an equipment grant with no personnel costs.

This grant opportunity came about after the adoption of the 2006-07 budget, so the City match of $43,750 was not budgeted. Based on the current financial forecast for FY 2006-07, staff recommends that the local match of $43,750 be appropriated from fund balance.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pros:

- The Police Department obtains much needed traffic enforcement equipment that will improve its ability to address traffic related issues throughout the city.
- The City does not have to bear the full cost of initially purchasing the equipment.

- The City receives five patrol vehicles to address traffic issues.

Cons:

- The City is required to use $43,750 in matching funds.
- The City will have to bear the full cost of replacing the equipment in future budgets.
- The Police Department will have to dedicate five personnel to the traffic team.

City staff requests City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of $175,000, to purchase traffic enforcement equipment.

In response to Councilwoman Cape, Police Chief Bill Hogan explained what the vehicles will be used for and the reasoning behind purchasing those types of vehicles. He said that he would be happy to research vehicles that could use the alternative fuel E-85.

Councilman Mumpower wondered if this item should have come before the City Council Public Safety Committee prior to City Council as a way to streamline discussion.

Councilman Freeborn moved for the adoption of Resolution No. 07-33. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 217

Councilman Newman moved for the adoption of Ordinance No. 3439. This motion was seconded by Councilman Freeborn and carried unanimously.

Upon inquiry of Mayor Bellamy, Police Chief Hogan said that he will be reporting to Council, on February 27, 2007, information in order to begin dialogue on a comprehensive drug plan.

ORDINANCE BOOK NO. 23 - PAGE 245

I. RESOLUTION NO. 07-35 - RESOLUTION APPROVING PARKS & RECREATION DEPARTMENT'S LIST OF CO-SPONSORED EVENTS FOR 2007

Summary: The consideration of a resolution approving Parks and Recreation Departments list of co-sponsored events for 2007.

The Parks and Recreation Department annually presents for consideration a list of co-sponsored events. The Department requests City Council's approval of this list that will provide authorization for in-kind support by the City.

The Parks and Recreation Department uses a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 29 events were approved last year costing the City approximately $80,000. This year the number of events is reduced to 23 and the cost to the city is approximately $72,000. The following is the recommended list:

- Asheville Criterium/Asheville Bicycle Racing Club
- Asheville Greek Fest/Holy Trinity Greek Orthodox Church
- Biltmore Estate 15K/5K Fun Run Classic Race/Kiwanis Club of Asheville
- CROP Walk/ecumenical group of churches
- Dickens Festival/Biltmore Village
- Downtown After 5/Asheville Downtown Association
- Dr. Martin Luther King Jr. Peace Walk/Dr. Martin Luther King Jr. Association of Asheville/Buncombe County
- Fiesta Latina/YMI Cultural Ctr.
- GoomBay! Festival/YMI Cultural Ctr.
- Hard Lox, Asheville's Jewish Food Festival/Beth Ha Tephila Synagogue
- Jazz & Gospel in the Park/Eagle Market Street Development Association
- Light Up Your Holidays Premier Celebration/Light Up Your Holidays Festival
- Midday Musicals/Community Foundation of WNC
- Organic Fest/Pure Food Partners
- Relay for Life/American Cancer Society
- Shindig on the Green/Folk Heritage Committee
- St. Patrick's Day 10K/5K/Fun Run/Asheville Catholic School
- Thomas Wolfe 8K Road Race/Asheville Track Club
- Walk America/March of Dimes
- 2007 Buncombe Memory Walk/Alzheimer's Association
- 4th Annual Montford Arts & Music Festival/Montford Neighborhood Association
- 8th Annual Asheville Citizen-Times Half Marathon/5K Run/ABCCM & Asheville Citizen-Times
- 10th Annual Buddy Walk/Western Carolina Down Syndrome Alliance

Pros:

- Generates in excess of $10 million dollars for the local economy.
- Provides additional quality cultural programming and diversity.
- Allows fundraising opportunities for charities.
- Expands and enhances special events and festivals in Asheville.

Cons:

- The City's financial contribution is approximately $72,000.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Asheville Parks and Recreation Department recommends City Council approval of the resolution approving list of co-sponsored events for 2007.

Councilman Mumpower had no trouble with co-sponsoring festivals, however, was concerned with the amount of the City's financial contribution.

Councilwoman Cape felt that it was interesting to note that in matrix used to evaluate potential City co-sponsored events, the economic development weight of room nights is high, which demonstrates to the Buncombe County Tourism Development Authority (TDA) another way, through co-sponsored events, the City is helping with tourism in the community. Councilwoman Cape asked that the TDA to be made aware of this.

In response to Mayor Bellamy, Mr. Butch Kisiah, Superintendent of Recreation, explained how the $10 Million for the local economy was computed.

At the request of Vice-Mayor Jones, City Manager Jackson said that more scrutiny would be placed on the formula used in computing revenue to the local economy.

Councilman Freeborn moved for the adoption of Resolution No. 07-35. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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J. RESOLUTION NO. 07-36 - RESOLUTION ANNOUNCING PARTICIPATION IN THE ASHEVILLE-BUNCOMBE CLEANLINESS COLLABORATION

Summary: The consideration of a resolution announcing participation in the Asheville-Buncombe Cleanliness Collaboration.

The Asheville Chamber of Commerce has taken the lead in reinvigorating county-wide cleanliness efforts by bringing together representatives from the Chamber, the City of Asheville, Buncombe County, UNCA, NCDOT, A-B Tech, Quality Forward, RiverLink, downtown businesses and residents, and others. The collaboration was established to initiate sustainable efforts for the cleanliness and beautification of Asheville and Buncombe Bounty. It plans a call to action and an event to kickoff a month of cleanups across the area during April, as well as ongoing reinforcement of these efforts.

Pros:
- The collaboration's efforts support the work already performed by city staff to clean, beautify, enforce and educate on the subject of cleanliness.
- Broad participation in the collaboration is vital for full community buy-in of the importance of cleanliness and beautification.
- The city will be a leader in this effort; other participating organizations will follow the city's lead in adopting the partnership resolution.

Cons:
- There are no cons.

Staff recommends adoption of the resolution declaring collaboration and announcing the City's participation in the Asheville-Buncombe Cleanliness Collaboration.

Ms. Masterson, with the Chamber of Commerce, spoke in support of this resolution noting that ideas are always welcome from the public about how we can sustain clean-up efforts.

Mayor Bellamy gave statistics about what the City of Asheville is doing to step up what they are doing regarding cleanliness and how they are working with other organizations.

Councilman Mumpower moved for the adoption of Resolution No. 07-36. This motion was seconded by Councilwoman Cape and carried unanimously.

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M. RESOLUTION NO. 07-39 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 4-6, 2007

RESOLUTION NO. 07- 40 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S DOWNTOWN AFTER 5 EVENTS ON MAY 18, JUNE 15, JULY 20, AUGUST 17 AND SEPTEMBER 14, 2007

RESOLUTION NO. 07- 41 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FOURTH OF JULY CELEBRATION ON JULY 4, 2007

RESOLUTION NO. 07- 42 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 76TH ANNUAL CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS PICNIC ON JULY 19-20, 2007

RESOLUTION NO. 07- 43 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY! FESTIVAL ON AUGUST 25-27, 2007

RESOLUTION NO. 07- 44 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS AND FUN FESTIVAL ON SEPTEMBER 9, 2007

RESOLUTION NO. 07- 45 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FIESTA LATINA FESTIVAL ON SEPTEMBER 22, 2007

RESOLUTION NO. 07- 46 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 11TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 22, 2007

RESOLUTION NO. 07-47- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL ON SEPTEMBER 28-30, 2007

RESOLUTION NO. 07- 48 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME HOMES ON VARIOUS DATES DURING THE SUMMER OF 2007

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2007 Special Events: (1) 2007 Mountain Sports Festival on May 4-6, 2007; (2) Asheville Downtown Associations' 2007 Downtown After 5 Events on May 18, June 15, July 20, August 17, and September 14, 2007; (3) Fourth of July Celebration on July 4, 2007; (4) 76th Annual City of Asheville Open Tennis Championships Picnic on July 19-20, 2007; (5) GoomBay! Festival on August 25-27, 2007; (6) Lexington Avenue Arts and Fun Festival on September 9, 2007; (7) Fiesta Latina Festival on September 22, 2007; (8) 11th Annual Brewgrass Festival on September 22, 2007; (9) Asheville Greek Festival on September 28-30, 2007; and (10) Asheville Grizzlies home games, various dates, throughout the summer.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events:

- The Mountain Sports Festival, scheduled for May 4-6 at Carrier Park, is an event to draw attention to the vast opportunities in Asheville as a destination for adventure sports.

- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation the Downtown After Five series to bring both citizens and visitors to the downtown area. This year Downtown After 5 will be held on May 18, June 15, July 20, August 17 and September 14, with the stage located at intersection of Battery Park Ave. and O.Henry Street.

- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area. This event will be held in Pack Square in 2007.

- The 76th City of Asheville Open Tennis Championships Picnic, scheduled for July 19 & 20 at Aston Park, is a hospitality picnic for the spectators and players.

- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 25-27 in the Eagle/Market Street area of downtown Asheville.

- The Lexington Avenue Arts and Fun Festival, an event that showcases Lexington Avenue, on September 9, 2007.

- Fiesta Latina is fundraiser for the Hispanic traditions in Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held on September 22 in the Eagle/Market Street area of downtown Asheville.

- The 11th Annual Brewgrass Festival, which is a benefit for the Big Brothers/Big Sisters program, has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on September 22, at Martin Luther King, Jr. Park.

- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 28-30 at Martin Luther King, Jr. Park.

- The Asheville Grizzles are a semi-professional sports team that seek to serve alcohol at their home games throughout the summer at Memorial Stadium.

Pros:

- Allows fundraising opportunities for charities
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Cons: There are no negative issues associated with this request.

The Asheville Parks and Recreation Department recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2007 Special Events: (1) 2007 Mountain Sports Festival on May 4-6, 2007; (2) Asheville Downtown Associations' 2007 Downtown After 5 Events on May 18, June 15, July 20, August 17, and September 14, 2007; (3) Fourth of July Celebration on July 4, 2007; (4) 76th Annual City of Asheville Open Tennis Championships Picnic on July 19-20, 2007; (5) GoomBay! Festival on August 25-27, 2007; (6) Lexington Avenue Arts and Fun Festival on

September 9, 2007; (7) Fiesta Latina Festival on September 22, 2007; (8) 11th Annual Brewgrass Festival on September 22, 2007; (9) Asheville Greek Festival on September 28-30, 2007; and (10) Asheville Grizzlies home games, various dates, throughout the summer.

Councilman Newman moved for the adoption of Resolution Nos. 07-39 through 07-48. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 07-39 - RESOLUTION BOOK NO. 30 - PAGE 224
RESOLUTION NO. 07-40 - RESOLUTION BOOK NO. 30 - PAGE 227
RESOLUTION NO. 07-41 - RESOLUTION BOOK NO. 30 - PAGE 230
RESOLUTION NO. 07-42 - RESOLUTION BOOK NO. 30 - PAGE 232
RESOLUTION NO. 07-43 - RESOLUTION BOOK NO. 30 - PAGE 235
RESOLUTION NO. 07-44 - RESOLUTION BOOK NO. 30 - PAGE 237
RESOLUTION NO. 07-45 - RESOLUTION BOOK NO. 30 - PAGE 239
RESOLUTION NO. 07-46 - RESOLUTION BOOK NO. 30 - PAGE 241
RESOLUTION NO. 07-47 - RESOLUTION BOOK NO. 30 - PAGE 244
RESOLUTION NO. 07-48 - RESOLUTION BOOK NO. 30 - PAGE 247

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 175 MARIETTA STREET FROM INSTITUTIONAL DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING IN ORDER TO REVIEW ACCESS FOR A FUTURE COMMERCIAL DEVELOPMENT

Mayor Bellamy announced that the applicant withdrew his petition and no public hearing will be held on this matter.

B. PUBLIC HEARING TO CONSIDER THE CONVEYANCE OF CITY-OWNED REAL PROPERTY LOCATED ON RALPH STREET AND CHOCTAW STREET TO MOUNTAIN HOUSING OPPORTUNITIES INC. AND THE GREEN FAMILY TO REDEVELOP CONSISTENT WITH THE CITY'S REQUEST FOR QUALIFICATIONS

RESOLUTION NO. 07-49 - RESOLUTION TO CONVEY CITY- OWNED REAL PROPERTY LOCATED ON RALPH STREET AND CHOCTAW STREET TO MOUNTAIN HOUSING OPPORTUNITIES INC. AND THE GREEN FAMILY TO REDEVELOP CONSISTENT WITH THE CITY'S REQUEST FOR QUALIFICATIONS

At Mayor Bellamy's request, Councilman Freeborn moved to excuse Mayor Bellamy from participating in the matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Vice-Mayor Jones opened the public hearing at 5:50 p.m.

Real Estate Manager Ed Vess said that this is the consideration of a resolution approving the Sale and Redevelopment Contracts with Mountain Housing Opportunities, Inc. for parcels on Ralph Street and Choctaw Street in East Riverside.

On September 26, 2006, City Council accepted the Statement of Qualifications of Mountain Housing Opportunities, Inc. and the Green Family (MHO) and authorized the City Manager or his designee to negotiate a contract for the sale and redevelopment of two (2) parcels in East Riverside pursuant to the Request for Qualifications issued by the City on May 19, 2006. The sale contracts have been negotiated with Mountain Housing Opportunities, Inc., for Ralph Street and Choctaw Street. We have a letter from the Green Family which indicates that they will be participating as an equity partner, but they are withdrawing as a bidder, per se. They do not want to be in the sale contract or to be on the deed.

The purchase prices for the parcels reflected in the contracts conform to the respective fair reuse values established by City Council on January 23, 2007, which are consistent with the appraisals by BRB Appraisal Associates:

The Ralph Street parcel is 3.8± acres appraised at $274,000. It is steeply sloped from Ralph Street to Town Branch with some flattening on each end. A greenway easement will be reserved along Town Branch.

The Choctaw Street parcel is 5.92± acres appraised at $426,000. It varies from steeply sloped along the street fronts to moderate slope and nearly level in the middle of the property. The parcel is bisected by Town Branch and a greenway easement will be reserved here also.

Consistent with MHO's intent to develop the parcels in two phases, the dates for deeding provided in the contract are January 31, 2008, for Ralph Street and January 31, 2009, for Choctaw Street. Prior to deeding, the contracts provide for submission of a redevelopment plan for the parcels within six (6) months after the contract is executed. The redevelopment plan must be consistent with the goals set forth in the Request for Qualifications including the development of affordable workforce housing. Subsequent to Council approval of the redevelopment plans, construction plans and evidence of financing will be required prior to deeding. Construction must commence within three (3) months after the date of the deed and must be completed within eighteen (18) months after commencement.

Pros:

1. The sale will be at fair reuse value.
2. The proposed redevelopment will further the goals set forth in the RFQ, specifically the provision of affordable workforce housing.
3. It will return vacant underutilized property to the tax rolls.
4. Redevelopment of the property will significantly enhance the tax base.
5. It will enhance the stability and vitality of an existing revitalized community.
6. It will facilitate completion of a substantial portion of the Asheville Greenway system.

Con: The only negative is the loss of some park land, but the trade off is the Greenway will be a more accessible and desirable amenity than the unused vacant land.

On January 10, 2007, staff reviewed the contract terms with the City Council Planning & Economic Development Committee and the Committee referred the contracts to City Council for approval.

Approval of the resolution will authorize execution of the sale and redevelopment contracts with MHO as the qualified developer for the parcels on Ralph Street and Choctaw Street.

Economic Development staff recommends adoption of a resolution approving the Sale and Redevelopment Contracts with Mountain Housing Opportunities, Inc. for parcels on Ralph Street and Choctaw Street in East Riverside.

Councilman Davis responded to Mr. Fred English and explained the process to date and that the property, once developed, will pay taxes.

Vice-Mayor Jones closed the public hearing at 5:59 p.m.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-49. This motion was seconded by Councilwoman Cape and carried unanimously.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

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V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-50 - RESOLUTION FOR ENHANCEMENT OF CHILD PORNOGRAPHY AND INTERNET PREDATOR INVESTIGATIONS

Police Chief Bill Hogan said that this is an update on information pertaining to child pornography and internet predator investigations and initiatives by the Asheville Police Department.

The Asheville Police Department (APD) receives approximately 4-6 reports of child pornography or on-line predatory behavior each year. This number of reports has remained consistent over the last four years. In comparison, APD receives 60-70 reports of sexual assault, rape, indecent liberties with a child, and indecent exposure each year, with "some" cases involving computer evidence that is consistent with child pornography investigations. To date, APD has not conducted on-line chatting or the luring of suspected internet predators.

Current initiatives: The APD is currently developing a Detective position within Criminal Investigations to conduct child pornography and internet predator investigations. This position will also assist with more than 150 Internet Fraud referrals that APD receives yearly from the Internet Fraud Complaint Center (IFCC). This dedicated child pornography / internet predator position does not currently exist within the Criminal Investigations Division, but has been requested in the 2007/2008 budget. A white collar crime / fraud Detective has been redirected and is currently receiving training and equipment to fill this position. The selected Detective will receive extensive training in computer forensic examination, allowing them to recover and extract network and personal computer information that is vital to these investigations. Currently, the State Bureau of Investigations (SBI) is the only area agency that conducts computer forensics. The backlog in the computer forensics division of the SBI is more than one year, making it essential that APD have this ability "in-house." The selected Detective is already scheduled for a computer "search and seizure" class as a foundation for the following classes:

- CyberCop 101: Basic Data Recovery and Acquisition Training.
- Criminal Investigations in an Automated Environment.
- Seized Computer Evidence Recovery Specialist Program.

Additionally, the APD is currently purchasing a Forensics Tower II Computer, Field Analysis Notebook Computer and associated equipment to recover data from suspect computers. This training and equipment was budgeted for in the 2006/2007 budget and will cost approximately $15,000.

Future Plans: Upon completion of this training, the APD Detective will be prepared to fully investigate child pornography and on-line predatory behavior. The Detective will be able to examine network information and extract hidden files on personal computers to further these examinations. This Detective will receive additional training and cooperate with the National Association to Protect Children and the U.S. Department of Justice, Internet Crimes Against Children program. This Detective will work cooperatively with their peer at the Buncombe County Sheriffs Department to further area investigations into child pornography and internet predators. The computer forensics function will greatly enhance APD investigations into internet fraud and identity theft also. The first year cost of this position is $64,796. The following years cost will be $40,935. It will take approximately 8 to 12 months for this position to be fully operational.

Mr. Grier Weeks, representing the National Association to Protect Children, thanked City Council for adoption of this resolution.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-50. This motion was seconded by Councilman Davis and carried unanimously.

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B. RESOLUTION NO. 07-51 - RESOLUTION REQUESTING LEGISLATIVE ACTION FOR THE CITY OF ASHEVILLE IN THE 2007 GENERAL ASSEMBLY

City Attorney Oast said that this is the consideration of a resolution requesting legislation for the City of Asheville in the 2007 session of the North Carolina General Assembly, and appropriate action with respect to other legislative matters.

Since the discussion with Council on January 9, 2007, the General Assembly convened on January 24, and there have been several developments of relevance to the City's legislative interests.

1. The deadline for submission of requests for local legislation has been established.

2. Several pieces of legislation have been initiated on subjects that Council expressed interest in:

   a. Strengthening of sex offender laws – There have been several bills (including HB 27, 28, 29, and SB 17) introduced to strengthen and clarify laws relating to child pornography and sexual predators.

   b. A bill (HB 39) was introduced to permit the provision of economic development incentives to "endangered manufacturers."

c. A bill (HB 55) was introduced to require public employers to take certain steps to verify immigration information on new employees.

d. Bills have been introduced (HB 86 and 87) that would affect the ability of the City to annex; one of those bills is a local act that would apply only in Buncombe County.

e. The Asheville Chamber of Commerce on January 12, 2007, adopted its legislative agenda.

As the foregoing are matters with respect to which legislation has been introduced, the appropriate action for Council is a resolution stating Council's position (endorsing, approving, etc.). There is no particular deadline for taking this action, and with respect to some of the items, Council may wish to perform some more investigation before taking action, such as learning what the League of Municipalities' position is, or the position of other cities. In fact, a bill has been introduced today in support of affordable housing bonds for the State of North Carolina. He will report on various legislation as they develop.

With respect to specific requests for legislative action, Council has indicated an interest in the following:

1. Sullivan Acts. As Council knows, the Sullivan Acts require the City to provide water to customers outside the City limits, and prohibit the City from charging differential rates for outside service. Under the general law, other cities can and do charge differential rates for services provided outside of the city. The proposed resolution requests repeal of these acts.

2. Civic Center. A bill authorizing the City to charge a 1% room occupancy tax as a revenue source to fund improvements to the Civic Center. Council has adopted a plan for these improvements, and on February 13, directed that a request for this funding source be requested. A draft bill will be prepared and transmitted to the delegation, along with a copy of the plan.

3. Annexation. As with the last two years, there is the possibility that legislative action will be required to annex some properties into the City that cannot be annexed by other means, but whose incorporation into the City is desirable for service provision reasons. Specifically, there are some parcels between Asheville and Woodfin near UNC-A, that should have municipal services (police, fire) availability, should the need arise. We have spoken with Woodfin in the past about this. Depending on how further discussions proceed, legislative action may be necessary. Because of limitations on "blank bills," we will need to consult the delegation to determine what form this action should take.

4. Housing Authority Board Term of Office. The Housing Authority Board of Directors unanimously approved reducing their term of office from 5 years to 4 years. This request was recommended by Mayor Bellamy in order to bring the terms more in line with other boards.

At this point, action is needed with respect to the items of local legislation noted above. Council may want to obtain further information and develop a position with respect to the bills that have already been introduced.

City Attorney Oast noted that the list of bills that have already been introduced outlined above is not a comprehensive list. At this point, he requested Council take action on the specific requests for local legislation.

Councilman Mumpower said that it takes time to draft bills and if we are going to encourage our local delegation to pursue strong efforts toward the criminal justice system reform the sooner we advise them, the better. He said that North Carolina is the 48th state in the country in funding right now. He felt it was very important to put this in front of our delegation as soon as possible, if nothing else but to illustrate how important we believe this issue to be.

City Attorney Oast said that he could bring back to Council another resolution on March 13, 2007, that addresses the matters that are not necessarily appropriate for local legislation, noting that the deadline concerning these actions would be April 10 and April 18, 2007. He felt that when he checks the legislation that has been introduced, is that there are bills that have already been introduced or in the process of being drafted addressing the issues Council has raised.

In order to expedite the general resolution supporting the criminal justice system reform, Mayor Bellamy said that Council would be willing to work with the Assistant City Attorney in order to bring this matter before Council on February 27, 2007.

Councilman Newman suggested we adopt the resolution on local legislative and ask the Mayor to write a letter to the local delegation identifying the other important Council issues, e.g., the Land for Tomorrow initiative.

Mayor Bellamy noted that the other important legislative issues Council is interested in are still on the table, e.g., additional subsidy for day care, but are not listed today because they do not require specific legislative writing by our delegation.

Councilman Mumpower said that he wants our delegation to introduce a bill for the criminal justice system reform and that it should be included as an item of local legislation.

Councilwoman Cape said that in order to show how the criminal justice system reform is specific to Asheville, she suggested language about the closing of the recent mental health facilities which overloads our court system.

Councilman Davis felt there is an overall need for a justice center. He would support a general statement to our legislators requesting reform for the judicial system, but also supported partnering with the Buncombe County Commissioners in this request.

Mayor Bellamy felt that we need to put computerization of the court system as another important legislative issues to come before Council.

Councilman Newman said that our legislators probably have the sense of an appropriations bill that funds judicial systems across the state. He suggested we let them know this is a priority for Asheville and let them figure out how to accomplish it.

Councilman Mumpower said that our legislators are comfortable intruding in our local affairs in areas that are not necessarily in the City of Asheville's interest and since criminal justice system reform is crucial to Asheville, he suggested local intervention.

Councilman Mumpower moved to submit the Sullivan Acts request to our local delegation. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilman Newman moved to submit the Civic Center request to our local delegation. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Vice-Mayor Jones moved to submit the annexation request to our local delegation. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Jones moved to submit the Housing Authority Board of Director's term reduction from 5 years to 4 years to our local delegation. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Mumpower moved to submit a general statement of support for the criminal justice system reform in Buncombe County. This motion was seconded by Councilman Freeborn and carried unanimously. It was the consensus of Council's understanding that if it is possible to do this through a local bill, we would urge them to do that, but if it is appropriate to address it through a statewide appropriations process, then we encourage that route.

Vice-Mayor Jones asked about legislation (1) allowing Asheville to have the ability to work with our business license structure; and (2) other ideas for property tax relief. Mayor Bellamy said that these will be discussed at a later date since they would have to be accomplished through state-wide legislation.

After a brief discussion, initiated by Vice-Mayor Jones, about a local bill two of our legislators have introduced prohibiting Buncombe County (and municipalities statewide) to annex, Councilman Mumpower moved to oppose that bill and request withdrawal. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Councilman Freeborn felt we should ask our delegation to sponsor a bill that gives us a variety of tools to promote voluntary annexations.

Councilman Mumpower said a tool might be allowing Asheville to have additional taxing resources, e.g., the room tax, then that enables the City to keep the property tax lower, which makes coming into the City more attractive. There are other taxing capacities that he won't advocate for but other cities have. And, if other cities have them, then in fairness, Asheville should have them.

Councilman Newman moved to ask our legislators to allow Asheville to work with developers who are proposing significant new developments along the periphery of our City to work with them on voluntary annexation. This motion died for a lack of a second.

Councilman Mumpower moved to request our state legislation to give fair consideration to providing Asheville the same resources supportive of the voluntary annexation option that other cities and municipalities in the State of North Carolina have. This motion was seconded by Councilman Freeborn and carried unanimously.

Councilman Mumpower moved support House Bill 55 which was introduced to require public employers to take certain steps to verify immigration information on new employees.

After a short discussion, it was the consensus of Council to not consider the legislative issues that have already been introduced because there are a number of other statewide issues that Council is interested in and those will be discussed at the February 27, 2007, meeting. Councilman Mumpower withdrew his motion.

Councilman Newman was agreeable to discussing support of state funding for the expansion of the Asheville Art Museum at the February 27, 2007, meeting.

C. RESOLUTION NO. 07-52 - RESOLUTION ESTABLISHING THE CITY OF ASHEVILLE'S FEDERAL PRIORITIES AND LEGISLATIVE AGENDA FOR FISCAL YEAR 2008

Economic Development Director Sam Powers said that the purpose of this agenda item is to review and request City Council prioritization of federal legislative initiatives and federal funding requests for the 110th Congress.

At the November 14, 2006, meeting, City Council reviewed potential federal legislative initiatives that Council members had noted as of interest. These legislative initiatives are as follows:

1. Legislative action to remedy changes to the funding of Asheville Transit system negatively affecting the system.
2. Support for national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens.
3. Support federal legislation securing the necessary funds to continue the North Carolina Health Choices Initiative to insure our children in North Carolina by supporting Senate Bill S.3913 (Keep Children Covered Act of 2006).
4. Support raising the federal minimum wage.
5. Support changes to require that Social Security offices be located on public transportation routes so that all citizens have access to the services provided by the agency. - This item has been addressed.

Council also received from staff an updated list of projects that are potential candidates for federal funding. These projects are outlined as follows:

1. Reid Center for the Creative Arts Renovation
2. Asheville Transit System Bus Acquisition Pilot Project (also addressed through CIP)
3. Sustainable (Green) Building Fire Station Enhancements
4. Driving and Firearms Simulator/Firing Range Upgrades
5. Public Safety Radio System
6. Traffic Signal Preemption
7. Thomas Wolfe Cabin Project

City Council has the opportunity to (1) identify potential new initiatives; (2) select and prioritize initiatives for inclusion in a federal priorities agenda; and (3) consider how to communicate with our legislative delegation.

Staff recommends that Council list and prioritize Federal initiatives and projects and pass a resolution communicating stated priorities to the federal elected delegation and appropriate federal funding agencies.

At the request of Councilman Freeborn and Mayor Bellamy, support for public housing initiatives, including HOPE 6, was added to the list for federal funding.

Vice-Mayor Jones explained why she will not be supporting any of the potential projects for federal funding, but did hope that the HOPE 6 initiative could be included in the federal legislative initiatives as the fifth item (since the Social Security Office changes have been addressed).

Councilman Newman spoke in support of the Thomas Wolfe Cabin Project and asked that City staff pare down the request to a more basic maintenance budget to take care of this property.

Mayor Bellamy asked for an anti-crack bill that deals with the harsh realities of crack cocaine be placed under the potential federal legislative initiatives.

Councilman Mumpower explained that he will be voting against any project or initiative that has dollars in it because of the current federal debt.

Councilman Mumpower moved to support legislative action to remedy changes to the funding of Asheville Transit system negatively affecting the system. This motion was seconded by Councilwoman Cape and carried unanimously.

After a brief discussion, Councilman Mumpower moved to support national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Vice-Mayor Jones voting "no." Vice-Mayor Jones feels this may be another unfunded mandate; however, she was supportive of ways that we can really crack down on the criminal element.

Councilman Freeborn moved to support federal legislation securing the necessary funds to continue the North Carolina Health Choices Initiative to insure our children in North Carolina by supporting Senate Bill S.3913 (Keep Children Covered Act of 2006). This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

After a brief discussion, Councilman Newman moved to support raising the federal minimum wage. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Davis voting "no."

After a brief discussion, Councilman Freeborn moved to support public housing initiatives, including HOPE 6. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Freeborn moved to support an anti-crack bill. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Freeborn moved to support the Reid Center for the Creative Arts Renovation as a candidate for federal funding. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Vice-Mayor Jones and Councilman Mumpower voting "no."

Councilman Newman moved to support the Asheville Transit System Bus Acquisition Pilot Project (not being addressed in the Capital Improvement Plan) as a candidate for federal funding. This motion was seconded by Councilwoman Cape and failed on a 3-4 vote, with Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Davis and Councilman Mumpower voting "no."

Councilwoman Cape moved to support sustainable (green) building fire station enhancements as a candidate for federal funding. This motion was seconded by Councilman Newman. There was considerable discussion of Council's policy regarding LEED certification for City facilities. City Manager Jackson said that City staff will bring back this issue for specific discussion by the end of March. The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 3-4 vote, with Councilwoman Cape, Councilman Freeborn and

Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Davis and Councilman Mumpower voting "no."

Councilman Freeborn moved to support the driving and firearms simulator/firing range upgrades as a candidate for federal funding. This motion died for a lack of a second.

Councilman Freeborn moved to support the public safety radio system as a candidate for federal funding. This motion was seconded by Councilman Newman and failed on a 3-4 vote, with Mayor Bellamy, Councilman Freeborn and Councilman Newman voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to support the traffic signal preemption as a candidate for federal funding. This motion was seconded by Councilman Freeborn and failed on a 2-5 vote, with Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to support the Thomas Wolfe Cabin Project as a candidate for federal funding and request City staff to pare down the budget request for just basic maintenance. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Councilwoman Cape, Councilman Davis and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn and Councilman Mumpower voting "no."

Vice-Mayor Jones moved to add as a federal legislative initiative support for incentives for local governments to have LEED certification and energy efficient vehicles. This motion was seconded by Councilman Freeborn and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 253

VI. NEW BUSINESS:

A. REVIEW AND CONSIDER CRITERIA FOR SCHOOL BOARD QUESTIONS

After a short discussion, it was the consensus of City Council to ask the School Board candidates to respond to the following questions in writing, at the appropriate time: (1) What do you believe is the cause of our extraordinarily high drop out rate for black males in the City school system?; (2) The City school system is currently responsible for educating approximately 50% of students living within the City limits. What are your thoughts on this reality and the $21,000,000 of City school supplement utilized in education of those students?; (3) What are your views on the role of the school system to community health, nutrition, and childhood diseases?; (4) How do you address the problem of minority student achievement gap?; and (5) Should upper administrative staff be required to live in the Asheville City School District, and why?

B. RESOLUTION NO. 07-53 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Recreation Board.

The term of Shelly Booth expires on June 30, 2008, and the term of Laura Williams expires on June 30, 2009.

City Council instructed the City Clerk to arrange interviews for Carolyn Stanberry, Adam S. Pittman and Scott Barnwell. However, it was determined that Mr. Barnwell was appointed to the Board on July 25, 2006.

Councilman Mumpower moved to appoint (1) Carolyn Stanberry as a member of the Recreation Board to serve the unexpired term of Ms. Booth, term to expire June 30, 2008; and (2) Adam S. Pittman as a member of the Recreation Board to serve the unexpired term of Ms. Williams, term to expire June 30, 2009, or until their successors have been appointed. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 269

C. RESOLUTION NO. 07-54 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Greenway Commission.

The terms of Jack Saye and Phyllis Styles, as members on the Greenway Commission, expired December 31, 2006.

City Council instructed the City Clerk to arrange interviews for Hartwell Carson, Glen Locascio and Dawa Clark. Mr. Carson was unable to be contacted for an interview.

It was the consensus of City Council to reappoint Phyllis Styles to serve an additional three-year term, term to expire December 31, 2009, or until her successor has been appointed.

After Council spoke highly of both candidates interviewed, Hartwell Carson received no votes; Glen Locascio received 5 votes; and Dawa Clark received 2 votes. Therefore, Glen Locascio was appointed as a member of the Greenway Commission to serve a three-year term, term to expire December 31, 2009, or his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 270

D. RESOLUTION NO. 07-55 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Tree Commission.

The terms of Monty Wooten and Robert Halliday, as members on the Tree Commission, expired on December 31, 2006.

City Council instructed the City Clerk to arrange interviews for Laura Uberbacher, Mary Carol Koester and Bill Hascher. Ms. Koester withdrew her application

Councilman Freeborn moved to appoint Laura Uberbacher and Bill Hascher as members to the Tree Commission to each serve a three-year term respectively, terms to expire December 31, 2009, or until their successors have been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 271

E. RESOLUTION NO. 07-56 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Public Art Board.

The term of Tina McGuire expires on December 31, 2007, and the term of Dana Irwin expires on December 31, 2008.

City Council instructed the City Clerk to arrange interviews for Lisa Messa and Julie Calhoun-Roepnack. It was noted that Harry Harrison is a candidate but it was not necessary to bring him in for an interview.

After Council spoke highly of the candidates, Harry Harrison received 7 votes; Lisa Messa received no votes and Julie Calhoun-Roepnack received 7 votes. Therefore, Ms. Calhoun-Roepnack was appointed to fill the unexpired term of Ms. McGuire, term to expire December 31, 2007; and Mr. Harrison was appointed to serve the unexpired term of Ms. Irwin, term to expire December 31, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 30 – PAGE 272

F. RESOLUTION NO. 07-57 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Alcoholic Beverage Control Board.

The terms of Debora Holmes-Young and Kenneth Kaplan expired on November 13, 2006.

It was the consensus of City Council to reappoint Mr. Kaplan, term to expire November 13, 2009, or until his successor has been appointed.

City Council instructed the City Clerk to arrange interviews for Wiley Neal Evans, DeRothea G. Williams and William C. Dickason. Mr. Evans was interested, however, was unable to attend the interview.

After Council spoke highly of the candidates, Wiley Neal Evans received no votes; DeRothea G. Williams 5 received votes; and William C. Dickason received 2 votes. Therefore, Ms. Williams was appointed as a member of the Alcoholic Beverage Control Board to serve three-year term, term to expire November 13, 2009, or until her successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 273

G. RESOLUTION NO. 07-58 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Community Relations Council.

The term of Clara Jeter expired on December 31, 2006.

City Council instructed the City Clerk to arrange interviews for Ms. Ira Naiman, Mr. Craig White, Ms. Amanda Hendler-Voss, Ms. Shirley Schultz, Ms. Clara Hanrahan, and Ms. Martha

Swindell Brown, Ms. Sharon West, and Mr. Michael Vavrek. The following is the status of four of the candidates: (1) Ms. Naiman and Ms. Hendler-Voss withdrew their applications; (2) Ms. Brown has moved; and (3) Mr. Vavrek is interested, however, was unable to attend the interview.

After City Council spoke highly of the candidates, City Council voted until one candidate received a majority vote. As a result, Mr. Craig White was appointed as a member of the Asheville-Buncombe Community Relations Council to serve a three year term, term to expire December 31, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 274

H. CONSIDERATION OF APPOINTMENTS TO THE FILM COMMISSION, THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE, AND THE DOWNTOWN COMMISSION

It was the consensus of City Council to (1) instruct the City Clerk to re-advertise for candidates for the Film Commission; and (2) ask Vice-Mayor Jones to contact the Chair to discuss the need for the Film Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Bonnie Love and Carol Ann Pothier as members of the Americans with Disabilities Act Compliance Committee, to each serve an additional three-year term respectively, terms to expire August 22, 2009, or until their successors have been appointed.

It was the consensus of City Council to instruct the City Clerk to arrange the following interviews for vacancies on the Downtown Commission: Amy Merritt, Brad Galbraith, Hutch Kems and James Kilbourne.

VII. OTHER BUSINESS:

Councilman Mumpower noted (1) Biltmore Press printing the Drug Commission posters for the first three months of the year; and (2) the "Stop the Harm" anti-drug vigil on February 22, 2007.

Councilwoman Cape described (1) the State of Black Asheville community forum at UNC-Asheville; and (2) the performance by children at the Reid Center for their renovation campaign.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Steve Arpin asked for City Council assistance with City and State regulations at his home at 13 Detroit Place. City Manager Jackson said that he will report back to Council with what we can remedy and what is not possible within public safety standards.

Rev. Christopher Chiaronmonte spoke to Council about homelessness in Asheville.

Ms. Mildred Brooks related concerns for the children at Asheville High School. Mayor Bellamy said that she would be happy to contact her and discuss her concerns.

At 8:26 p.m., Councilman Mumpower moved to go into closed session for the following reasons (1) to establish or to instruct City staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property, including McCormick Heights, by purchase, option, exchange or lease. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between

the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, Reid Thompson and the Board of Adjustment. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Mumpower and carried unanimously. This motion was seconded by Councilman Freeborn and carried unanimously.

At 10:25 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:25 p.m

Kenna Lyse
CITY CLERK

MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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Tuesday – February 27, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones (was excused from the meeting due to illness at 7:50 p.m.); Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Ms. Megan Sanchez's 4th Grade Class from Emmanuel Lutheran led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C" and "D" were removed from the Consent Agenda for individual discussions.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 20, 2007

B. RESOLUTION NO. 07-59- RESOLUTION REAPPOINTING BONNIE LOVE AND CAROL ANN POTHIER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: It was the consensus of City Council to reappoint Bonnie Love and Carol Ann Pothier to the Americans with Disabilities Act Compliance Committee to each serve an additional three-year term respectively, terms to expire August 22, 2009, or until their successors have been appointed.

RESOLUTION BOOK NO. 30 – PAGE 275

C. BUDGET AMENDMENT FOR PROJECT MANAGEMENT OF THE CITY-OWNED PROPERTY REQUEST FOR QUALIFICATIONS

This item was removed from the Consent Agenda for individual discussion.

D. RESOLUTION AMENDING THE CIVIC CENTER CAPITAL IMPROVEMENT PROGRAM

This item was removed from the Consent Agenda for individual discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

C. ORDINANCE NO. 3441 - BUDGET AMENDMENT FOR PROJECT MANAGEMENT OF THE CITY-OWNED PROPERTY REQUEST FOR QUALIFICATIONS

Summary: The consideration of a budget amendment, in the amount of $68,750, for project management on the City-owned property Request for Qualifications (RFQ).

This budget amendment authorizes funding for the contract with Real Estate Research Consultants, Inc. for project management on the City-owned property RFQ, which was approved by City Council on January 9, 2007. The amount of the contract is $68,750 ($55,000 fee and expenses up to $13,750 both on a not-to-exceed basis). This amendment is simply a technical, housekeeping item to appropriate the funding for the project since funding was not already included in the budget or appropriated at the January 9, 2007, meeting. Staff recommends that $68,750 be appropriated from the City's fund balance for this project.

City staff recommends City Council adopt the budget amendment, in the amount of $68,750, for project management on the City-owned property Request for Qualifications.

Mayor Bellamy asked for clarification regarding the Parkside property. She recalled that when Council discussed the RFQ and then approved the budget amendment for support of the Civic Center, there was discussion about a feasibility study being done on the realistic opportunities for Parkside to occur. She voted for that to happen but not as a part of the RFQ process. In fact, the minutes do not state specifically that the feasibility study would be part of the RFQ process. Since that time she has heard that the feasibility study was part of the RFQ process.

City Manager Jackson explained the RFQ process and said that any responses we get from the RFQ will not represent a feasibility study on a stand-alone performing arts center. It represents an interest on the part of potential partners to go through the due diligence with the City and whether or not that is a concept worth pursuing and investing in detailed feasibility studies, pro forma, development etc. Economic Development Director Sam Powers agreed that the motion approved by Council was not a feasibility study on Parkside for the performing arts center. It is project management to help develop and do a market scan of the sites and then to develop the RFQ and provide evaluation of the RFQ.

Mayor Bellamy said that she recalled when City Council approved the $400,000 for the next five years for the Civic Center, part of the motion was to do a feasibility study for Parkside.

Councilman Davis said that early on in the process, the Asheville Area Center for Performing Arts had volunteered to do a feasibility study. There was a time that we talked about partnerships with them in doing that feasibility study on the actual performing arts center. The principals still have that interest in doing that.

City Manager Jackson said that at this point it does not make sense for staff to do an independent study, but, subject to Council's approval, it would be one of the things we would ask the project management firm to advise us on.

Councilman Newman's understanding of the direction was to approve the $15 Million plan to do the deferred maintenance for the Civic Center. Beyond that, we have this property and if the performing arts center effort turns out to be viable, we would be open to reserving that

property for the performing arts center. He doesn't see carrying out a separate feasibility study as City Council's leadership role on that. He believed that the leadership responsibility for doing the feasibility study for the performing arts center rests with the Asheville Area Center for Performing Arts, at least initially. First, we are saying that we are going to fix up our building that we are responsibility for; and secondly, we are open to the fact that if the private sector and the performing arts organization's efforts turn out to be successful, then the City has some property that seems like an excellent place for the performing arts center to be built and that could be part of what the City contributes to the effort.

Mayor Bellamy felt we needed further dialogue about this issue since it is not clearly stated in our minutes of Council's actual direction.

Councilman Mumpower said that he disagrees with this expenditure of City funds and using those dollars from our savings account.

Councilman Davis moved for the adoption of Ordinance No. 3441. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 249

D. RESOLUTION NO. 07- 60 - RESOLUTION AMENDING THE CIVIC CENTER CAPITAL IMPROVEMENT PROGRAM

Summary: The consideration of the Capital Improvement Plan (CIP) schedule for the Civic Center in conjunction with the CIP recommendations of the Civic Center Commission.

The recommended projects on this six-year CIP list, adopted by City Council on December 12, 2006, were selected by staff because they addressed some of the most critical arena and building-wide deferred maintenance and safety issues. Due to budget constraints, including the absence of a new dedicated revenue stream, annual funding for this six-year plan is limited to approximately $400,000. The six-year staff recommended CIP only includes one specific auditorium project (smoke hatch replacement) because of the limited funding and the possibility the auditorium could be renovated in the future.

Staff amended the six-year CIP plan that incorporates the recommendations of the Civic Center Commission. Their ideas encompass both the arena and auditorium. They address public safety, efficiency and an appearance upgrade. With those recommendations added in, a funding gap of $320,000 is created in the six-year plan. There are several options for dealing with this gap. Staff could re-prioritize the project list and move projects slated for Fiscal Year 2007-08 into future years. A second option would be additional funding supplied as directed by Council. A final idea would be consideration given to using any actual dollar savings versus the budgeted deficit on an annual basis. While this latter option is less definite than the prior two options, it could provide some relief to the amount of funding provided by the City in any given year depending on the amount of savings. The amount of any savings in this area would not be known until close to the end of any fiscal year.

City staff recommends that City Council approve the revised CIP project list and further direct staff how to proceed with project scheduling given the funding gap.

Councilman Mumpower confirmed that we are committed to our existing facility, with the exception of the performing arts center component.

In response to Councilman Davis about the roof on the Thomas Wolfe Auditorium, City Manager Jackson said that if staff determines after an analysis that the roof needs to be moved up, they will be back to City Council for an amendment to the CIP for the Civic Center.

Councilman Davis moved for the adoption of Resolution No. 07-60. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 276

III. PRESENTATIONS & REPORTS:

A. POLICE ACTION PLAN FOR DRUG ENFORCEMENT AND NEIGHBORHOOD SAFETY

Police Chief Bill Hogan explained to City Council this following 7-Point Police Action Plan for drug enforcement and neighborhood safety:

Point No. 1 - Increase criminal interdiction traffic enforcement: (1) deploy directed patrols on streets and thoroughfares known for criminal activity or drug trafficking (immediate); (2) increase K-9 interdiction patrols; and (3) increase unobligated time in high crime areas by 50% per officer (summer of 2007).

Point No. 2 - Increase drug investigative special operations: (1) includes surveillance arrest operations, undercover drug buys and search warrant executions (immediate); (2) partner with Buncombe County Sheriff's Office to enhance long- and short-term investigations (immediate); and (3) expedite drug testing analysis with NarTest instrument (March 2007).

Point No. 3 - Increase current Drug Suppression Unit (DSU) staffing by 25%: (1) five vacant DSU (filled March 2007); (2) initial increase in drug-related arrests expected (March 2007); and (3) improved response time to drug tip line (May 2007)

Point No. 4 - Increase partnership with US Attorney's Office in federal drug case prosecution: (1) train officers to understand requirements for cases to be prosecuted at the federal level (immediate); and (2) partner with DEA to increase larger scale, multi-jurisdictional investigations (immediate).

Point No. 5 - Invest additional resources in crime prevention/neighborhood enhancement in public housing and high crime areas: (1) recommend additional fill-time employee Crime Prevention Officer (immediate); (2) Housing Security Team to conduct monthly meetings with residents associations (March 2007); and (3) implement the High Point model (summer 2007).

Point No. 6 - Increase community policing and outreach initiatives: (1) hire community relations manager to implement crime prevention programs (immediate); (a) neighborhood watch programs; (b) youth and children's programs; (c) neighborhood walks; and (d) community events and meetings.

Point No. 7 - Explore additional policy considerations: (1) consider additional resources/enhanced service levels in Fiscal Year 2007-08 budget; and (2) consider developing community work groups to address childcare and employment barriers in high crime areas.

Throughout discussion, Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: is the full-time Crime Prevention Officer the only thing that is new in the budget; how do we measure our success in curtailing the open air drug market or other initiatives in tangible and intangible ways; what is the definition of "unobligated" time; if

neighborhoods are getting safer over time, is that a possible way to measure success; overview of the difference between federal vs. state prosecutions; is the Police Chief looking at expanding the three districts in the future or expanding the beats within the districts; and how is the Police Department stepping out to use technology to make them more efficient.

Councilman Mumpower suggested strengthening the effort in creating more tangible ways to measure success because he felt that if it were measurable, then we are more likely to accomplish it. He also requested, as the Police Chief discovers weaknesses in our system, that the Chief to bring those concerns to Council along with quarterly feedback.

In response to Councilman Mumpower, Police Chief Hogan said that he would bring a budget amendment for the Crime Prevention Officer to Council on March 13, 2007. Other issues will be coming to Council in the budget process.

In response to Mayor Bellamy, Police Chief Hogan said that they are looking at the proposal of a Federal Bureau of Investigation Task Force located in our area with consideration of a staff person in that effort.

At the request of Councilman Mumpower, it was the consensus of Council to ask the Police Chief to report back to Council with a more detailed plan to measure our progress.

B. VISION FOR BUNCOMBE COUNTY SHERIFF'S OFFICE

At Mayor Bellamy's invitation, Buncombe County Sheriff Van Duncan spoke about the direction of the Sheriff's Office. He explained the new badge of the Sheriff's Office along with the mission statement and guiding principles, said principles being service; integrity, professionalism, accountability and dignity. He then explained in detail the following:

Sheriff Office Changes: (1) shift and squad changes for patrol; (2) field investigator position; (3) school resource officers and the "On Track Program"; and (4) new name and focus for Metropolitan Enforcement Group (MEG).

Patrol Changes: (1) move from a five squad to a four squad division; (2) with the addition of field investigators it will move the number of officers per shift from 12 to 16; and (3) aligned with Asheville Police department (APD).

Field Investigators: (1) eight investigative positions moved to Patrol Field Investigations; (2) immediate response on investigations; and (3) move officers on the road.

School Resource Officers: (1) school administration will have input and ownership; (2) resource officer will be "the best of the best"; and (3) on track program.

New Name and Focus for MEG: (1) new name for MEG with a new focus; (2) will work in conjunction with DEA Task Force as well as DSU; (3) plans to include other municipalities; and (4) collaborative effort with no duplication of efforts.

Vice-Mayor Jones noted that the Asheville Police Department and the Sheriff's Office are working together intelligently, strategically and compassionately on the same page for the same end.

On behalf of City Council, Mayor Bellamy thanked Sheriff Duncan for taking time out of his busy schedule to outline his vision of the Sheriff's Office.

C. DISTRICT ATTORNEY'S OFFICE OVERVIEW

Mayor Bellamy said that District Attorney Ron Moore was unable to attend this meeting to talk about the court system, but will invite him to another meeting in the near future.

D. RIVER SCULPTURE FESTIVAL PRESENTATION

Mr. Robert Winkler, representing the River Sculpture Festival, gave a brief overview of the River Sculpture past and present. He said the emergence of the River Sculpture in 2006 was an unprecedented event on every level. This was not only the City's first large scale public art event, it was the first to feature contemporary outdoor sculpture by Western North Carolina artists; to set a major exhibit in a park setting; to juxtapose sculpture with dance, music, theater and education and to interact with the viewing public through guided tours and surveys.

Conceived and produced by Asheville residents Robert and Arlene Winkler, River Sculpture was the result of a highly successful collaboration with Asheville Park & Recreation, the Public Art Program, the Asheville Area Arts Council, Western North Carolina sculptors and private individuals and sponsors.

Our objectives for the 2006 pilot project were as follows: (1) to display a collection of outdoor works by the best local sculptors, enriching and interacting with the public on multiple levels; (2) to add an important new culture attraction that would draw additional visitors and income flow to area businesses, especially during the tourist "shoulder" between summer and the foliage season; (3) to create higher visibility for Western North Carolina sculptors as a part of the larger cultural community; and (4) to draw visitors to a beautiful part of the City that they might not normally visit. In spite of a tight time-frame and a limited budget, River Sculpture 2006 was an unqualified success with both the artists and the public.

River Sculpture 2007 can and should be even better. Based on our experience in 2006 and the foundation that is now in place, our objectives for River Sculpture 2007 are as follows: (1) to display more and larger contemporary outdoor works; (2) to draw artists from a broader geographic area creating higher visibility for Asheville and expanding the sculptors' dialogue with the larger cultural community; (3) to raise the sculptors' stipend from the current $250 per sculpture to help the artists offset expenses, to underscore Asheville's reputation as a City that supports the arts, and move us towards becoming the pre-eminent sculpture event in the region; (4) to offer merit awards for individual works in order to attract the highest level of quality as well as create public relation opportunities; (5) to acquire the appropriate permits to keep the exhibition in French Broad River Park for the entire duration; (6) to extend the exhibition period to at least 90 days; and (7) to focus on public relations and advertising beyond Western North Carolina in order to create broader visibility for River Sculpture both statewide and nationally, enabling Asheville to benefit from the high level of spending associated with art tourism.

The ongoing development of River Sculpture will require a commitment in both dollars and interest on the part of the City. It is our intention to continue fund-raising with the private sector, but the level of the City's involvement will underscore the value of the arts and drive the generosity of corporate and private donors.

In response to Councilman Davis, Cultural Arts Superintendent David Mitchell explained why the sculptures were moved from the French Broad River Park to City-County Plaza.

It was the majority of Council's consensus to support and endorse the River Sculpture 2007.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT AND A REQUESTED DENSITY BONUS FOR A 19-UNIT CONDOMINIUM PROJECT FOR PROPERTY LOCATED AT 2 SUNSET DRIVE AND A MODIFICATION OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW PARKING TO BE LOCATED IN THE FRONT SETBACK

ORDINANCE NO. 3442 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT AND A REQUESTED DENSITY BONUS FOR A 19-UNIT CONDOMINIUM PROJECT FOR PROPERTY LOCATED AT 2 SUNSET DRIVE AND A MODIFICATION OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW PARKING TO BE LOCATED IN THE FRONT SETBACK

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:20 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit and a density bonus for a 19-unit condominium project for property located at 2 Sunset Drive and a modification of the Unified Development Ordinance (UDO) to allow parking be located in the front setback.

The ***ACDP 2025*** proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. This project accomodates this by utilizing the "Exceptional Development Standards" density bonus. In addition, the comprehensive plan discusses the need for residential infill development and new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing neighborhood.

This project is also proposing 20% of the units (4 units) at the City's affordable housing rate standard. This is not only meets one of the City Smart growth goals for affordable housing, but also contributes to meeting the needs for affordable housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005.

This project utilizes the Density Bonus provision as an incentive in providing a higher density infill development as outlined under Housing Opportunities, Goal #3.

The project area is located in the Asheville city limits at the corner of Baird Street and Sunset Drive (City Exhibit 3 - Aerial Map). The property consists of 3.4 acres and is zoned RS-8. The site is currently developed and houses eleven (11) buildings consisting of a total of 23 units (4 duplex units, 1 quadraplex unit, 1 six-plex unit and 5 single family roudette buildings). Some of the units are accessed via a private drive along the backside of the development. The remaining units fronting Sunset Drive are accessed directly from the street.

The current development is considered non-conforming primarily in that the number of units existing on the site exceeds the density allowed under the RS-8 zoning district and Hillside development standards. Based on the Hillside area calculations certified by the project engineer a total of 12 units would be permitted. Under the same calculations, disturbance to the site is limited to 46% or 1.55 acres, less than half of the overall site acreage. The conceptual grading plan and a letter from the project engineer states that site disturbance for this project would be limited to approximately 45% (City Exhibit 3 - Site Plan).

The applicant is proposing to demolish the existing buildings and is requesting a 150% density bonus in order to reconstruct 19 units, a density of 5.6 units per acre. The development of the site will consist of sixteen (16) buildings with four (4) duplex structures, eleven (11) single family structures and one (1) 2-car garage. The development will provide 7- 2 bedroom units, and 12- 3 bedroom units. Of the 19 units, the developer is committing (4) four units to be sold at the City's affordable housing rates.

Access to the development and new structures is proposed via private driveways off of Sunset Drive and also by the existing private drive along the west side of the property that will be upgraded to meet City standards. A total of 33 off-street parking spaces and one two car garage are proposed to serve the development.

The re-development of the site will require that landscaping be brought into compliance with the Unified Development Ordinance (UDO). A 20-foot, Type B landscape buffer is required along the north and west sides of the property, a 15-foot Type A buffer along Baird Street and street trees along Sunset Drive.

The applicant is proposing significant tree preservation as an "Exceptional Development Standard" item being used to support the density bonus request. The existing vegetation may also be credited towards the landscape requirement once a tree survey is completed and tree protection fencing is installed to ensure the health of the trees.

In an effort to minimize land disturbance and clearing, the applicant is proposing to:

1) Use the existing building locations for the new construction and where possible, rebuild on existing concrete pads;
2) Utilize and improve the private drive along the west side of the development that serves the units at the rear of the lot;
3) Minimize the overall number of parking spaces for the development (33 off street spaces, plus one 2-car garage);
4) Utilize and improve the existing parking spaces along Sunset Drive (upgrading to City Standards as required by the Technical Review Committee). Note: This will require a modification by City Council (see below); and
5) Preservation of existing landscaping and undisturbed open space.

Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for the requested 150% density bonus by providing an exceptional development through: Higher quality building design and orientation, green building techniques, enhanced landscaping (significant tree preservation), project amenities (walking trails, open space in excess of City Standards), enhanced stormwater management, and environmentally sensitive design.

At the December 18, 2006, Technical Review Committee (TRC) meeting the project was approved subject to the conditions outlined in the TRC staff report and also with a condition that City Council grants a modification that would allow the parking spaces along Sunset Drive to be located within the front setback.

Regarding the modification request for City Council consideration, the applicant is requesting a modification of Section 7-8-4(f)(9) of the UDO that states no parking shall be permitted in any required setback. The conceptual site plan shows a 15-foot encroachment of 18 parking spaces that are located within the front setback along Sunset Drive. The applicant is requesting a modification from this standard that would allow the development continued use of the existing parking layout (parking spaces located directly off of Sunset Drive). Denial of this request would result in the need for creating a larger parking area that would be necessary to serve the number of units proposed on the lot.

Although staff is in support of this request with approval from the Engineering Department to allow the 90 degree parking off of Sunset Drive; as stated above, the applicant does have an option that would eliminate the need for the modification by creating an off-street parking area on the lot. This, however, would result in additional grading of the lot, removal of existing vegetation and a reduction in the open space area proposed for the project.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the ***UDO***, the ***Standards and Specifications Manual***, the ***North Carolina Building Code*** and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The property in its current state is developed. The redevelopment of the site proposes demolition of all existing structures (23 units). The applicant intends to rebuild at a lower density than what is in place today.

   In an effort to reduce the amount of grading and disturbance on the site, and to also reduce the need for excessive removal of existing vegetation, the majority of new buildings (19 units) will be constructed on or near the existing building sites (utilizing existing concrete foundations where feasible).

The majority of disturbance on site will concentrated around units 9, 13 and 14. These units are being constructed in areas where buildings currently do not exist.

Additional efforts made by the developer to reduce the amount of grading on site include the following:

- Utilizing and improving the private drive along the west side of the development that serves the units at the rear of the lot;
- Minimizing the overall number of parking spaces for the development (33 off street spaces, plus one 2-car garage) and utilizing retaining walls to support these parking areas as necessary to minimize disturbance;
- Utilizing and improving the existing parking areas along Sunset Drive (upgrading to City Standards as required by the Technical Review Committee). Note: This will require a modification by City Council; see below.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The development is not expected to injure the value of adjoining and abutting properties, given the proposal to utilize the existing site layout and commitment to preserve the majority of mature vegetation areas along the perimeter and interior portions of the property.

The new construction will be more in character with the existing development patterns on the hillside and will also be more architecturally attractive and consistent with the older Craftsman style homes of the area. The applicant, as part of the exceptional development standards bonus, has committed to the use of 'green building' techniques for appropriateness and energy efficiency.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The existing development on the hillside currently supports several pockets of medium density development as well as individual lots that would be classified as high density and low density. The redevelopment of this site is considered medium density, and proposes a decrease in the number of units from what currently exists (existing 23 units to 19 units).

The proposed development does not appear to be out of scale with many of the larger single family homes in the area as well as the existing multi-family structures. Units most visible to the area, along Sunset Drive, are a mix of 2 and 3 story buildings. The 3 story buildings will appear 2-story-like with 2 levels on Sunset Drive and the 3rd level below grade with a daylighted basement.

Lastly, the character of all the proposed structures would be more compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The ***ACDP 2025*** proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning

tools to encourage higher density residential infill development. This project accomodates this by utilizing the "Exceptional Development Standards" density bonus. In addition, the comprehensive plan discusses the need for residential infill development and new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing neighborhood.

This project is also proposing 20% of the units (4 units) at the City's affordable housing rate standard. This is not only meets one of the City Smart growth goals for affordable housing, but also contributes to meeting the needs for affordable housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The development proposes a decrease in the number of units. The City's Traffic Engineer has reviewed the proposal and determined that there are no traffic issues created by the project nor is a traffic impact analysis warranted.

Pros:
- Project incorporates green building and environmentally sensitive approach to development.
- The proposed development will replace outdated buildings with new construction that is more architecturally compatible with the surrounding neighborhood.
- The redevelopment of the site will result in a reduction in the number of units than what currently exists on the site today.
- Four (4) units will be sold at the City's affordable housing rate standards.

Cons:
- The project exceeds the density allowance under the RS-8 zoning district and Hillside development standards, unless the Conditional Use Permit and density bonus is approved.
- If a modification to allow the parking to encroach into the front setback along Sunset Drive is not approved, additional grading and clearing of a portion of the site will be necessary to create an off-street parking area.

Based on the above findings and that the project appears to display an "exceptional development", staff recommends approval of the conditional use permit and approval of the 150% density bonus requested by the applicant.

Mr. Alan Laibson, one of the developers of Sunset Park, spoke in support of the conditional use permit (Applicant Exhibit 1). He explained this project will exemplify the City's comprehensive plan what calls for new construction to preserve, protect and enhance existing neighborhoods, as well as epitomize what the City expects of a residential infill project. They have incorporated 20% of the units in Sunset Park to fall within the City's affordable rate standards. In order to achieve that goal, they had to partially subsidize their construction. Granting the density bonus will help them accomplish that goal. They have met with neighbors

12.

who are supportive of the project. There will be minimal disturbance of the property. To the most part, they will build on existing building footprints. They will be reducing the density from 23 rental units to 19 single-family homes and town homes of which 4 are affordable. The size and design are compatible with the existing neighborhood. In addition to creating energy efficient and green buildings and site plan, it should be noted that the site's proximity to public transportation and the ability to walk to downtown and north Asheville sites contributes to the sustainability the City is looking for.

Mr. Daryl Rantis, Architect, reviewed with Council a computer animation of the development (Applicant Exhibit 2). Using pictures (Applicant Exhibit 3), he explained how this development will meet the City's exemplary development standards. He said it was important to the development team that the building designs reflect the architectural heritage of the neighborhood and of north Asheville. They have always been ambitious about incorporating environmentally conscious design. They are incorporating passive and active solar heating and cooling strategies. They are fitting all of the buildings that have good solar access with panel ready rooflines for the direct application of photovoltaic and thermal hot water panels as an option for the buyers. They will be employing Energy star and healthy house certification programs as a minimum standard for all of the built structures. They will be incorporating a photovoltaic electrical panel system to run the site irrigation and lighting system. And they will also incorporate water conservation methods by specifying water conserving fixtures in the buildings and capturing rain water for use on the site.

Mr. Mike Lavoy, civil engineer, briefly explained the development.

After rebuttal, Mayor Bellamy closed the public hearing at 6:37 p.m.

Councilman Freeborn moved for the adoption of Ordinance No. 3442, granting a conditional use permit and a density bonus for a 19-unit condominium project for property located at 2 Sunset Drive and a modification of the UDO to allow parking be located in the front setback, subject (1) conditions recommended by City staff; (2) the project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets. A lighting plan is required to be submitted for review and approval; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) A grading permit will not be approved until a tree survey is performed and tree protection measures are in place. Final Landscape and Grading plans shall clearly denote all tree's being preserved and also show tree protection devices in compliance with the City's UDO standards; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (7) The applicant shall provide documentation to staff ensuring that the affordable units proposed with this project are being offered at the City's affordable housing rate standards; and (8) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 341 ROCKWOOD ROAD

ORDINANCE NO. 3443 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED AT 341 ROCKWOOD ROAD

Mayor Bellamy opened the public hearing at 6:40 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to consider extending the corporate limits of the City of Asheville to include property located at 341 Rockwood Road. This public hearing was advertised on February 16, 2007.

Crown/Asheville, LLC has petitioned the City for the annexation of one lot owned by the LLC and located at 341 Rockwood Road (PIN 9643.02-65-9836) containing approximately 1.93 acres.

The lot is adjacent to the new Southridge Shopping Center located along Airport and Rockwood Roads in South Buncombe County. A restaurant is under construction on this property. The area, while contiguous to other non-contiguous ("satellite") parcels in the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N.C. Gen. Stat. sec. 160A-58.1. One of these standards states, "no point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city....." The area proposed for annexation is closer to the corporate limits of the Town of Fletcher. However, since Fletcher's charter precludes them from annexing into Buncombe County, staff has determined that this annexation is not contrary to state statutory requirements. Council may recall that similar situations have arisen in the past and we have handled these annexations by voluntary petition or legislative action.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on April 30, 2007.

Considerations:

- Provides for the orderly growth of the City and the tax base through the acceptance of areas into the corporate limits where owners desire annexation.
- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mayor Bellamy closed the public hearing at 6:41 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3443. This motion was seconded by Councilwoman Cape and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER REZONING 11 LOTS LOCATED ON CRAVEN STREET, ROBERTS STREET, WEST HAYWOOD STREET, RIVERSIDE DRIVE AND THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT

ORDINANCE NO. 3444 ORDINANCE TO REZONE 11 LOTS LOCATED ON CRAVEN STREET, ROBERTS STREET, WEST HAYWOOD STREET, RIVERSIDE DRIVE AND THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT

Mayor Bellamy opened the public hearing at 6:42 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 11 lots located on Craven Street, Roberts Street, W. Haywood Street, Riverside Drive and Thompson Street from River District to Urban Place District. This public hearing was advertised on February 16 and 23, 2007.

Mr. Glines said that the rezoning effort began with the intent to support the Wilma Dykeman Riverway Master Plan (Dykeman Plan) that was adopted by the City of Asheville in 2004. The Urban Place District provides the best fit for the development vision provided for in the Dykeman Plan. The Dykeman Plan anticipates the French Broad and Swannanoa Rivers becoming a vital mixed-use urban district. The individual program highlights of the plan provide a holistic approach to redevelopment in the river area. One area of importance is expanding the current roadway system to provide a cross town access route by improving existing roads and providing some new bridge connections. The economic development part of the plan proposes new mixed-use development, strengthening the arts community and opportunities for business growth in Asheville's core business sectors. A third highlight of the Dykeman Plan envisions environmental protection and recreation opportunities for the corridor which includes completion of the greenway system along the Swannanoa and French Broad Rivers, park development and water quality improvements for surface runoff. Above all, the river flood issues must be dealt with in an environmentally sensitive way to balance this special issue and still allow for the development in the floodplain. The Urban Place District encourages a scale and density to create the critical mass to make infill and redevelopment successful. Upper stories of buildings can be used for residential uses similar to the way downtown has redeveloped. The river area would benefit from the incorporation of live-work units which may have particular application as artist spaces.

The Urban Place District is designed to encourage higher density mixed-use development that is pedestrian friendly and includes special building design considerations similar to other mixed-use districts. The district is expected to foster development and redevelopment of areas with sufficient infrastructure in place to support the uses. Urban Place is expected to be applied to areas faced with blight and neglect and for areas that may have special environmental considerations. The list of uses is broad enough to support compatible infill redevelopment. This rezoning is an effort to begin implementing the Dykeman Plan by providing the appropriate zoning for the area properties. The proposed wording amendment to the Urban Place District also being considered will ensure that properties that are located in the floodplain will meet environmental standards that are similar to the River District.

The River District is developed to encourage redevelopment of the river areas in a manner that complements the natural environment of the river. The River District is unique in that it allows any use that is not prohibited in the list of uses. The residential density of the River District is relatively low for the nature of the district and the fact that most housing will be multi-family in style.

The River District Design Review Committee became interested in the topic of providing incentives for redevelopment of the river areas. The group reviewed the river maps and discussed areas most favorable for redevelopment. On September 14, 2006, a community meeting was held for all property owners with River District zoned property. The turnout was

reasonable and the majority of those in attendance agreed with the rezoning proposal for mixed-use nodes. The current rezoning proposal to Urban Place includes properties within those areas identified at the community meeting.

At the initial presentation of the rezoning request at the January 3, 2007, meeting of the Planning and Zoning Commission staff from RiverLink expressed concern with the zoning change primarily because of environmental issues. The Commission continued the item to allow time to explore those concerns. RiverLink staff, the River District Design Review Committee and City staff met on several occasions to review ordinances pertaining to environmental standards in the proximity of the river floodplain. The wording amendment to Urban Place District to include similar requirements from the River District is a result of these discussions. The net effect it that the environmental standards will still apply to properties that are located in the 100-year floodplain regardless to the zoning change to Urban Place.

Since the January meeting, two properties located on Thompson Street owned by the Dalton Family have requested to be added to the rezoning proposal. These properties are adjacent to the properties known as the Mica Village site. Recently the property owner of 91 Thompson Street has requested to be removed from consideration at this time. Staff is supportive of these changes.

The Planning and Zoning Commission considered the rezoning proposal and the Urban Place wording amendment at their February 7, 2007, meeting. Eight people spoke about the proposals and most were in favor of the changes. The Planning and Zoning Commission voted 5-0 to recommend in favor of the proposals.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposal is supports the goals of the City Development Plan 2025 related to river-area land use, smart growth concerns, transportation opportunities, potential for economic growth and greenway and environmental features.
- The rezoning is in line with the goals of the Wilma Dykeman Riverway Master Plan which was a planning effort spearheaded by RiverLink and adopted by City Council in July 2004 as an official plan of the City.
- The zoning to Urban Place will encourage private investment and redevelopment in the river areas.
- The zoning changes raise public awareness of the redevelopment potential in the river areas.

Cons:

- Additional rezonings will be needed over time to create the districts and nodes that are outlined in the Wilma Dykeman Riverway Master Plan document. (a potential pro) staff will need direction from City Council to move forward.
- Public participation for infrastructure needs will be required in the river area to realize the area's full potential. (a potential pro)
- Maps for the 100 year special flood hazard area are being revised and may be available this summer so the actual flood elevation may change.
- Flood and water quality issues are continuing concerns for some in the community and both issues have task groups working on them. (a potential pro)

At their February 7, 2007, meeting, the Planning and Zoning Commission voted 5-0 to recommend approval. Staff concur with this recommendation.

Ms. Spangler asked what the implications are when the properties are changed from River District to Urban Place District.

The following individuals spoke in support of this rezoning request:

Ms. Pattiy Tomo, resident on Riverside Drive and member of the River District Design Review Committee
Ms. Regina Trantham, representing Mica Village on 75 Thompson Street
Mr. Joe Ferikis, property owner in the River District
Mr. Alan Shepherd, one of the owners of the stockyard property
Mr. Whitt Riley

Mr. Mike Klepper, owner of four lots adjacent to the area, would like for his four lots to be included in this request as well. Mr. Glines responded that we cannot include the lots at this time, but would be happy to include them when City staff brings Council more properties, if Council is agreeable to this rezoning.

Mr. Don Yelton supported cleaning up the river area, but feared development due to flooding.

Mayor Bellamy closed the public hearing at 6:59 p.m.

In response to Councilwoman Cape, City Attorney Oast explained why he felt that spot zoning is not a legal issue in this case.

At the request of Vice-Mayor Jones, Mr. Glines spoke to the concern of RiverLink regarding flooding. It was his understanding that their concern was that flood ordinances in general may not be complete enough for what the City needs. Our Engineering Department is working on both the floodplain ordinance and the stormwater ordinance and feel that they will have a flood ordinance in place later this summer for Council consideration. Planning & Development Director Scott Shuford also resplied that in a following public hearing, there is a proposed Unified Development Ordinance wording amendment with specific changes to address some of the issues that have come up during this process. All of our erosion control, stormwater management, flood control ordinances are separate and stand alone and they apply no matter what the underlying zoning is. It really makes no difference on what the zoning is if those regulations are sound and we are working on improving them. They will address the issues at hand.

Vice-Mayor Jones was concerned about how the City is balancing more development with issues of flooding. Mr. Glines said that the flood ordinances are managed by the Engineering Department and we are working together to strengthen the ordinances.

Councilman Newman said that this rezoning looks good, but wondered if we have a process in place (similar to information on how traffic impacts the streets in terms of congestion) to look at the big picture to make sure that the pattern of development that we see unfolding will not exasberate flooding.

Mr. Chad Pierce, City Stormwater Services Manager, said that the Flood Reduction Task Force is looking at this particular issue. He said that Mr. Shuford made a presentation to the Task Force on this rezoning issue, coupled with the RiverLink presentation for the Wilma Dykeman Plan.

In response to Councilman Davis, Mr. Glines explained why some of the area property owners were not interested in joining this rezoning request at this time.

Councilwoman Cape said that the comprehensive watershed issue is absolutely important, but in that stead, we need to comprehensively look at the location of this section of the River and the overall regional benefit for bringing our density to this area. If we create these vibrant places, we are going to overall lessen the need to fill up the mountainside with houses for people to live. Cities and rivers can live together very vibrantly. We need to let local landowners be a part of the redevelopment boom of the River. We need to let them take their properties and make them viable right now. If we don't, what happens is the big developers are the ones who come in and reap reap the benefits. She encouraged Council to be supportive in moving forward and allowing these people to set the positive example. The flood regulations are in place to help manage the flooding issues.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3444, finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously.

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At 7:26 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; and County of Buncombe. The statutory authorization is contained in G.S. 160A-318.11 (a) (3); and (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:45 p.m., Mayor Bellamy moved to continue the closed session until after the completion of the agenda for the regular meeting. This motion was seconded by Councilman Davis and carried unanimously.

At 7:50 p.m., Councilman Freeborn moved to excuse Vice-Mayor Jones for the remainder of the meeting due to illness. This motion was seconded by Councilwoman Cape and carried unanimously.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO AMENDING THE URBAN PLACE DISTRICT

ORDINANCE NO. 3445 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO AMENDING THE URBAN PLACE DISTRICT

Mayor Bellamy opened the public hearing at 7:50 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to consider an amendment to the Unified Development Ordinance (UDO) relative to amending the Urban Place District. This public hearing was advertised on February 16 and 23, 2007.

The Urban Place District is written to develop walkable pedestrian oriented mixed-use districts for areas that may be in decline and blighted or otherwise are not meeting their potential. The River area was anticipated as a likely area for the Urban Place District when it was created. The built environment is an important consideration and requirements are in place to ensure that new construction embraces the street and creates a active streetscape and pedestrian environment. The changes proposed in this amendment are the result of the request from RiverLink to strengthen the environmental standards for properties located within the special 100-year flood hazard area. The primary focus of the changes included here are specifications for properties that are affected by the special 100 year flood hazard areas. Most of the wording is currently found in the River District and has direct application to the Urban Place District for flood prone properties. A few minor wording changes cover other issues in the Urban Place District and will be briefly outlined.

The initiation of the wording amendment began with a proposal sponsored by the planning staff and the River District Design Review Committee, (River Design Committee) to rezone several parcels in the River District to Urban Place District. The River Design Committee supported this effort as a way to begin implementing goals of the Wilma Dykeman Riverway Master Plan which encourages redevelopment of river-area properties with sensitivity to the flood plain. After working on this proposal in 2006 and holding a community meeting in the fall, several property owners offered the rezoning of their property to Urban Place District. The amendments to Urban Place have been considered by the River Design Committee and RiverLink staff. The largest amendment to the Urban Place District is the addition of section 14 of the code to cover properties that are located within the 100-year special flood hazard area.

Section 14 replicates most of the special language from the River District to provide for a river resource yard, limits to speculative grading without a site plan, limits to impervious surfaces standards to match the River District. The remaining items cover design for new construction, elevated structures and encouragement for green building. The river resource yard is proposed to be expanded from a minimum of 20 feet in the River district to 25 feet. Several people from the review team recommended an even greater dimension for the river resource yard perhaps up a minimum of 50 feet. Staff notes that there was not sufficient time to meet with affected property owners and that the requirements found within the Urban Place District were not intended to replace or super cede the floodplain ordinance. The floodplain ordinance is managed by the City Engineering Department and there is some work being done to provide amendments to the floodplain ordinance and the stormwater ordinance. While the change to the river resource yard is minimal, it is still an improvement. Staff feels that larger and more comprehensive revisions are better researched and reviewed by the Engineering Department which is charged with managing this special area.

Another minor change is to remove 'inn' from the list of allowable uses and replace it with 'lodging facilities." The change will be more consistent with other districts found in the UDO by using the term lodging facility.

Considerations:

- This amendment seeks to provide an expanded understanding of the goals and opportunities of the Urban Place District especially as it pertains to parcels located in the special flood hazard areas.
- The amendment includes purpose statements directly from the Wilma Dykeman Riverway Master Plan.
- This amendment requires additional development standards for properties that are located adjacent to the French Broad or Swannanoa Rivers that was inspired by requirements found in the River District.

- The changes to fenestration requirements for building that are raised above the 100-year flood elevation will address what is a unique reality for development in the floodplain area of the rivers.
- A minor changes in the list of uses for lodging facilities provides consistency for Urban Place with other districts in the UDO.

Staff recommends approval of the proposed ordinance amendments to Urban Place.

Mayor Bellamy closed the public hearing at 7:52 p.m.

Mr. Glines responded to various questions/comments from Council, some being, but are not limited to: would this allow small river boat type manufacturing; will this change affect any existing businesses in that district; and is there a need to mention bus transfer stations in the permitted uses.

In response to Councilwoman Cape, Mr. Glines said that the Urban Place District does not allow salvage yards, salvage warehouses, recycling yards or recycling warehouses.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3445. This motion was seconded by Councilwoman Cape and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR NORTH VIEW AT BILTMORE LAKE PHASE II ON ENKA LAKE ROAD FOR 257 RESIDENTIAL MULTI-FAMILY UNITS ON 33 ACRES

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:57 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for North View at Biltmore Lake Phase II on Enka Lake Road for 257 residential multi-family units on 33 acres.

Under review is a proposal to build 257 residential units on 33 acres located in the City's western extraterritorial jurisdiction area (ETJ) (City Exhibit 3 - Location Map and Aerial Map). The site is zoned RM-16 and is being presented as a second phase of the North View at Biltmore Lake project that was approved in 2003. Under the current zoning the developers could build many more units than is proposed at this time. North View at Biltmore Lake Phase II (North View Ph. II) has access from Enka Lake Road at a point close to Sand Hill Road. The phase two site will share the main driveway with the phase one project (made up of apartments and condominiums) now called Seasons at Biltmore Lake. A second driveway will be constructed south of the existing driveway. A Traffic Impact Analysis (TIA) was completed for the original first phase and included a full build-out scenario for the two phases. Improvements to Enka Lake Road were constructed during the Phase I project as a result of this study.

The modified Site Plan (City Exhibit 4 - Modified Site Plan) consists of an additional six one-bedroom units.

The Master Plan proposes a circuitous driveway route across the hill top parcel. The main part of the development is clustered in the center of the site in the area that is now an open meadow. The fifteen residential buildings and clubhouse structure proposed on the plan will be accessed from the main drive route and will have two access points along Sand Hill Road. The front part of the lot and rear of the lot are heavily wooded. Some of these trees will be protected and will remain to provide natural buffers for the project. A portion of the rear section of the site is in the hillside ordinance area. This portion of the lot is not being developed and is being set aside. Open space is provided by the buffer areas and the space around the central clubhouse.

This number of units was recently updated based on the discussion during the Planning and Zoning Commission meeting. The 257 units are now designated as 102 one-bedroom units, 115 two-bedroom units and 40 three-bedroom units. Since the project does not require a density bonus or other incentive for development it is difficult to leverage affordable units in this project. Staff requested that the developer consider providing some percentage of the units at a rate affordable to people with incomes below 80% of area median income (AMI). The area median income for a family of four is $50,400. Projects throughout the City are needed to assist in the affordable housing crunch in Asheville. The developer has responded that the public sector should provide a subsidy to augment the financing for this kind of project to make the below-market rents feasible. The developer has noted that the projected rents at this point in the planning process for North View Phase II will serve the market that is making between 80% and 120% of the area median income. This market segment is commonly referred to as 'workforce housing'. They also noted in a recent meeting with staff that many of the units will be affordable to persons making between 80 and 100% of the AMI. At the Planning and Zoning Commission meeting the developer offered to take six three-bedroom units and convert them to 12 smaller one bedroom units. This would allow the developer to offer less expensive units within this project. The Planning and Zoning Commission and staff were supportive of this proposal. The numbers for the project now reflect this change from 251 total units to 257 units. The building footprints for the buildings (with the conversions from three bedroom units to two one–bedroom units) will not substantially change. Neither will site grading or parking requirements, etc.

Since the Technical Review Committee (TRC) reviewed the project some amendments were made to the plans which address some of the concerns from staff. Buildings One and Two at the front end of the parcel have been shifted closer to the access driveway to reduce the impact on the hill below and the existing vegetation there. The existing trees that can be protected are shown in more detail on the plans. Staff still recommends that the developer tighten the distance of the building to the driveway route to lessen the grading required and provide a tree survey for the areas below the two driveways and buildings One and Two. This will assist in preserving the buffer trees during construction and to reduce the limits of clearing in this

area. The project will lessen the visual impact from Enka Lake Road by saving trees in these areas.

The elevations that have been provided with this submittal have also been revised. The elevations show greater definition in the materials used on the facades. Two sizes of hardi-plank are being proposed to provide some visual interest for the facades. Stone veneer will be placed at the lower portions of the building. The colors of the materials should also offer variety in the facades.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) notes the seven conditional use standards and states that the Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case;

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposal is being reviewed and will meet requirements for City standards and the state building code. If the project is approved, detailed plans will be submitted and reviewed for permitting.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The development is in keeping with the underlying zoning for the area, residential multi-family high density (RM-16). The actual development will located at the center of the site on a sloping knoll on the part of the site is mostly already open. Parts of the front area and the rear portions of the site will be preserved and not graded or cleared. The upper section of the rear of the site is located in the city regulated Hillside area and no grading or clearing will occur in this area. The creek area at the front of the site will have some disturbance mainly from the required second driveway. Other sections adjacent to the creek will not be disturbed. The project is reasonably sensitive and compatible with the significant natural features of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed use is not expected to injure the value of adjoining or abutting property. This type of investment is important for providing a mix of residential uses in this sector of the community. The area has seen significant growth in the single family residential market and the original North View Phase I is converting to condominiums. This rental project will provide balance to the area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The density of the project is just under eight units per acre. The zoning of the site is RM-16. The project does not require density bonuses or special incentives to build this project. The proposed use is in harmony with the scale, bulk, coverage, density and character of the underlying area. The clustering of the units and the preservation of some of the existing trees at the front and rear of the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The comprehensive plan encourages development in areas where the infrastructure is in place to support the development. The comprehensive plan encourages a variety of housing types in a given sector of the community. The west end of the City is expected to continue to develop and redevelop to serve the growth in the population there. The project is providing market rate rental units with initial prices in a range that can be considered workforce housing. This is an important segment of the population to serve. Affordable units are a challenge to provide for without some public participation through subsidy or tax credit. The project should still be an asset to the west Asheville community.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Plans are underway for road widening for Sand Hill Road, the closest connecting street, based on growth projections for the community. Staff is recommending that the developer provide an urban level of service for the development and provide a comment for how they will accomplish this requirement. If this is made a requirement then this condition can be met. Other facilities are in place to support the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
With two driveway access points for Phase II and the road widening planned along Sand Hill Road, the proposed development is not expected to create undue traffic congestion or create a traffic hazard. A traffic impact analysis was completed for the Phase I project and anticipated an even larger build-out between the two North View phases. The roadway improvements that were noted in the TIA have been completed (turn lanes and widening on Enka Lake Road).

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Project provides some diversity in housing choices from smaller one bedroom units to three bedroom units.
- The site provides space for undisturbed buffers and open space to minimize impacts and improve the quality of life for residents.
- Provides a suitable transition from busier commercial areas to lower density residential and institutional uses.
- The developer has provided initial projections that most of the units will be in the price range of workforce housing, (families making 80% to 120% of area median income which is $50,400 for a family of four).

Cons:

- Project does not address the need for housing options to those residents making 60%-80% of AMI.
- Developer cannot ensure that projected rents will remain within the 80%-120% AMI.
- Besides the short term possibility that the widening along Sand Hill Road may fall behind this project timeline, no other items of concern are noted.

This conditional use permit was recommended for approval by a 5-0 vote by the Planning and Zoning Commission at their February 7, 2007, meeting. Besides the development team, no one spoke regarding the project. Staff also supports the approval of the project.

Mr. Will Buey, representing the design team, said that the clustering of homes is on property that was a meadow and was already cleared. We tried to make sure that the disturbance from the project is limited to that area. We have preserved quite a bit of open space and are staying away from the hillside area. He reviewed some statistics about what is allowed and what they are providing in terms of density, open space, undisturbed area, buffers and pervious area (Applicant Exhibit 1). They are providing a secondary access into the project. He explained the stormwater measures which will meet or exceed the City's standards.

Mr. Wyatt Dixon, representing the owner of the property, pointed out that the building footprints are half the size of the building footprints of the units in Phase I (Applicant Exhibit 2) (Applicant Exhibit 3). Regarding affordable housing, we did revise the Site Plan for smaller units at approximately $600 per month.

After rebuttal, Mayor Bellamy closed the public hearing at 8:09 p.m.

Councilman Newman moved to grant a conditional use permit for the proposed Master Plan for North View at Biltmore Lake Phase II on Enka Lake Road for 257 residential multi-family units on 33 acres (noting that the request is reasonable based on information provided in the staff report), subject to the conditions recommended by City staff and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans and substantially agree with the plan presented to City Council; (4) The developer shall provide an urban level of public safety service for the development; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower.

In response to Mayor Bellamy, Mr. Dixon said that the units will be rental units.

When Mayor Bellamy asked if they would voluntary annex into the City, Mr. Dixon said that they have had discussions with City staff about that and at this point they are not prepared to commit to doing that, but they do note that as part of their approval process that they are required to provide an urban level of service. He explained that they would need to examine that further because this request has just recently been raised. Due to their investors and financing in place, he could not unilaterally commit to do that, however, they are willing to discuss that with City staff.

Councilwoman Cape suggested continuing this matter in order for Council to receive advice from the City Attorney as to what their options are concerning annexation as a term of a conditional use permit.

When Councilman Freeborn asked what would happen if Council did not approve this project, Mr. Dixon said that they would have to go back to the drawing board but was hopeful that would not happen.

Mr. Craig Justus, attorney, said that the issue of voluntary annexation was brought to their attention last week. It has never been brought to their attention at any time that a policy of the City requires a developer in an ETJ area, as a condition of approval, has to ask for annexation. The bottom line is these developers have spent a lot of money based on the rules in place presented to them. The only discussion about urban level of services at the Planning & Zoning Commission level was, you can ask for voluntary annexation, or you can by contract, contract with private services to provide an urban level of service. They would like to maintain that option. He asked what the point of continuance would be, unless Council believes they can create a policy to then apply it to the developers, almost retroactively. He hoped Council would not do that.

Councilman Freeborn said that he could not support any project in the ETJ unless they voluntarily annex.

In response to Councilman Newman, City Attorney Oast said that Council has to find in favor of every one of the seven conditional use standards in order to approve the conditional use permit. If they fail to meet any one of them, then Council may deny the conditional use permit. Council can put reasonable and appropriate conditions on a conditional use permit. He would have to explore whether a developer will or will not voluntary annex into the City is a basis for Council's decision on this project.

Councilman Mumpower said that the developer has come before Council with a project that seems to meet our criteria and standards and for us to ask if they would like to come into the City is fine, but to make a vote conditioned on that is municipal blackmail. This developer did not comply with our ordinances with an understanding that we had the criteria of voluntary annexation for acceptance of the project.

Councilwoman Cape said one of the roles of City Council is land planning. Regarding Condition No. 5, this continuance of adding people to our borders and spreading out, in an urban fashion, is not strategically economic or smart growth. She did not think this fits a comprehensive plan for how a city grows. They are contributing to the urban development of the area.

In response to Councilman Freeborn, Mr. Justus preferred that Council have adequate time for the City Attorney to them of what they are required to do under the law. He said that at no point in time did anyone point to a policy in writing, comprehensive plan or otherwise, that said that as part of the ETJ they have to come into the City. If after Council creates a policy, he felt to impose that retroactively is fundamentally unfair. They prefer not to be put into a corner because their only option is to litigate.

Councilman Davis said the developer is offering a lot of what we are looking for in this project, recognizing that they are enjoying building on the border of our City. He would not be comfortable in making any policy retroactive since this project is so far along.

Councilman Freeborn asked City staff ever asked this developer, who was looking at such a large scale project in our ETJ, if they were interested in voluntary annexation. Mr. Glines replied that they did discuss, in a general way, urban level of service can mean annexation, but they could provide it in another fashion as well.

Councilman Newman and Councilwoman Cape withdrew the motion to approve the conditional use permit to give the City Attorney time to look at the questions raised by Council.

Mr. Justus asked for Council to agree that this is a good project, and if part of the conditioning is to say they have to come into the City, they would like the opportunity to re-design

the project to increase the density to off-set the costs that they were unaware of at the beginning of the application.

Councilwoman Cape moved to continue this matter until March 13, 2007, in order to give the City Attorney time to look at the questions raised by Council. This motion was seconded by Councilman Freeborn and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

Mayor Bellamy opened the public hearing at 8:28 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to consider an amendment to the Unified Development Ordinance (UDO) regarding new requirements for use and dimensional nonconformities. This public hearing was advertised on February 16 and 23, 2007.

There has been recent community confusion about how the nonconformities section of the UDO addresses dimensional nonconformities. The community perception is that any renovation amounting to more than 50% of the appraised value of the structure causes full compliance with ALL sections of the UDO. This is incorrect. In Asheville, the "50% rule" applies only to certain site improvements, not to all of them. The code section in question is Section 7-11-2(b)(1) that states, in part, that "{t}he following developments must bring the entire site into ***full compliance with the requirements of Article XI*** of this chapter" (emphasis added) with one of the listed developments being "{r}enovations with a total cost exceeding 50 percent of the assessed value of the building, according to Buncombe County tax records." The reference to Article XI limits site compliance to only the standards that are covered in that Article which are:

- Parking, loading and access standards
- Landscape and buffering standards
- Open space standards
- Sidewalk requirements

As a consequence, building location, setback, height and other requirements are not required to be complied with in renovations exceeding 50% of appraised value. While it is common for zoning codes to exempt certain features from compliance in cases of significant site improvement, Asheville's UDO is one of the more generous. We have seen situations where virtually the entire structure has been demolished without triggering compliance with anything more than site design requirements.

In response to Council direction, staff has developed this ordinance which significantly increases the extent to which "virtual teardowns" must comply with all dimensional requirements but which exempts renovations (see definition below) from compliance with anything other than site design (Article XI) requirements.

Renovation means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

There are two other significant changes in this ordinance from the current situation regarding nonconformities. First, the current provisions require adjoining lots in common ownership on the day that the UDO became effective to be combined to create a conforming or less-nonconforming lot(s). In other words, if there are two adjoining lots that were lawfully

created sometime in the past and which have become nonconforming due to code changes and if the lots were owned by the same entity in 1997, they cannot be separately developed. The same two lots owned by different entities in 1997 can be separately developed. The proposed amendment corrects this inequity.

Second, the proposed ordinance creates a new role for the Planning and Zoning Commission. Under current code, a nonconforming use can be replaced by another nonconforming use of equal or lesser intensity using the table provided in Section 7-11-2(d)(10). If the proposed existing or replacement use is not specifically listed, City staff makes the determination of whether replacement can occur. Under the revised ordinance, the Planning and Zoning Commission makes the determination as to whether the unlisted uses are of equal or lesser intensity.

Pros:

- Provides a simpler, cleaner approach to nonconforming uses and dimensional nonconformities.
- Meets the expectations of many in the community about site compliance during renovation.

Cons:

- Will likely result in increased cost of site development.
- Some projects may not be pursued due to expense of compliance.

The Planning and Zoning Commission considered this code amendment on February 7, 2007, and recommended approval of this amendment by a vote of 5-0, subject to staff adding a definition of the term "impact" and evaluating whether there was ordinance confusion about the terms "communication tower" and "telecommunication tower." Staff has added a definition for "impact" and reviewed ordinance provisions concerning the other two terms, finding that there is indeed sufficient ordinance clarity about the distinctions. City staff recommends approval of the proposed code amendment as modified.

When Mr. Shuford said that he has recently received five concerns from Mr. James Judd, some of which are well founded, Mayor Bellamy wondered if the Planning & Zoning Commission should review the concerns prior to City Council taking action.

Mr. Eugene Katz explained why he encouraged the use of non-conforming lots.

Mayor Bellamy closed the public hearing at 8:37 p.m.

Councilman Freeborn moved to remand this issue back to the Planning & Zoning Commission. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. GREENLIFE/MAXWELL RECOMMENDATION

Assistant City Manager Jeff Richardson said that at the January 12, 2007, meeting, City Council directed staff to continue to analyze options regarding minimizing local commercial traffic on Maxwell Street.

At City Council's direction, City staff has continued to work with Greenlife Grocery Store officials and representatives for the property owners at located at 70 North Merrimon Avenue, in an effort to mitigate local commercial traffic accessing Greenlife Grocery from Maxwell Street.

As part of this process, store officials have analyzed the volume and size of delivery truck traffic accessing Greenlife in a seven (7) day period. The data represents store truck delivery broken down into two categories:

- Non-Commercial (cars, trucks, vans)
- Commercial ((Straight Trucks, Semi-Tractor Trailer)

Analysis reveals an approximate 50/50 volume split between commercial/non-commercial delivery traffic. Store officials believe that by reconfiguring the parking lot to include relocation of the one residential home, the redesign will allow for one (1) additional loading dock adjacent to the current loading dock on the west side of the store entrance. This additional dock will virtually guarantee that all mid-size straight trucks, along with all tractor trailer trucks will unload using the front store delivery entrance. Therefore, non-commercial trucks will use the side loading dock accessed using Maxwell Street and commercial truck deliveries will occur via Merrimon and confined to the front parking lot of the grocery store.

If this site design moves forward, store officials would obtain plan approval from City planning staff, which requires a privacy fence in addition to a minimum ten foot vegetative buffer. In addition, the Greenlife property owners have expressed continued support for a rezoning request for 37 Maxwell Street, which if approved, would provide Greenlife necessary space for the proposed parking lot redesign.

City Council may consider the options as outlined and staff is prepared to take further direction accordingly.

Ms. Hillary Stewart, resident on Maxwell Street, said that even with these changes, the volume is tremendous on this residential street.

Mr. James Judd if Council supports this solution, then he explained his concerns of due process. In the spirit of compromise, he believed the neighbors would be satisfied if the loading was taken off Maxwell Street, the parking reinstalled on the Maxwell Street, the intended buffer placed on Maxwell Street and no commercial traffic on Maxwell Street. He questioned the Planning & Development Director's authorities. City Council should direct the City Manager to delivery the notices of violation for the decision that exceeds staff's authority.

Councilman Newman said that the four major complaints heard include the question of the site triangle and the safety of trucks entering and exiting Greenlife property on Maxwell Street; problems of trucks on Maxwell Street, especially the large trucks; buffer compliance on Maxwell Street; and the need to restore street parking on Maxwell Street. He is not asking Council to vote on anything tonight because there are aspects on what is being presented which would require Planning & Zoning Commission review. These are the efforts which he and Councilman Freeborn have undertaken to see if there are different design options to address the concerns. This design option is not a perfect solution to the problems, but it goes a long way to address three of them - the site triangle issue is fully resolved; buffer compliance on Maxwell Street; and street parking is restored on Maxwell Street. Regarding the trucks on Maxwell Street, this design makes a significant impact on that issue. It would eliminate about 1/2 of the total truck traffic on Maxwell Street, but more important, it would significantly eliminate all of the large trucks. People have asked Council to do their best to create a situation where we are fully enforcing our laws. As he understands our laws, he does not think the City Council has the authority to require Greenlife to do everything people are asking Council to do. All Council has the authority to do is to spend some time in making the situation better and this design goes a long way to that end.

Councilwoman Cape thanked Greenlife for continually stepping up to the table to help solve this difficult situation, unlike others who do business in our community and who refuse to try

to seek solutions with us. She hoped that we would get better at removing some of those difficulties in those places and she is comfortable with the compromise that we have all come to for this difficult situation. One of the huge issues in a livable community is having grocery stores that people can walk to and be a part of in our community.

Councilman Mumpower felt this represents the best compromise effort to try to meet the most needs in the fairest way possible.

Councilman Freeborn wanted to hear what the Greenlife's plan is for managing truck traffic, since he is getting an additional loading dock and only 50% of the receiving traffic will be taken off Maxwell Street. He said that he would be happy to meet with Greenlife and talk about the type of management plan he is looking for in order to consistently manage the traffic of the deliveries.

Mr. Hugh Bradburn, Greenlife Store Manager, explained the overall operations of the store.

Councilman Davis noted that Greenlife will be spending a lot of money on this design to get to a better place, and wondered, if the end of the process, if there will still be neighborhood conflict. He hoped that Greenlife and the neighborhood will talk about what will happen at the end of the process.

Since it was agreed by Council that this is the best site design available, Councilwoman Cape asked what the next step would be. City Attorney Oast said that if a rezoning is required, it will go through the Planning & Zoning Commission. All that City Council can do at this point is to agree to consider the rezoning request.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REGULATE THE REMOVAL, RELOCATION AND RECONSTRUCTION OF QUALIFIED SIGNS WITHIN THE QUALIFIED SIGN OVERLAY

ORDINANCE NO. 3446 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REGULATE THE REMOVAL, RELOCATION AND RECONSTRUCTION OF QUALIFIED SIGNS WITHIN THE QUALIFIED SIGN OVERLAY

Mayor Bellamy said that this public hearing was held on January 9, 2007, and continued in order to allow staff to develop some illustrations showing what the modified ordinance would permit.

Using illustrations, City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: what is the purpose of this amendment; are billboard companies assigned a certain number of signs; does this allow dynamic (electronic screen) signs; how many signs does this amendment have the potential of affecting; and how many billboards are in our City.

Mayor Bellamy said that Council worked hard on an agreement with the billboard industry about three years ago and felt this might erode on what was agreed to.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3446. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 23 - PAGE 271

C. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

In response to Councilman Newman, City Attorney Oast said that he would research the issue of allowing City Council to approve the guidelines for a historic district (since Council designates the area), with the Historic Resources Commission (HRC) providing Council with draft guidelines for their consideration, instead of having the HRC being the body to approve those guidelines.

Councilman Newman appreciated the HRC addressing the concerns raised by Council regarding incorporation of green building construction methods into new and existing structures in the local historic districts. He encouraged their sub-committee to continue to work on new language that could be incorporated into the guidelines.

It was the majority of Council's consensus to have the City Attorney provide Council with a memorandum on the guidelines of the St. Dunstan's Historic Preservation Overlay District along with the response regarding guideline approval requested by Councilman Newman. In addition, at Councilwoman Cape's request, the City Attorney was directed to report on the difference between the national guidelines around solar panels and what our HRC uses.

Councilman Mumpower felt there was no longer a need to create historic overlay districts to preserve historic properties anymore. He wondered when the last historic property was torn down in recent years that had anything left to it. He felt we are creating special privileges and government oversight in an elite community and could not support the motion.

Councilman Newman moved for the second and final reading of Ordinance No. 3413. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 152

D. RESOLUTION NO. 07-62 – RESOLUTION REQUESTING LEGISLATIVE ACTION FOR THE CITY OF ASHEVILLE IN THE 2007 GENERAL ASSEMBLY

City Attorney Oast said that last week Council took action to request the introduction of legislation dealing specifically with the City of Asheville. These were requests for local legislation, and the action last week was necessary in order to meet the submission deadline of February 27, 2007, that applied with respect to the Senate (the House deadline for local bills is March 7). The resolution also requests withdrawal of support for certain bills regarding annexation that have been introduced, and further requests that members of the delegation consider the introduction of legislation or other action to ensure that Asheville has the ability to encourage voluntary annexation. He then asked for further direction with respect to the other matters of local concern and potential legislative action. He noted that as bills come forward on items Council has expressed an interest in, he will advise Council.

Councilman Newman moved to support the Land for Tomorrow initiative. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Freeborn moved to support increased funding for criminal justice. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Newman moved to ask the state legislators to increase the state minimum wage and index it annually for inflation. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no." Councilman Mumpower felt this is against every basic economic principle upon which this country is founded.

Councilwoman Cape moved to support review of child care reimbursement amounts for Buncombe County. This motion was seconded by Councilman Freeborn and carried unanimously.

Councilman Freeborn moved to support campaign funding, reform to allow local governments to implement public financing of local elections. This motion was seconded by Councilman Newman and failed on a 3-3 vote, with Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no." Councilman Mumpower felt we talking about using forced taxpayer money to finance elections and would not support the motion.

After a brief discussion, Councilwoman Cape moved to revise state laws relative to the homestead exemption for low-income, elderly homeowners. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no." He was concerned that when you give people exemptions, you take away their incentives to participate in local government. Mayor Bellamy asked the City Attorney to advise Council as taxation bills come forward.

Councilman Mumpower moved to support strengthening criminal laws dealing with sexual predators, especially as related to children. This motion was seconded by Councilman Freeborn and carried unanimously.

After a short discussion, Councilman Freeborn moved to support obtaining legislation to strengthen the City's ability to regulate development on steep slopes, including transfer of development rights. This motion died for a lack of a second.

After a short discussion, Councilman Freeborn moved to support obtaining stronger legislation in order to create financial incentives for private sector development who would like to build more affordable housing. This motion was seconded by Councilman Newman and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to support obtaining stronger legislative authority to allow governments to create stronger incentives for environmentally sustainable design. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower moved to support obtaining stronger legislation to deal with illegal immigration at the local level. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Freeborn voting "no." Councilman Freeborn felt that this is a federal issue and felt confident that our new Congress will be able to deal with this issue.

There was no motion to support obtaining stronger legislative authority for regulation of trees and vegetation.

After a brief discussion, Councilman Freeborn moved to establish authorization and funding for a program to allow for enforcement of City's "quality of life" ordinances (noise, solicitation, junk vehicles, minimum housing, etc.), similar to existing programs in other N.C. cities, e.g., Durham. This motion was seconded by Councilman Davis and carried unanimously.

After a brief discussion initiated by Mayor Bellamy, Councilman Freeborn moved to ask our legislators for a direct appropriation of $5 Million to fund improvements to the Civic Center (in case they do not authorize Asheville to charge a 1% room occupancy tax as a revenue source for this effort). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Newman moved to support the state funding of the Asheville Art Museum's expansion. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no." Councilman Mumpower said that expansion will be expensive and would not be able to support the motion.

Councilwoman Cape was supportive of the Chamber of Commerce's legislative agenda item regarding transportation and infrastructure.

Councilman Freeborn moved to support the Chamber of Commerce's state legislative agenda item regarding unfunded mandates. This motion was seconded by Councilman Mumpower and carried unanimously.

After a short discussion initiated by Councilman Mumpower, Councilwoman Cape moved to reprioritize and focus on the I-26/I-40 interchange and then perform the due diligence for the remainder of the project, with the community input. This motion was seconded by Councilman Freeborn. (No vote was taken.)

Councilman Mumpower moved to support expediting the planning and construction of the I-26 Connector Project. This motion was seconded by Councilman Davis and carried on a 4-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

Councilman Freeborn updated City Council on the proposal to create an independent Airport Authority. He said that the he has been working actively, with the Airport staff and the City and the County to move this issue forward. He said that they feel confident that they will have a recommendation to bring forward soon. They have drafted very basic language for legislation to be introduced this session in case the details with the City, Buncombe County and the Airport Authority can agreed upon. If the details are agreeable, they wanted to act on it this session. Therefore, they have asked Representative Goforth to introduce the very basic legislation. They feel confident that the legislation will be amended once the details are agreed upon by the three bodies. On March 27, 2007, he will provide Council with a detailed update.

RESOLUTION BOOK 30 PAGE 210

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-61 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Mayor Bellamy said that Larry Turner, member of the Downtown Commission, resigned thus leaving an unexpired term until December 31, 2008.

City Council instructed the City Clerk to arrange the following interviews: Amy Merritt, Brad Galbraith, Hutch Kerns and James Kilbourne. Ms. Merritt was moving out of state and withdrew her application.

After Council spoke highly of the candidates, Brad Galbraith received 4 votes, Hutch Kerns received 1 vote, and James Kilbourne received 1 vote. Therefore, Brad Galbraith was appointed as a member of the Downtown Commission to serve the unexpired term of Mr. Turner, term to expire December 31, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 27

B. CONSIDER DIRECTION FOR REVIEW OF SUBDIVISION REGULATION AND PROCESS

Planning & Development Director Scott Shuford said that City staff is requesting direction from Council concerning changes to subdivision requirements.

Staff would like to receive direction from City Council on several proposed or potential changes to the subdivision requirements. The changes are scheduled to be considered by the Planning & Zoning Commission on March 7, 2007. Changes identified by staff include:

- Update application procedures for better consistency with other application processes
- Re-organize and re-format to improve comprehension and clarity
- Remove engineering/construction standards that will be separately covered in the Standards and Specifications Manual
- Add information regarding "Planned Community Act"
- Update definitions
- Cross-reference access standards covered in other sections of the City Code and Standards and Specifications Manual
- Revise and enhance enforcement processes
- Establishing standards for allowing gated communities as a conditional use permit
- Treating all subdivisions of more than 50 lots as Level III projects (conditional use permit)

While most of the changes listed above fall into general housekeeping or clarification categories, the last two items are more substantive and are discussed in more detail below.

Gated communities – Council has noted that there may be times in which gating a community may be appropriate. These may include when criminal activities may need to be addressed through CPTED measures or when connectivity is not necessary or desired (e.g., when an inappropriate cut-through situation would occur). These times are likely infrequent so staff suggests creating a conditional use permit process, allowing Council to consider any gating proposals. The conditional use permit process would involve all developments, not just subdivisions. Alternatives include: Outright prohibition; status quo.

Pros: Allows case-by-case consideration; allows control over gating
Cons: Additional review time for developer, staff, & Council; not prohibitive

Level III – Subdivisions have been excluded from the Level III process because they primarily involve technical development standards and result only in the creation of lots that conform to underlying zoning district requirements. Council oversight was not regarded as necessary since the lot layout is required to meet existing lot size and width, street access and design, stormwater management, utility placement, and similar standards. The areas for significant negotiation are therefore much more limited than for site plans. Additionally, it may be legally-problematic to turn unpopular subdivisions down if all the road width, utility locations, and lot sizes meet highly objective standards, creating a situation where Council's ability to act is more limited than what the public expects. Public input occurs at Technical Review Committee (TRC) meetings. Staff estimates that Council would see five or fewer such subdivisions in a typical calendar year. Alternative: Status quo.

Pros: Allows case-by-case consideration; allows control over subdivision details
Cons: Additional review time for developer, staff, & Council; Council involvement in what is primarily a technical decision-making procedure; public expectations may not match Council's ability to manage subdivision design.

Other pending amendments related to subdivisions (and other developments) that may be of interest to Council will be brought forward separately. These include:

- **Open space requirements** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Steep slopes and ridgetops** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Retaining walls** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Infill development incentives** – To be developed (will include regulatory incentives for cluster developments, green infrastructure, etc. using a "menu" system)
- **Level III incentives**

City staff recommends City Council provide direction regarding Council expectations for changes to the subdivision ordinance.

At the request of Councilwoman Cape, it was the consensus of Council to ask the Planning & Zoning Commission to re-evaluate the standard in the minor subdivision regulations regarding 1,500 feet or 1/4 mile between these kind of developments.

It was the consensus of Council to ask the Planning & Zoning Commission review the subdivision requirements for potential changes and make a recommendation to City Council.

Mr. Shuford said that in the absence of no recommendation (1) regarding gated communities, staff will put the more restrictive language in the draft ordinance (a prohibition of gated communities); and (2) a requirement that large subdivisions be a Level III review. These will be reviewed by the Planning & Zoning Commission and then brought to City Council for consideration.

Councilwoman Cape moved to establish standards for allowing gated communities through a conditional use permit process. This motion was seconded by Councilman Freeborn and Councilman Newman.

Mayor Bellamy didn't support the gated community concept in that they divide our community.

Councilman Freeborn withdrew his second of the motion made by Councilwoman Cape.

Councilman Newman felt this will send the development community a message to not count on getting a high-end gated community approved.

The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 3-3 vote, with Councilwoman Cape, Councilman Davis and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Freeborn and Councilman Mumpower voting "no."

Councilwoman Cape moved to disallow gated communities. This motion was seconded by Councilman Freeborn and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no." Mr. Shuford said that this language will be put into the draft ordinance that will be reviewed by the Planning & Zoning Commission.

C. ANNEXATION POLICY DISCUSSION

Planning & Development Director Scott Shuford said that City staff is requesting direction from Council concerning the City annexation program.

Staff is preparing the 2007 annexation program and would like to receive direction from City Council prior to initiation of the first step in the process.

Asheville's ability to annex is and has been complicated by many factors, including an unwillingness to involuntarily annex throughout the 1990s, a water agreement that limited our ability to require annexation as a condition of service from 1981 to 2006, and the new Sullivan Acts imposed by our legislative delegation that also limit our ability to annex. As a consequence, Asheville likely has the most restrictive annexation rules for any City in NC. If the local act sponsored by Mr. Thomas and Mr. Goforth passes, Asheville will undoubtedly have the most restrictive statutory environment for municipal annexation in NC.

Some quick annexation history facts developed by the NC State Demographer's Office showing population growth due to annexation and natural growth of NC's 15 largest cities show:

- Charlotte annexed over 83,000 people between 1990 and 2000 and about 55,000 since 2000 – a total of 138,000 people (or almost 2 entire cities of Asheville).
- Fayetteville annexed about 60,000 people in the last 15 years.
- Raleigh has annexed ~84,000 people in the last 15 years.
- Wilmington (perhaps the city most similar to Asheville) – ~27,000 in 15 years.
- Concord – (a much smaller city – for now) - ~20,000.
- Jacksonville (also much smaller – for now) – ~38,000.
- Asheville - about 8,000 in 15 years.

Our annexation efforts since 2000 have increased the City property tax base by over $300 million. We receive additional revenue in the form of sales taxes, Powell Bill funds, and fees. These revenues have enhanced our public safety staffing, provided much-needed capital investment in annexed areas, and improved the operation of our sanitation services, among other benefits.

Our strategic planning document provided to Council last year notes the effects of our daytime population and our tourist population on our infrastructure. It notes the challenges the City has faced and continues to face in addressing key service needs. It provides a key perspective about our failure to grow and its effect on our political influence in our region: "Had the Water Agreement not existed, we would have added around 25,000 new people to our population since 1981 through voluntary annexation to receive water services; it is interesting to

think of the political implications of our City having half Buncombe County's population, rather than one third."

City staff requests Council direction to staff regarding annexation.

Councilman Mumpower said that cities have to grow and there are a lot of ways to grow. One way is to expand the borders to sustain a balance of upper, lower and middle classes. We have a large upper class and a large lower class, in terms of social economic resources, and a shrinking middle class. He is against forced annexation in principle and practice. However, you have to either reach out and get people at the borders or you have incentives, like all other cities in North Carolina have, to make coming into the city attractive, e.g., lower water rates, lower sewer rates, fair tax rates, etc. Asheville has the worst of both worlds and that is not fair to the people who live in Asheville and who have to absorb the double tax rate. Our legislators should treat Asheville like all other cities in North Carolina and should have the same resources as other cities have to offer incentives for people to come in and get away from forced annexation.

Mayor Bellamy asked staff to look at creating incentives that we can use, e.g., the success of Biltmore Park came as a result of the City working with the developer on the front end on infrastructure. An agreement was worked out for voluntary annexation during the different phases.

Councilman Freeborn asked staff to do a better job in promoting voluntary annexation at the beginning of an application being received in the ETJ area.

Councilman Mumpower suggested that Council make a policy decision against forced annexation with the consideration that our state legislators provide us with incentive tools to facilitate voluntary annexation. Forced annexation is the default position for the City of Asheville and no Council Member likes it, takes pleasure in it, or enjoys it but there are no other alternatives.

Councilman Mumpower suggested a resolution be sent to our legislators stating that unless they give us the incentive tools to facilitate voluntary annexation, Asheville has no choice but to force annexation. Councilman Davis asked that language also be included in the resolution requesting a meeting with the legislators and the mayors of the municipalities in Buncombe County about what the future plans are for municipalities.

Councilman Mumpower was curious how the equation would change if the City had all the tools to create tax fairness when people come into the City. Mr. Shuford explained why he didn't think the equation would change that much in terms of relative difference between the City taxes and the taxes they pay in the County. He would have to get more information on that.

Councilman Mumpower asked what the other cities in the country do to make their voluntary annexations work. Mr. Shuford said that if they get the development at the stage where it's starting, they offer zoning incentives, the water and sewer services, potential economic development incentives, and possible tax incentives. It is very difficult to get a subdivision already in existence to voluntarily annex.

Mayor Bellamy was agreeable with the resolution to the legislators with a timeframe. The language could be if you don't want us to do forced annexation, then in this legislative session give us the tools that we need to facilitate voluntary annexations.

Councilman Newman supported asking our legislators to give Asheville the tools other cities have. The single biggest step that could be taken would be to allow Asheville to be able to work directly with the developers who are building on the edge of the City to come into the City

and not put the families who move into the subdivisions later through this unpleasant process. But, with that said, it would be wrong for Asheville to take the only tool they have left, which is the State law that authorizes cities to look at new developments at their borders that do meet specific criteria, and throw that tool out of the toolbox. He felt we should look for ways to create incentives for voluntarily annex and also proceed with using the basic State law tool. The basic principle is that as areas urbanize they should be included in the municipal boundaries. He wanted Council to ask staff to look at areas they believe meet the statutory requirements for annexation and proceed with bringing that information to Council.

In response to Councilman Davis, Mr. Shuford explained the how areas are determined if they meet the criteria for annexation and the annexation process. Staff is prepared to begin that process at Council's direction. He agreed with Councilman Newman in that Council needs to very seriously consider removing that one tool with regard to expanding our borders. There are a variety of other things that could be suggested to the legislature that may be more palatable to them, e.g., perhaps changing the qualifications for what constitutes an urban area. But, in exchange for having a higher standard before you could bring in areas involuntarily, perhaps there should be a counter to that, which is if there are lawsuits filed that are not successful, then the taxes become retroactive.

Councilwoman Cape explained how property taxes also give the community their share of sales taxes and Powell Bill funds (road fees). Her main concern is growth and how we keep expanding. We have developers who build right outside of our City and then sell proximity without the price which is unfair to the people who live in Asheville. State law says that cities are supposed to incorporate the urban areas into the city.

Councilman Freeborn moved to call our legislators tomorrow and ask them in this session to provide us those tools that other cities have to encourage to encourage voluntary annexation and if they do not act upon it in this legislative cycle that we pursue the most aggressive annexation policy going forward. This motion died for lack of a second.

Councilman Mumpower moved to submit a resolution to our legislative representatives requesting that they give fair consideration to supporting the creation of incentive resources for the City of Asheville to duplicate the model provided by other cities in North Carolina and in consideration of their actions that we initiate a moratorium on forced annexation until the end of the current legislative year. This motion died for lack of a second.

Councilman Newman moved to ask our legislators to allow Asheville to have the tools to work directly with developers in voluntary annexations in the same manner and using the same infrastructure and regulatory tools other cities have. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no".

Councilwoman Cape explained how we not only need the tools moving forward, but we need the tools retroactive as well because it's not fair to the new people coming in (using the new tools) when we have others at our borders that we could have been annexed, but were not.

Councilman Davis agreed with Councilwoman Cape that it is a land use planning tool that we need in the future, but it will leave gaps in our city boundaries. We don't want to lose our only annexation tool that we have now.

Councilman Newman moved to notify the City Manager that Council believes that the state's basic principle that urbanized area that meet objective criteria for urbanization should be included in the municipal boundaries is a sound principle and Council wants to proceed with considering areas that staff considers high priorities for incorporation. This motion was seconded by Councilwoman Cape.

The following individuals spoke against forced annexation and some urged Council to let the citizens who are potentially being annexed to vote on the issue to be annexed or not:

Mr. Jerry Jensen, Biltmore Lake resident
Mr. Don Yelton, property owner in Asheville
Mr. Mike Thompson, Biltmore Lake resident
Dr. Mark Stultzo
Mr. Philip Murphy, Biltmore Lake resident
Mr. Ed Panek, Biltmore Lake resident
Ms. Leslee Kulba

Ms. Patti Beaver, representing the Council of Independent Business Owners, said that since City Council currently has an annexation process, she was surprised with Council's action requiring the voluntary annexation of the North View at Biltmore Lake be part of the development process.

The motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 4-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

Mayor Bellamy was taken aback how people characterized Asheville and described the wonderful acknowledgments Asheville has received and the many improvements that have taken place over the past year. She was dedicated to making Asheville a better place to live, work and play.

VII. OTHER BUSINESS:

Councilman Freeborn urged the community to contribute to Vance Elementary School for a 5th grade field trip out of Buncombe County.

The following claims were received by the City of Asheville during the period of January 27 - February 22, 2007: McDonalds (Sanitation), Kerlee Johnson (Transit Services), Serena Hirst (Police), Alexsis Giese (Streets), Henry S. Anderson (Water) and David Nard (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Consolidation

Ms. Carol Keleher, Biltmore Lake resident, presented City Council with information on consolidation, which she feels is the solution to forced annexation.

Upon inquiry of Councilman Mumpower, Mayor Bellamy said that the issue of consolidation was brought up at the City Council retreat. City Council will receive an update by staff and will have the opportunity to discuss it.

13 Detroit Avenue

Mr. Steve Arpin, resident at 13 Detroit Avenue, urged City Council to extend the March 1, 2007, deadline from Building Safety Department to reduce the number of people living in his house, who are not related by blood or marriage, to five. He said that he is researching group ownership. He would like City Council to review the laws, e.g., people not living in outbuilding. He urged Council to contact the state legislators to request the State law regulating the number of people allowed to live in a home, who are not related by blood or marriage, be changed from five.

Mr. Brendon Gallagher, Mr. Paul Feather and Ms. Terra Curry all spoke in support of Mr. Arpin's sustainable community and environmental awareness at 13 Detroit Avenue.

After a short discussion and after hearing Planning & Development Director Scott Shuford's explanation of the violations and City Manager Jackson's report, Mayor Bellamy asked the City Manager to meet with Mr. Arpin personally to discuss the matter. She noted that Asheville has worked very hard as a community to develop the Minimum Housing Code and if we make some allowances and not look at the bigger picture, we may not be doing the best thing for our community as a whole.

It was the consensus of City Council to extend the enforcement by the Building Safety Department for two weeks, noting that we may not be able to grant waivers to the State Building Code, but anything under City's control, we will extend for two weeks.

IX. ADJOURNMENT:

Due to the hour at which the agenda was concluded, there was no continuation of the closed session and Mayor Bellamy adjourned the meeting at 12:04 a.m.

Kesha Lyse
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – March 13, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Various Girl Scouts from different troops led City Council in the Pledge of Allegiance, as this was National Girl Scout Week.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. UNC-ASHEVILLE WOMEN'S BASKETBALL TEAM

Mayor Bellamy was pleased to recognize the UNC-Asheville's Women's Basketball Team and Head Coach Betsy Blose, with her assistants, as winners of the Big South Conference.

B. PROCLAMATION PROCLAIMING MARCH 17, 2007, AS "NATIONAL QUILTING DAY"

Mayor Bellamy read the proclamation proclaiming March 17, 2007, as "National Quilting Day" in the City of Asheville. She presented the proclamation to Ms. Ellen Levin, President of the Asheville Quilting Guild, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "M" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 27, 2007

B. RESOLUTION NO. 07-63 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE NC DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PURCHASE OF PORTABLE EMERGENCY RADIOS FOR THE ASHEVILLE FIRE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant from the N.C. Dept. of Crime Control and Public Safety for the purchase of portable emergency radios for Asheville Fie and Rescue and the associated budget amendment, in the amount of $29,607, to receive grant money.

The City of Asheville Fire and Rescue Department was awarded $29,607 from the Fiscal Year 2006 State Homeland Security Grant Program for 800MHz emergency communication

equipment. This grant is provided for through funding available for interoperable communications and will be used for the procurement of six (6) portable radios to be used by Asheville firefighters. This radio equipment will be used every day by Asheville firefighters on emergencies occurring in Asheville. Were it not for the grant award, the department would need to provide the emergency radio equipment through general fund dollars. Asheville was awarded this non-matching grant funding because we are a North Carolina Voice Interoperability Plan for Emergency Responders (VIPER) participating partner municipality. The VIPER program is working with municipalities across the state to increase interoperable emergency communications between North Carolina cities and counties.

PROS:

- The State Homeland Security Grant Program is funding 100% ($29,607) of the costs of the radios, with no city match.
- Increased firefighter safety through the use of modern equipment that represents newer digital technology.
- The radios will replace obsolete equipment no longer supported for service or parts.
- The radios will provide equipment used on a daily basis on Asheville's 800MHz radio system.
- The radios are compatible with the state-wide communications system known as VIPER.
- The radios will allow personnel to communicate directly with mutual aid departments and with fire and other public safety agencies across the state if needed.
- Asheville Fire Rescue will be able to work more effectively with a variety of public safety agencies from across the state (in addition to other fire departments).

CON:

- None identified at this time.

City staff recommends City Council approve a resolution authorizing the City Manager to accept a non-matching grant from the North Carolina Department of Crime Control and Public Safety for the purchase of portable emergency radios for Asheville Fire and Rescue and the associated budget amendment, in the amount of $29,607, to receive grant money.

RESOLUTION BOOK NO. 30 – PAGE 282

C. ORDINANCE NO. 3447 - BUDGET AMENDMENT TO RECEIVE NC DEPT. OF CRIME CONTROL AND PUBLIC SAFETY GRANT FOR THE PURCHASE OF PORTABLE EMERGENCY RADIOS FOR THE ASHEVILLE FIRE DEPARTMENT

Summary: See Consent Agenda Item "B" above.

ORDINANCE BOOK NO. 23 - PAGE 273

D. RESOLUTION NO. 07-64 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE OF EQUIPMENT TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant from the N.C. Dept. of Crime Control and Public Safety Division of Emergency Manager for the purchase of equipment to be used by Hazardous Materials Regional Response Team 6 and the associated budget amendment, in the amount of $192,858, to receive grant money.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through the State Homeland Security Grant Number: FY2006-GE-T6-0010 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRTs) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters.

There are seven Regional Response Teams (RRTs) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the 20 westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment, self contained breathing apparatus and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the City of Asheville.

PROS:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $192,858 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

CONS:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

City staff recommends that City Council approve a resolution authorizing the City Manager to accept a non-matching grant from the North Carolina Department of Crime Control and Public Safety Division of Emergency Manager for the purchase of equipment to be used by Hazardous Materials Regional Response Team 6 and the associated budget amendment, in the amount of $192,858, to receive grant money.

RESOLUTION BOOK NO. 30 – PAGE 283

E. ORDINANCE NO. 3448 - BUDGET AMENDMENT TO RECEIVE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION EMERGENCY MANAGEMENT GRANT FOR PURCHASE OF EQUIPMENT TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 23 - PAGE 275

F. RESOLUTION NO. 07-65 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUB-RECIPIENT AND SUB-ALLOCATION AGREEMENT WITH HENDERSON COUNTY FOR FEDERAL TRANSIT FUNDS

Summary: The consideration of a resolution authorizing the City Manager to execute a Sub-Recipient and Sub-Allocation Agreement with Henderson County for federal transit funds.

The Federal Transit Administration (FTA) encourages federal transit funding through a regional approach. Following the 2000 U.S. Decennial Census, showing the County of Buncombe with a population over 200,000, FTA designated Asheville as an Urbanized Area for regional funding (AUZA). Currently, there are only two transit systems within the AUZA authorized to apply for federal transit program funds, Asheville Transit and Henderson County Transit. The City of Asheville is the Designated Recipient for the AUZA and the only entity within the AUZA eligible for direct federal transit funding. As a part of the regional approach, FTA discourages having more than one Designated Recipient per region. In order for a transit system such as Henderson County to continue to receive federal transit funding under the regional approach, application to FTA must be made through the Designated Recipient. FTA further requires that the Designated Recipient enter into sub-recipient/sub-allocation agreements with those transit systems within the AUZA not otherwise eligible to make direct application to FTA for transit funding, to include Henderson County.

The purpose of the Sub-Recipient Agreement is to assure FTA that the Designated Recipient and the Sub-Recipient are aware of the conditions of federal transit funding and agree to such conditions, such as providing public notice, engaging in competitive bidding, providing assurances and certifications of non-collusion and lobbying, etc. The purpose of the Sub-Allocation Agreement is to provide for a fair and rational distribution of regional federal transit funding through a formula, (i.e. population, population density and system performance characteristics), which must be approved as being a fair and rational distribution by the AUZA's Planning Organization, which is the French Broad River Metropolitan Planning Organization. Henderson County has signed both Agreements.

This conforms with the City Development 2025 Plan in Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.

This action conforms to the Strategic Operating Plan in Strategic Plan Section on Planning, Goal 2: Objective B, by creating a partnership between ATS and Henderson County and to mitigate congestion and improve air quality.

Pro: Region conforms to federal requirements and enjoys continued transit connection between Henderson County and Asheville.

Cons: None.

City staff recommends adoption of a resolution authorizing the City Manager to execute a Sub-Recipient and Sub-Allocation Agreement with Henderson County for federal transit funds.

RESOLUTION BOOK NO. 30 - PAGE 234

G. RESOLUTION NO. 07-66- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HENDERSON COUNTY TO LEASE TWO 20-PASSENGER BUSES

Summary: The consideration of a Resolution authorizing the City Manager to sign a Lease Agreement with Henderson County for two 2006 City Transit Buses.

The Asheville Transit System recently took delivery of five new buses, two of which are the smaller 20 passenger buses. The transit system however, has grown more rapidly than anticipated, thereby dispensing with any further need for the two smaller 20 passenger buses. Due to the rapid transit growth and the receipt of the new buses, the City has four more buses

than authorized by federal rules. Federal rules base the number of allowable buses on the peak service routes. Consequently, four buses must be disposed of or reallocated regionally. Henderson County is a three route transit system and in dire need of two new buses. With federal and state funding, the City paid a little over $13,000 for the two smaller 2006 buses, which buses were delivered on May 25, 2006. Although federal rules will permit Henderson County to purchase the City's surplus 2 smaller buses, Henderson County does not have sufficient capital funds for such a purchase. Federal rules frown upon the City leasing the buses to Henderson County, a member of the UZA, for any amount in excess of the depreciated value of the buses. The depreciated value of the two smaller transit buses over a five year period is approximately $6,000 per bus for a total of $12,000. At the end of five years, maximum depreciation is realized. Staff recommends leasing the two smaller surplus transit buses to Henderson County for five years, receiving the entire depreciated value of $12,000 for the first year and thereafter, for the four remaining years at $1.00 per year. What happens to the buses at the end of the five year lease will become part of the Lease Agreement.

This action conforms with the City Development 2025 Plan in Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.

This action conforms to the Strategic Operating Plan in the Strategic Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and Objective B, by creating a partnership between ATS and Henderson County and to mitigate congestion and improve air quality.

Pro: Increased mobility for Asheville residents by placing additional seats in the active fleet.

Cons: None.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an Agreement for the lease by Henderson County of two surplus City of Asheville Transit Buses.

RESOLUTION BOOK NO. 30 - PAGE 215

H. RESOLUTION NO. 07-67 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE TARGET CORPORATION TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE PURCHASE OF HANDHELD RADIO EAR PIECES

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds, in the amount of $1,000, from the Target Corporation to assist the Asheville Police Department in the purchase of handheld radio ear pieces and associated budget amendment to receive grant money.

The Asheville Police Department has been awarded $1,000 from the Target Corporation for the purchase of radio ear pieces for police officer's handheld radios. There is no match involved in this grant.

This action conforms to the Asheville City Council's Goals and Vision in the Priority Area of Critical Services and Infrastructure by improving and enhancing basic city services.

Pro:

- Provide officers with handheld radio ear pieces so that they can conduct their patrol business in a safer and more effective manner.

Con: None noted.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds, in the amount of $1,000, from the Target Corporation to assist the Asheville Police Department in the purchase of handheld radio ear pieces and associated budget amendment to receive grant money.

RESOLUTION BOOK NO. 30 - PAGE 286

I. ORDINANCE NO. 3449 - BUDGET AMENDMENT TO RECEIVE GRANT FUNDS FROM THE TARGET CORPORATION TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE PURCHASE OF HANDHELD RADIO EAR PIECES

Summary: See Consent Agenda Item "H" above.

ORDINANCE BOOK NO. 23 - PAGE 277

J. RESOLUTION NO. 07-68 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO INSTALL EMERGENCY SIGNAL CONTROLS BETWEEN FIRE STATION 11 AND THE INTERSECTION OF BREVARD ROAD AND ROCKY RIDGE ROAD

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to install emergency signal controls between Fire Station 11 and the intersection of Brevard Road and Rocky Ridge Road.

The City of Asheville Fire and Rescue Department will be operating Fire Station 11 in July, 2007. Traffic signals located adjacent to fire stations are equipped with emergency signal control to better enable emergency equipment to safely travel through signaled intersections. This request is the format required by NCDOT. The work will total $4,000.00.

PROS:

- The signal control will aid Asheville Fire and Rescue in navigating the intersection of Brevard Road and Rocky Ridge Road on emergency responses.
- The signal control system has the concurrence by the city's traffic engineer.
- Funding for this project has already been approved in the city's budget.

CONS:

- None identified at this time.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with the NCDOT to install emergency signal controls between Fire Station 11 and the intersection of Brevard Road and Rocky Ridge Road.

RESOLUTION BOOK NO. 30 - PAGE 287

K. ORDINANCE NO. 3450 - BUDGET AMENDMENT FOR THE ACQUISITION OF A DRIVEWAY EASEMENT TO PROVIDE ACCESS TO A SIGNALIZED INTERSECTION FOR CITY-OWNED PROPERTY ON AIRPORT ROAD

Summary: The consideration of a budget ordinance amendment, in the amount of $250,000, for the acquisition of a driveway easement to provide access to a signaled intersection for City owned property on Airport Road.

This budget amendment authorizes funding for the purchase of a driveway easement over property owned by Hankins Properties LLC adjoining City owned property at 550 Airport Road. The purpose of the easement is to provide a connection between the City's property and Rockwood Road in order to allow ingress and egress from the City's property to Airport Road via the signaled intersection of Airport Road and Rockwood Road. The objectives would be to address a safety issue; to enhance the value of the City's property for sale; and to facilitate future development on the site. Acquisition of the easement was approved by City Council in closed session on February 20, 2007. The purchase price of the easement is $250,000. This amendment is to formally appropriate the funding for the project. Staff recommends that $250,000 be appropriated from the City's fund balance for this project.

City staff recommends City Council approve the budget ordinance amendment, in the amount of 250,000, for the acquisition of a driveway easement to provide access to a signaled intersection for City owned property on Airport Road.

ORDINANCE BOOK NO. 23 - PAGE 279

L. RESOLUTION NO. 07-69- RESOLUTION APPROVING LOCAL ALCOHOLIC BEVERAGE CONTROL BOARD PROPOSAL TO USE PROCEEDS FROM REAL PROPERTY SALES FOR CAPITAL PROJECT

Summary: The consideration of a resolution approving Local ABC board proposal to use proceeds from real property sales for capital projects

At Council's February 13, 2007, meeting Local ABC Board Chair Charles Worley gave a report to Council on the Local ABC board's activities and its capital improvements plans.

At the close of the presentation, Mr. Worley was asked what action might be needed from the City to help with the Board's plans. Mr. Worley responded that the Board would like to use the proceeds from the sale of two of its properties (Biltmore and Tunnel Road) for acquisition and construction of new facilities and expansion of existing facilities. Ordinarily, the proceeds from the sale of ABC properties would be treated as program income, with certain percentages earmarked for certain purposes. Mr. Worley indicated that, with Council approval, all of the proceeds could be used for the planned capital improvements, and he was requesting such approval.

Pro: Allows for quicker completion of needed capital improvements.

Con: Slight decrease in percentage of revenue available for other ABC purposes.

If Council approves of the ABC Board's request, as communicated in the report by Mr. Worley, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 - PAGE 288

M. RESOLUTION APPROVING AN UNDERWRITING TEAM AND GRANTING APPROVAL TO FILE A WATER SYSTEM REVENUE BOND APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 07-70 - RESOLUTION APPROVING AN UNDERWRITING TEAM AND GRANTING APPROVAL TO FILE A WATER SYSTEM REVENUE BOND APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION

Summary: The consideration of a resolution approving an underwriting team and granting approval to file a water revenue bond application with the Local Government Commission.

On January 9, 2007, City Council gave staff direction to pursue a $35 million water revenue bond issue to improve the City's water system. In order to officially begin the process for a water revenue bond issue, City Council must adopt a resolution giving staff approval to apply to the Local Government Commission (LGC).

Specifically, the resolution provides for the issuance of $35,000,000 in bonds to finance the cost of the water system projects plus an additional $5,000,000 amount to 1) pay capitalized interest during construction of the projects, 2) fund a reserve fund for the Bonds if necessary, 3) pay for the cost of bond insurance if necessary and 4) pay underwriter's discount and other cost of issuing the bonds.

The resolution also appoints bond counsel, underwriter's, underwriter's counsel and the trustee and escrow agent for the Bonds; directs the Chief Financial Officer to file an application with the LGC for approval of issue of the bonds; and acknowledges that the City Council has determined that the issuance of bonds to improve the water system is necessary and expedient.

City staff recommends City Council approve a resolution approving an underwriting team and granting approval to file a water revenue bond application with the Local Government Commission.

Councilman Mumpower personally didn't feel we should be borrowing money until our legal challenges regarding the Sullivan Act are resolved.

Chief Financial Officer Ben Durant responded to Councilman Davis regarding the $5,000,000 amount.

In response to Mayor Bellamy, Mr. Durant said that the debt follows the ownership of the water system.

Councilman Davis moved to approve Resolution No. 07-70. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 289

III. PRESENTATIONS & REPORTS:

A. PROPOSAL FOR CREATING BEAUCATCHER OVERLOOK PARK

Ms. Maggie Clancy, Project Manager with the Trust for Public Land (TPL), said that the TPL conserves land for people to enjoy as parks, gardens, and other natural places, ensuring

living communities for generations to come. Since 1972, the TPL has completed more than 3,300 projects; conserved more than 2.2 million acres, from wilderness areas to city parks; and helped generate more than $109 Billion of state and local conservation funding.

The TPL helps public agencies and communities to create a vision for conservation, raise funds for conservation, and complete complex conservation real estate transactions. She gave examples of TPL in North Carolina. TPL's partnership in parks in Asheville include: Beaver Lake Audubon Sanctuary, Reed Creek Greenway, Greenways Master Plan, Jake Rusher Park, and Beaucatcher Overlook Park. Working with communities across America, TPL believes that connecting people to land is key to create livable communities and a healthy environment.

Mr. Scott Riviere, volunteer co-chair for fundraising for acquiring the Greenberg property, explained the vision of Beaucatcher Overlook Park. Creating an overlook park is an idea that has been talked about for years in Asheville. The availability of the Greenberg tract, 30 acres of woodland covering the slope of Beaucatcher Mountain, is serving as a catalyst to revive the Overlook Park vision. The tract, behind McCormick Field, is a green backdrop to the City. The view of the wooded slope is visible from nearly everywhere in downtown Asheville. The need for action is urgent. The landowner has generously offered to sell the wooded mountainside tract for a park. However, the landowner has set firm and relatively quick timeline for action. The option of the property now held by the TPL expires on March 31, 2007. If the land is not quickly acquired, it will be developed with high-end housing. This is our last chance to protect a sizable green space in the City of Asheville.

The site is perfectly situated to be the centerpiece of a new vision for the area around McCormick Field and Beaucatcher Mountain. The Greenberg tract is surrounded by another 30 acres of City-owned land, including the baseball field, Memorial Stadium, and about 10 acres of vacant land behind them. The City is considering buying McCormick Heights public housing project, and redeveloping this as affordable housing. The Greenberg tract is right below White Fawn Reservoir, which is also owned by the City. The Parks & Recreation Master Plan proposed a "Sister Cities Park" to be located on the site of the reservoir, and that site can be easily connected to the Greenberg tract. The Greenways Master Plan shows a connector greenway extending from downtown through the Greenberg tract and up to the Beaucatcher Mountain ridgeline, and extending all the way to the I-240 cut.

The purchasing of the Greenberg tract will establish a natural park, within walking distance of downtown Asheville, the surrounding neighborhoods of the White Fawn, East End, and Kenilworth and Mission Hospital, and on a city bus line. It is easily accessible to the residents of Buncombe County and visitors to Asheville. It will become an oasis of green in Asheville, offering opportunities for walking, bicycling, picnicking, and quiet experience of nature. The park will add to the offerings of arts and entertainment, dining, shopping, and the unique Asheville culture that attracts people from all over the world.

The establishment of the Park will take place in three phases: acquiring the Greenberg tract; further planning of the Park's proposed amenities; and the development of the Park and surrounding areas.

Regarding acquiring the Greenberg tract, Councilwoman Cape and community members contact the TPL to help acquire the Greenberg tract when they heard that the landowner wanted to develop the land.

Ms. Clancy said that the tract is now under option to TPL, but that option expires March 31, 2007. The landowner will give us time to work out the financial details; however, we need the commitment of the City, county and private donors to complete the acquisition and place the tract in public hands.

The cost of the property is $2.6 Million. The fair market value, established by an independent appraisal, is just above $2.6 Million. If developed for single-family homes under the current City guidelines, the value increases to about $7 Million in today's market.

Given the short timeline of the option, we put together a funding plan that shares the financial responsibility among five partners: TPL (Jake Rusher Bequest) - $375,000 (available); State of North Carolina (Parks & Recreation Trust Fund) - $500,000 (apply January 2008); private donors - $575,000 (by March 31, 2007); City of Asheville - $575,000 (by March 31, 2007); and Buncombe County - $575,000 (by March 31, 2007).

After we receive financial commitments from the private donors, the City and the County, TPL will acquire the tract from the landowner. TPL will then transfer the deed to the public agency that will hold it, and enter into a 3-year lease/purchase agreement with the public agencies. The cost to the City would be dependent on the terms of the lease/purchase (how much is paid down, the interest rate, etc.).

Regarding the private and public commitments, we are actively raising funds from the community. We are confident that we will meet the goal of $575,000 by March 31, and we will not stop fundraising when we reach the interim goal. Also, we are exploring funding sources for the planning and development phases of the Park.

We have received endorsements for the Overlook Park vision and acquiring the Greenberg tract from the City's Parks & Recreation Advisory Board, the Greenway Commission, the Parks & Greenway Foundation, and Quality Forward.

The City and the Buncombe County commitments are necessary to make this Park a reality. We are presenting the Overlook Park to the Buncombe County Commissioners on March 20, 2007, and will be asking the County to commit to their share.

We are now asking the City for three actions: (1) authorize the purchase of the Greenberg tract; (2) commit funds for the City's contribution to the purchase price; and (3) work with TPL and Buncombe County on the details on the lease/purchase agreement.

Councilwoman Cape highlighted that this request came so close to the time with the option will expire because of the difficulty of getting the items on the agenda due to the fullness of the schedule. Mayor Bellamy reminded Council of the process of getting items on the agenda, and asked City Clerk Lipe to provide all Council members with this year's request.

Vice-Mayor Jones was pleased that the private donation portion has been met. She thanked Councilwoman Cape, for her work with this project, and the many other people who have contributed their time and energy into this project.

Councilman Mumpower asked that City staff also provide Council with information about the development and maintenance of the property as well.

It was the consensus of Council to bring this matter back to Council next week in order to give staff the opportunity to look at requested actions.

B. LIVING WAGE DISCUSSION

Mr. Isaac Coleman presented the Asheville/Buncombe Living Wage Campaign's Living Wage Proposal for the City of Asheville. Using a chart, he showed the share of the national income from 1975 to 2005.

The big picture is (1) if 1968's minimum wage was adjusted for inflation, it would be over $9.00 today; (2) real wages of non-management employees in the United States are 10% below their level in the early 1970's; and (3) since the early 1990s, over 140 cities and counties have passed a Living Wage Ordinance.

A Living Wage is based on information about what it costs to afford basic necessities in a particular geographic area. Local Living Wage policies and programs can begin to address the dramatic erosion of wage value for low-income workers over the last 30 years.

A Living Wage ordinance will (1) require the City of Asheville to pay City employees a Living Wage; and (2) prevent the future erosion of this wage value by committing to annual cost-of-living increases. It is also recommended that the payment of a Living Wage be considered in the City's contract bidding process.

A Living Wage will not (1) change the minimum wage in Asheville; (2) require private businesses to increase wages as participation will be voluntary; (3) eradicate poverty in Asheville; and (4) change Asheville's present budget.

A representative of the Affordable Housing Coalition said that living wages in Asheville will also (1) increase self-sufficiency for low-income workers; (2) promote the dignity of work; (3) allow workers to live in the communities they serve; (4) provide employers with useful information about adequate wage compensation in Asheville; and (5) strengthen businesses.

Asheville's living wage is $10.86 per hour without health insurance and $9.50 per hour with health insurance. These figures are based on what it costs for an individual to live in Asheville.

These figures were arrived at by (1) when an individual or family pays more than 30% of income in housing, it becomes difficult to meet other basic needs; (2) fair market rent for a one-bedroom apartment in the Asheville Metropolitan Statistical Area for 2007 is $543 a month; (3) an individual would have to earn at least $1,810 a month, or $21,720 a year, to afford a one-bedroom apartment in the City of Asheville; (4) dividing $21,720 by 2000 hours of work in a year, an individual working full-time would need to make $10.86 an hour; and (5) the $9.50 health care wage level simply acknowledges the high cost of this benefit for employers.

Mr. Mark Siler, one of the coordinators of the Asheville/Buncombe Living Wage Campaign, said that the real impact of an Asheville Living Wage will come as Asheville businesses take steps toward paying a Living Wage. We estimate that 25% of the jobs in Buncombe County doe not pay this Living Wage. Many of these jobs are concentrated in Asheville's tourist economy (retail/sales, cashiers, food preparers/servers, hospitality).

The Campaign's next steps are to (1) create a Living Wage Business Certification Program (a) encourage business participation; and (b) educate consumers and increase revenue for Living Wage businesses; and (2) explore the possibility of creating tax incentives for Living Wage businesses.

Mayor Bellamy said that staff has requested Council continue this matter until April in order to give them time to do due diligence on this matter.

Councilman Mumpower said that since there has been this advocacy presentation on this, he wondered if Council would have access to the information from the dramatic other side, or should Council pursue that on their own. He felt this is a highly socialistic initiative and for Council to not have some exposure to the potential damaging side of this equation would be in error. Mayor Bellamy responded that staff will list the pros and cons and provide Council with the raw data. It will be up to Council to interpret that data. In addition, City Manager Jackson said that staff will provide Council with the pros and cons drawn from other communities in order to

provide factual information to Council. Staff will be prepared to speak on the action steps requested.

Councilman Mumpower said that he didn't care if staff, or an opposing group, makes the opposition presentation, but if neither of them do, then he would take it upon himself to undertake that initiative. Mayor Bellamy said that if staff does not hear from an organized opposition prior to two weeks of the scheduled presentation on this issue in April, City Clerk Lipe will contact Councilman Mumpower in order for him to make that presentation.

The following items were additional information requests when this matter is brought back to Council: additional information on the contract bidding process; would the City still contract with those companies who do not pay a living wage; what is the Chamber of Commerce's and other businesses and business organizations' position on this issue; benchmark information from other cities who have living wage ordinances; and data of how this would affect our contract relationships.

Mayor Bellamy asked that if City Council has any other informational requests they would like for staff to research on this issue, please send them to City Manager Jackson by March 20, 2007, in order to allow staff a reasonable time within which to gather input.

It was the consensus of Council to continue this discussion until April in order to give staff time to do due diligence on this matter.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 47 RUTHERFORD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO LIGHT INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ESTABLISH A CONFORMING OFFICE/WAREHOUSE USE WITH OUTDOOR STORAGE

Urban Planner Blake Esselstyn said that a letter has been received from Mr. Gerald Green, representing David Sweatt, owner of SigNet Real Estate, LLC, requesting this public hearing be continued to April 17, 2007, in order to allow them more time to meet with the Planning Department staff to address issues identified in the staff report, which they received Friday, March 9, 2007. Therefore, Councilman Mumpower moved to continue this public hearing until April 17, 2007. This motion was seconded by Councilman Davis and carried unanimously.

Councilwoman Cape requested additional information on when the property was zoned as part of the extension of the extraterritorial jurisdiction area.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE ADJUSTMENTS TO ENFORCEMENT PROCEDURES

At City staff's request, Councilman Mumpower moved to continue this public hearing until April 10, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR NORTH VIEW AT BILTMORE LAKE PHASE II ON ENKA LAKE ROAD FOR 257 RESIDENTIAL MULTI-FAMILY UNITS

ORDINANCE NO. 3451 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR NORTH VIEW AT BILTMORE LAKE PHASE II ON ENKA LAKE ROAD FOR 257 RESIDENTIAL MULTI-FAMILY UNITS

Mayor Bellamy said that this public hearing was held on February 27, 2007, and continued to allow time for staff to address one concern, being whether annexation could be induced as a condition of zoning.

City Attorney Oast said that he researched the issue and it was his opinion that it would be inappropriate to require voluntary annexation as a condition of a conditional use permit, at least in this circumstance.

Councilman Newman moved to grant a conditional use permit for the proposed Master Plan for North View at Biltmore Lake Phase II on Enka Lake Road for 257 residential multi-family units on 33 acres (noting that the request is reasonable based on information provided in the staff report), subject to the conditions recommended by City staff and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans and substantially agree with the plan presented to City Council; (4) The developer shall provide an urban level of public safety service for the development; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilman Freeborn voting "no."

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B. RACE TRACK DISCUSSION

Councilman Davis said that this issue came up at City Council's retreat and three Council Members were interested in looking at the potential development of a race track at the Asheville Airport property that is in the floodplain. Since then, there has been a lot of community interest in this issue. They have asked staff to do a little work on that issue.

He said that staff has reviewed property at the Asheville Regional Airport. Almost the entire parcel is within the regulated floodway, which is the more restrictive of the flood zones. For development to occur in the floodway, the following steps would need to occur:

1. A *No Impact Study* is required. For this type of development, it may be difficult to achieve *No Impact Status,* meaning that the development would not trigger a change in the base flood elevation.
2. If change occurs due to development, that would trigger the requirements of a Letter of Map Revision process (LOMR). The LOMR work would be sent to the state's Floodplain Management branch for review and approval. Approximate turnaround time: Four months. Approximate cost: $30,000.

He said that staff feels that since the land availability for development is significant, it may be easier to design a project to mitigate any loss of potential storage volumes due to added fill and structures (i.e. excavation in some areas). In looking at the mapping, the floodplain is very wide and there is very little elevation change, so staff interprets the depth of flooding to be shallow, thus making this approach more plausible.

As Councilman Freeborn is Chairman of the Asheville Regional Airport Authority (Authority), he has met with him and the Airport Director to discuss this issue further. Even though the Authority is not committed at this point, there is an interest in them looking at this issue further. The process would be that if there is an interest from Council that we would look at the strategic goals we want to accomplish, e.g., an economic benefit. We would then work with the Airport Authority to develop a Request for Qualifications (RFQ) to send to potential developers to see if there is an actual interest in developing and operating a race track at the land at the Airport. He noted that A-B Technical Community College is in the process of looking to develop a training track for their basic law enforcement training and for EMT uses. If the decision is made to move forward on this project, they have an interest in partnering with us. There is a positive economic development aspect of racing as well since there is a great deal of industry revolving around the racing community. He asked for Council's support for the City to explore this issue further of whether or not the site can be used for a race track. He thinks we owe it to the community to look at both sides of this issue, making sure this is something that would be a good neighbor and something that can be successful in this community. He feels it will provide entertainment, an economic benefit, and the opportunity for law enforcement training.

Councilman Freeborn said that he has talked with the Mayors of Mills River and Fletcher and Chairman Moyer of Henderson County to let them know Council would be discussing this issue and to inform them what is being requested. We are only asking for Council to approve staff time to develop an RFQ process. If Council agrees to that, we would want to include the surrounding municipalities in that process so that all concerns expressed are addressed in the RFQ. The area municipalities seemed supportive of that process.

Councilman Newman said that Council is not looking at this as something we would be financially supporting, but if it is something that could financially support itself and have some economic benefits, that would be his prerequisite for it happening. His main concern is the question of noise. If the proposal is looking at a process of an RFQ for people who might be interest in building a facility like this, he personally would like to have more information on the noise issue before we invite developers to spend a lot of time and money. If the facility is not a nuisance to people and is financially self-sustaining, then it would be a good facility. He would not, however, be supportive it if degrades the quality of life. It is his understanding that there is the ability to use different technology and design to help mitigate noise and he would like to see that information.

Councilman Davis said that he has talked to several people in the racing community about noise. Noise is a serious question. He has been assured that there are tracks that are working throughout the country that do a good job with noise restrictions. Racing is not a totally quiet sport, but this area has an existing fairly loud noise level and feels that noise will be below the level of what is happening there now. In the RFQ process we would outline the concerns and what we would like to see in that area (other amenities to this recreational area, e.g., walking trail).

There was a short discussion of how this blends into Council's short and long term goals in their overall Strategic Operating Plan, which was agreed upon by all of Council. Mayor Bellamy's preference would be that we look at this when we review the Plan because we need to look at this issue in the context of all Council has asked staff to do. She asked that we not direct staff to do the due diligence right now, but to let them work on what we want to accomplish this year in our short and long term goals, noting that there are 52 items on the short term list.

Councilman Davis said that he would be happy to use his own time to assemble some of this information and make it available to staff. He was looking for endorsement by Council to move forward, noting that he, Councilman Freeborn, Councilman Mumpower and Councilman Newman supported moving forward.

Mayor Bellamy suggested the process of where the community gathers the information and provides a presentation to Council, in order to give staff a starting place to move it forward.

Councilman Davis said that they already have a good committee of people assembled that have a stake in racing, along with letters from the surrounding municipalities of their concerns and communications from the neighbors in the area. He feels they are beginning to get a base of inf mation to present to Council, with a small amount of staff effort. He also updated Council on the commemorative memorial at the old Asheville Speedway.

Vice-Mayor Jones said that she was not interested in investing significant City dollars in a racetrack. She wondered if the Airport Authority would be willing to share or cover the costs of a feasibility study.

In response to Councilman Newman, City Attorney Oast said that he believed that any final decision regarding a race track on this property will be contingent upon approval by City Council, Asheville Regional Airport Authority and the Federal Aviation Administration (FAA).

Councilman Freeborn feels that although the FAA in the past has taken a negative stance towards usage of this property for anything other than aviation, he feels confident that we could get a different decision today.

When Councilman Newman asked if the Airport Authority has any degree of decision making on that property, City Attorney Oast said that he would have to review the Airport Agreement but he believed there is some degree of overlapping approval required by the City Council and the FAA.

In response to Councilman Newman, Councilman Freeborn said that the Airport Authority's position is that they are supportive of looking at this, as long as it doesn't cost them any money. In terms of developing an RFQ process, their preference would be to have the City take the lead on the process leading up and through an RFQ and then the Authority would take over when it gets into the Request for Proposals process.

Councilwoman Cape suggested that as this is brought forward that a little historic prospective of racing to this area be presented.

The majority of Council supported moving the process forward via a community presentation before Council.

At 5:53 p.m., Mayor Bellamy announced a short recess.

C. DOWNTOWN SOCIAL ISSUES TASK FORCE - REVISITED RECOMMENDATIONS

Urban Planner Stephanie Monson said that this is the consideration by City Council of approval on two items from the revisited recommendations by the Downtown Social Issues Task Force and policy direction on five other recommendations.

At the request of City Council, the Asheville Downtown Commission recently reviewed the Downtown Social Issues Task Force's (original) recommendations and staff's responses to those recommendations. The Downtown Commission convened a subcommittee of Task Force members and asked them to make appropriate changes by taking into account any new conditions and by paying particular attention to supplying City Council with a wider range of options.

In summary regarding panhandling, the Commission requests Council consider execution of an encroachment agreement with the Asheville Downtown Association (ADA) to assist with the implementation of the Spare Change for Real Change Program. City staff also recommends City Council execute the encroachment agreement.

In summary regarding graffiti, the Commission requests Council consider drafting a 48-hour graffiti removal ordinance and/or 48-hour graffiti removal program pilot. Based on copious evidence as outlined by the original and revised Downtown Social Issues Task Force that prompt removal is the only proven method of abating graffiti, as well as a determination by staff that such an ordinance/program is feasible, staff recommends City Council direct staff to draft both a 48-hour graffiti removal ordinance and a 48-hour graffiti removal program to enforce said program. Part of the recommendation suggests that City Council consider adding a line item in the budget to help fund graffiti removal. There are suggested alternatives regarding the 48-hour removal program/ordinance noted in the "Revisited Recommendations" below.

Staff also recommends that City Council consider providing staff with their level of interest regarding implementation of the following items:

- Increased City of Asheville participation in Housing First portion of Ten Year Plan to End Homelessness
- Adding a line item in the next budget for the Asheville Mural Project's public art element.
- Adding more specific language to the current panhandling ordinance
- Support of City of Asheville solicitation of healthcare providers, law enforcement, and judicial system to create a facility modeled on The Healing Place
- Further exploration on the feasibility of establishing a City nuisance court
- Further exploration on the feasibility of Alcohol Impact Zones (Inebriate Safety Zones) and/or alternatives.

Ms. Kitty Love, member of the Downtown Commission, and Mr. Dwight Buckner, President of the ADA, briefly reviewed the result of the Downtown Commission's review:

(Information in plain type is the original recommendations and the revisited recommendations are stated in italics.)

Original Preamble:

The following represent the recommendations of the various subcommittees of the Downtown Social Issues Task Force. This task force was created by City Council in 2002 and was made up of downtown business owners and residents, city staff, representatives of the medical and mental health professions, various public and private social welfare and service agencies, homeless individuals and advocates, and representatives from the police department and justice system. Task force subcommittees focused on particular problem areas worked from early 2003 to late summer 2004 researching both the local situation and solutions that have worked effectively in other communities. Draft recommendations on the issues of homelessness, public drunkenness, graffiti, and panhandling were then presented to representative groups of homeless individuals, social welfare workers, and downtown residents and property owners for review and comment. These final recommendations are the product of hundreds of hours of research and meetings put in by the members of the various subcommittees.
These recommendations are supported by the research documentation gathered by the subcommittees including descriptions of programs and ordinances from other cities, research on efficacy, and supporting statistics. The recommendations were intended to work together to discourage unacceptable behavior, while at the same time offering constructive opportunities for people to both help themselves and receive appropriate community support. The group was aware that many government initiatives over the last 50 years have failed to have their intended effect because initiatives conceived of as two-part efforts were only half done, i.e. in the 60's and 70's mental hospital beds were greatly reduced but the planned level of supportive community services were never created; public drunkenness was decriminalized in the 70's but the intended opportunities for treatment were never fully enacted. Many of these half-done initiatives have resulted in cities and their downtowns bearing the brunt of community-wide problems. The goal was to be fair and balanced.

The final recommendations were presented to Council with that supporting information in late summer 2004. City Council asked City Staff to evaluate the recommendations and report back to Council. The result of the staff's work is described in a memorandum from the City Planning Director dated 1/12/07. City Council has asked the Downtown Commission to revisit the recommendations and revise as appropriate for any changes or new conditions, with a particular emphasis on providing Council with a wider range of and/or more varied options. The Downtown commission requested updates or further recommendations from representatives of the Task Force. Those updated recommendations follow.

Summary of Recommendations from the Conditions Committee on Homelessness

Throughout 2003, the conditions committee of the Downtown Social Issues Task Force has engaged in conversation to develop strategies that address the conditions of homelessness that impact behavior problems in the downtown area. As our conversations evolved, it became clear that simply implementing one or two innovative strategies or programs could not "solve" the conditions of homelessness. The conditions of homelessness and the coinciding behaviors are problems that are entwined with bigger, systematic issues. Therefore, the Downtown Social Issues Taskforce (DTSITF) recommends:

1. The City of Asheville and the County of Buncombe develop a Ten Year Plan to End Homelessness that includes initial priority on the chronic homeless population, the sup-population most visibly present in the downtown area.
2. Leadership roles and positions within the steering committee be defined and;
3. Funds for staff time be allocated so that the plan can be carried out and written in a timely manner.

This was unchanged because the recommendations were followed and a Ten Year Plan to End Homelessness was created with cooperation from the County and appropriate social service agencies.

Original Graffiti Recommendations

1. Graffiti removal pilot program.

We recommend that the City of Asheville, Quality Forward, Downtown Association, private property owners, business owners, and community volunteers cooperate in removing graffiti within 48 hours of it being reported to a graffiti hotline maintained by Quality Forward. A group of trained volunteers will remove the graffiti.

We recommend that the City of Asheville, Quality Forward, Downtown Association, private property owners, business owners, and community volunteers cooperate in removing graffiti within 48 hours of it being reported to a graffiti hotline maintained by the City of Asheville. (Originally Quality Forward offered to do this but 2 ½ years have passed and momentum for this private sector solution has dissipated during the 2 ½ years of inaction.) At this time, Quality Forward is still willing to help facilitate a volunteer program or help with outside contractors. A group of volunteers could be trained to remove the graffiti. Alternatively, we suggest the city take responsibility to assist property/business owners by putting a line item in its annual budget to fund graffiti removal, via private contractor.
Reasoning: Whereas in other cities, property owners who allow graffiti to remain on their buildings receive stiff penalties, we propose a cooperative rather than punitive approach in order to relieve the burden of sole responsibility from the property owner.

2. 48-hour graffiti removal

We recommend that the City pass an ordinance that requires building owners to either remove all graffiti themselves within 48 ours of its being reported or to grant permission for their property to be cleaned by volunteers. Violations will incur a penalty of $25 per day.

We recommend that the City pass an ordinance that requires building owners to either: 1) remove all graffiti themselves within 48 hours of its being reported or 2) to grant permission for their property to be cleaned by others (either a volunteer staff or city staff or a city contractor). Violations will incur a penalty of $25 per day.
Reasoning: While no one wants to "punish the victim," our research indicated graffiti in a community has an adverse effect on issues of safety, tourism and economic development. Further, our extensive research indicates that insuring removal of graffiti within 48 hours is the single most effective way to abate graffiti. It may be complicated or difficult to insure removal within that time period, but if a community is serious about graffiti abatement, fast removal is key. It is a requirement that property owners remove ice from sidewalks, for example, and that they provide facilities for the handicapped, so certainly there is precedent for holding property/ business owners responsible for the well-being of citizens. In every city researched that successfully abated graffiti property owners were held responsible for removing graffiti from their property with fines for non-compliance or the city did the work and in most cases billed the property owner.

3. We recommend that the City initiate education in the schools, modeled on Keep America Beautiful's "Graffiti Hurts" program. In addition, we recommend that the City create a web page describing Asheville's graffiti abatement program with a hot link to Quality Forward's website describing their role in the program.

Unchanged

4. We recommend a program of public art murals to foster development of neighborhood

ownership and pride, specifically supporting the Asheville Mural Project.

Unchanged

5. Legal Graffiti Wall

Not originally a part of the committee's recommendation, a legal wall was added to the committee's recommendations to Council following public input sessions. Upon further discussion, we recommend:

The City consider as part of a larger graffiti abatement program a legally sanctioned graffiti wall on private property.
Requirements:
1. *Such a wall would be located on private property with, of course, property owner's permission.*
2. *The Task force agrees to review proposals from those wishing to offer their space as a legal site in order to address issues that may arise such as cleanliness, maintenance, and safety.*

Reasoning: While research shows inconclusive results as to the effectiveness of legal walls as an abatement measure, there is some evidence that indicates that legal walls can provide an alternative outlet for habitual offenders. It is possible as well that the presence of a legal site can lessen the negative perceptions which fuel politically inspired graffiti.

Additional Options:
Our recommendations are above. IF City Council is strongly opposed or unwilling to follow the recommendations, it could consider some of the following:
1. *A city sponsored public relations campaign along the lines of "Keep America Beautiful" or "Don't be a Litterbug" emphasizing "Beat Graffiti - Remove it within 48 hours", with the City setting that as its policy for city-owned property and encouraging all other property owners to follow the City's lead, with fines kicking in after 7(?) or 10(?) days.*
2. *Perhaps the clean-up could be pricritized so that less stringent standards and time limits applied to graffiti not visible from a public thoroughfare.*
3. *Perhaps less stringent standards and time limits could be applied to graffiti which is particularly difficult to remove because the graffiti is inaccessible or involved some permanent alteration of the substrate (like acid etching of windows). If this course is followed there should also be more stringent criminal penalties for graffiti vandals responsible for such damage as well as a reward program for information leading to their arrest and conviction.*

A request for a City liaison (department director if possible) for the graffiti abatement program.

Original Recommendations of the Panhandling Subcommittee

1. Through the Asheville Downtown Association, work to redirect money from panhandling to the local service providers.

   (a) Implement a public relations campaign that encourages downtown visitors to not give money to panhandlers and instead give money to local organizations that are working with the homeless population and working to end homelessness. The campaign would include posters in businesses' windows, articles in the papers, and radio spots. In addition, a flyer detailing available local services would encourage visitors to not give to panhandlers, but to these local service providers. There have been numerous of these campaigns in other cities, one example being called "Real Change, Not Spare Change"

(b) Place several "lock boxes" on the street in downtown to accept donations for homeless organizations in conjunction with the PR campaign. In addition, place donation boxes at participating businesses, making it convenient for folks to donate.

2. Educate District Court judges about the different kinds of panhandling happening in downtown and ask that harsher sentences be enacted for those committing fraud.

The original recommendation is unchanged because the recommendations were sound but the following elaboration on the lock-box program is provided:

Asheville Downtown Association "Spare Change for Real Change" Donation Box Proposal

The installation of donation boxes in key locations throughout downtown is seen as a key transition point in the overall implementation of the Downtown Social Issues Taskforce recommendations addressing social issues in downtown Asheville. In many ways, the panhandling program is the first transition point where the taskforces proposals addressing "conditions" which lead to various social issues integrate into programs, which attempt to control the negative behavioral consequences of poverty, homelessness, drug and alcohol abuse, and graffiti. The Taskforce was clear that we not only needed to address the conditions which lead to negative social behavior but we also have to address the behaviors themselves. The following proposal addresses the logistics involved in installing and maintaining the donation boxes. The Asheville Downtown Association has approved funding for the design and manufacture of the donation boxes. The box is constructed of quarter inch plate steel welded and assembled to look like a small home. The box will be secured with a heavy-duty padlock protected against damage. Each box will have a durable, easily replaceable sign identifying the box as a location to make donations. We originally proposed four boxes installed in key locations downtown. The four locations we originally requested were, one on Pack Square, one on Biltmore Ave., one in Pritchard Park and one in front of the Civic Center. The ADA has subsequently revised its request to add an additional location on North Lexington Ave at the corner of Walnut and North Lexington Ave for a total of five locations. The ADA believes that those key locations are the places to start. We will, of course, with your permission, gauge the effectiveness and coverage area and be ready to expand our locations as needed. As the program takes hold, the ADA also hopes to include donation centers in businesses throughout downtown on a volunteer basis. The Asheville Public Works Department has offered help with the installation and the ADA would like to request that the City provide the poles that we need to install the boxes on. We anticipate using a pole identical to the ones currently being used to mount the parking meters downtown.

The ADA is establishing precincts throughout downtown to facilitate the distribution of information to the downtown community. We anticipate that precinct captains will be responsible for the collection and maintenance of any collection boxes in their assigned area. We are providing samples of the signage on the boxes as well as the paint we anticipate using. The ADA anticipates some backlash to this program based on the level of graffiti that exists downtown as well as a somewhat natural resistance on the part of those panhandling to the existence of competition for the funds normally given to panhandlers. The design of the boxes and the signage anticipates just such activities. We anticipate that funds will be collected no less than on a weekly basis and any vandalism should be addressed within forty-eight hours by the precinct captains responsible. Once the funds are collected, the ADA plans to administer the distribution of those funds to the social welfare community through the Asheville Downtown Association Foundation, a 501-c-3 non-profit that we have established. The ADA plans to solicit matching funds from various businesses in the community on a tax-exempt basis in order to leverage the donations for a more significant impact on the conditions faced by the poor in our community. This will be the Foundations first project on behalf of the Association and we are inviting people from all areas of the community to make suggestions on the make up of our Foundation board. The Asheville Downtown Association has a one million dollar liability policy in place with the City of Asheville identified as a co-insured to offset liability concerns. Lastly, the ADA is making improvements to our public relations campaign based on our experiences so far. We expect to distribute our new poster in association with the installation of the collection boxes. We are updating our "Real Help" brochure to make it more current and we have designed a business card size handout to more easily direct panhandlers to the "Real Help" available. We hope that everyone in city government will procure brochures and/or business cards to distribute as they are approached during their daily activities downtown. The more participation we have the more effective the program will be.

Original Recommendations of the Public Drunkenness Subcommittee

The recommendations were intended to provide a unified and effective program to ameliorate the dangerous, expensive, and ineffective non-program currently represented by the "revolving door" approach to chronic public drunkenness problems. They were intended to be put into practice on parallel tracks so that the enforcement aspects of the recommendations act primarily as reinforcement for the recovery opportunities provided:

The original recommendations are largely unchanged because the Task Force felt that it was critically important that the punitive/enforcement recommendations and the treatment recommendations work together as a mutually reinforcing complementary solution. Changes are in italics.

1. Recommend that the City of Asheville petition the authority with control over existing ABC local tax collections to dedicate locally collected funds to improved detox and rehabilitation programs or, in the alternative, *if insufficient funds are available from ABC tax collections or elsewhere*, seek legislation from the state giving authority to pass a local ordinance with a ½% sales tax on beer and wine with the funds earmarked for detox and rehabilitation, or, in the alternative. *(The order was changed making ABC collections the preferred funding source.)*

2. Recommend that the City of Asheville seek legislation from the state providing Asheville City Police with regular ABC enforcement powers to allow them to deal directly with problems at or related to specific local drinking establishments such as underage drinking, fighting, public urination, and regularly serving inebriated individuals.

3. Recommend that the City of Asheville establish a Housing First program providing housing for our most difficult, chronic, and expensive to manage alcohol-dependent homeless. *(This approach is being partially implemented in partnership with MHO but additional implementation will be necessary and our understanding is that the current*

program does not deal with the most chronic cases, which was a critical feature of the Housing First program as originally described to the Task Force).

4. Recommend that the City of Asheville, in concert with the County, establish a detox/recovery center similar to the Healing Place in Raleigh or the jail-based public inebriate program in Roanoke, VA. *(It is our understanding that Neil Dobbins Center will open a Crisis Stabilization Facility (detox facility) this summer (2007) and a Community Intervention Team (CIT) with representatives from the criminal court system, police, and sheriff's office are being trained in dealing with mental health emergencies, presumably including substance abuse. In addition City staff has recommended the Healing Place model be pursued.)*

5. Recommend that the City of Asheville seek legislation from the state, which would allow the city to recognize certain Alcohol Impact Areas (similar to what's been done in Seattle and Washington State). These areas would be selected because they have consistent problems with some individuals presenting themselves in an extremely inebriated condition and thereby create significant danger for themselves and for innocent third parties because of heavy traffic and the reduced sight lines caused by many parked cars along the streets. The special restrictions for these areas would be: 1) city government would have authority to outlaw the sale of large (40 oz) beer containers and fortified wines within the Alcohol Impact Area, and 2) individuals with more than 10 convictions over any twelve month period would be prohibited from entering the Area in which they had been repeatedly arrested for one year. *(Council could reduce the number of convictions to a smaller number if this provision were viewed as too lenient or increase the number if it were viewed as too harsh.) (City staff has recommended against this proposal although no research or case law was provided to contradict the materials relied on and provided by the Task Force in making its original recommendation. Enforcement difficulties have been cited even though downtown police officers were consulted in making the original recommendation and no new information has been provided to the effect that the City Police oppose this recommendation.)*

6. Recommend that the City of Asheville pass an ordinance against possession or use of alcoholic beverages, whether open or closed, on city property or in city parks without permission from the City Parks and Recreation Director or the City Public Works Director.

7. Recommend that the City of Asheville pass an ordinance allowing the City to cancel the privilege licenses of establishments, which have, create, or attract repeated and chronic criminal activity in their immediate vicinity. Closure would be based an objective standard such as twenty (20) separate incidents of arrests which resulted in convictions of patrons of the establishment over a 12 month period.

8. Recommend that the City Council issue a proclamation to the District Attorney's office requesting that they inform the district court judges of the seriousness of the problems and dangers to themselves and others created by chronically inebriated individuals and that the District Attorney's office seek and recommend the longest available jail sentences for repeat offenders in an effort to reinforce individual responsibility in such repeat offenders, to improve and reinforce the effectiveness of our local police, and to encourage said offenders to take advantage of recovery opportunities created by the community. *(The DTC was informed that this has been done, with additional information that the City was considering instituting a "nuisance" court.)*

Ms. Susan Griffin, Chair of the Downtown Asheville Residential Neighbors, supported (1) the ADA's Spare Change for Real Change program; (2) establishment of facilities, such as the Healing Place; (3) the formation of a Nuisance Court in Asheville; (4) the graffiti removal pilot program; (5) creating a graffiti wall; and (6) greater police presence in downtown.

Rev. Christopher Chiaronmonte spoke to Council about homelessness in Asheville and spoke in opposition of the Spare Change for Real Change program.

Rev. Amy Cantrell asked the City to deepen their commitment of the Housing First model, to drop laws against panhandling, and to channel those funds for policing this ordinance into housing and justice initiatives.

Council then thoroughly discussed each recommendation by the DTSITF (and others) resulting in the following directions:

1. Committee on Homelessness

   A Ten Year Plan to End Homelessness was adopted and we are addressing this issue through Community Development Block Grant funds.

2. Graffiti Removal Pilot Program - Recommendation that the City of Asheville, Quality Forward, Downtown Association, private property owners, business owners, and community volunteers cooperate in removing graffiti within 48 hours of it being reported to a graffiti hotline maintained by the City of Asheville.

   48-Hour Graffiti Removal - Recommendation that the City pass an ordinance that requires building owners to either: 1) remove all graffiti themselves within 48 hours of its being reported or 2) to grant permission for their property to be cleaned by others (either a volunteer staff or city staff or a city contractor). Violations will incur a penalty of $25 per day.

   After each individual Council Member expressed their views, it was the consensus of Council to remand this issue back to City staff to further research the following, with a report back to Council in June, or sooner: re-visit those cities who have enacted this legislation and see how those regulations are holding up, if the 48-hours makes a difference, if the legislation is still in place, and if they still feel the program is successful; provide best practices data; provide information on the cost and liability to the City; request the Downtown Commission and the ADA to do a survey of how many property owners would sign an agreement of intent to have the graffiti removed within 48-hours or as soon as possible; number of graffiti artists, specifically in the downtown district; and can we put graffiti in our crime stoppers program.

   Mayor Bellamy said that if, by the end of March, Council has any other questions regarding graffiti that they would like addressed by staff to refer those questions to City Manager Jackson.

3. Panhandling Subcommittee

A. Through the ADA, work to redirect money from panhandling to the local service providers.

(1) Implement a public relations campaign that encourages downtown visitors to not give money to panhandlers and instead give money to local organizations that are working with the homeless population and working to end homelessness.

After discussion, it was the consensus of City Council to support the implementation of a public relations campaign.

(2) Place several "lock boxes" on the streets in downtown to accept donations for homeless organizations in conjunction with the PR campaign. In addition, place donation boxes at participating businesses, making it convenient for folks to donate.

After each individual Council Member expressed their views, it was the consensus of Council to support placing several "lock boxes" on the streets in downtown.

Mr. Buckner said that 100% of what is collected from the lock boxes is committed to be distributed to our local social service agencies.

At the request of Mayor Bellamy, Mr. Buckner said that in the Downtown Commission's annual report to City Council that information will be included each year about how much is collected from the lock boxes and given to the social service agencies.

Mr. Buckner agreed with Mayor Bellamy when she requested the "lock boxes" design be mandatory review and compliance with the Downtown Commission.

B. Educate District Court judges about the different kinds of panhandling happening in downtown and ask that harsher sentences be enacted for those committing fraud.

After a brief discussion, it was the consensus of City Council to refer this to the Public Safety Committee to look at other alternatives to harsher sentences.

4. Public Drunkenness Subcommittee

A. Recommend that the City of Asheville petition the authority with control over existing ABC local tax collections to dedicate locally collected funds to improved detox and rehabilitation programs or, in the alternative, if insufficient funds are available from ABC tax collections or elsewhere, seek legislation from the state giving authority to pass a local ordinance with a ½% sales tax on beer and wine with the funds earmarked for detox and rehabilitation, or, in the alternative.

As a first step, the majority of Council instructed Councilman Mumpower, as liaison to the ABC Board, to talk to the ABC Board regarding this request and report back to Council.

After said report, at this time, it was the majority of Council's desire to request City Attorney Oast to draft a resolution requesting the ABC Board dedicate some of their ABC local tax collections to improve detox and rehabilitation programs.

B. Recommend that the City of Asheville seek legislation from the state providing Asheville City Police with regular ABC enforcement powers to allow them to deal directly with problems at or related to specific local drinking establishments such as underage drinking, fighting, public urination, and regularly serving inebriated individuals.

It was the consensus of Council to instruct the City Attorney to provide Council with a memo on what powers the City has regarding providing the Asheville Police Department with regular ABC enforcement powers.

C. Recommend that the City of Asheville establish a Housing First Program providing housing for our most difficult, chronic, and expensive to manage alcohol-dependent homeless.

The Housing First Program has already been enacted.

Councilman Newman updated City Council on the program to date.

D. Recommend that the City of Asheville, in concert with the County, establish a detox/recovery center similar to the Healing Place in Raleigh or the jail-based public inebriate program in Roanoke, VA. *(It is our understanding that Neil Dobbins Center will open a Crisis Stabilization Facility (detox facility) this summer (2007) and a Community Intervention Team (CIT) with representatives from the criminal court system, police, and sheriff's office are being trained in dealing with mental health emergencies, presumably including substance abuse. In addition City staff has recommended the Healing Place model be pursued.)*

This recommendation is moving forward.

Councilman Mumpower said that a Drug Commission subcommittee will be making a presentation to the entire Drug Commission about a comprehensive initiative that speaks directly to this recommendation. Mayor Bellamy asked that Councilman Mumpower advise Council Members of the date and time of this presentation.

E. Recommend that the City of Asheville seek legislation from the state, which would allow the city to recognize certain Alcohol Impact Areas (similar to what's been done in Seattle and Washington State). These areas would be selected because they have consistent problems with some individuals presenting themselves in an extremely inebriated condition and thereby create significant danger for themselves and for innocent third parties because of heavy traffic and the reduced sight lines caused by many parked cars along the streets. The special restrictions for these areas would be: 1) city government would have authority to outlaw the sale of large (40 oz) beer containers and fortified wines within the Alcohol Impact Area, and 2) individuals with more than 10 convictions over any twelve month period would be prohibited from entering the Area in which they had been repeatedly arrested for one year.

It was the consensus of City Council to refer this to the Public Safety Committee.

F. Recommend that the City of Asheville pass an ordinance against possession or use of alcoholic beverages, whether open or closed, on city property or in city parks without permission from the City Parks and Recreation Director or the City Public Works Director.

It was the consensus of City Council to refer this to the Public Safety Committee.

G. Recommend that the City of Asheville pass an ordinance allowing the City to cancel the privilege licenses of establishments, which have, create, or attract repeated and chronic criminal activity in their immediate vicinity. Closure would be based an objective standard such as twenty (20) separate incidents of arrests which resulted in convictions of patrons of the establishment over a 12 month period.

It was the consensus of City Council to refer this to the Public Safety Committee.

H. Recommend that the City Council issue a proclamation to the District Attorney's office requesting that they inform the district court judges of the seriousness of the problems and dangers to themselves and others created by chronically inebriated individuals and that the District Attorney's office seek and recommend the longest available jail sentences for repeat offenders in an effort to reinforce individual responsibility in such repeat offenders, to improve and reinforce the effectiveness of our local police, and to encourage said offenders to take advantage of recovery opportunities created by the community.

It was the consensus of City Council to refer this to the Public Safety Committee.

5. Asheville Mural Project

Request for City Council to dedicate additional funds towards the implementation of the Asheville Mural Project as part of a budget amendment.

After discussion, it was the consensus of Council to refer this to the Public Art Board.

6. Current Configuration of Pritchard Park (safety, cleanliness, sleeping in the Park)

After discussion, it was the consensus of Council to ask the City Clerk prepare a letter to both Chairs of the Downtown Commission and the Recreation Board to establish an ad hoc committee with the charge of developing a public input process, including the input of the police officer who deals with SEPTA and including representatives of the homeless, regarding the configuration of Pritchard Park, including, but not limited to, the removal of the brick in the Park and replace it with wrought iron fencing.

In response to Vice-Mayor Jones, City Manager Jackson said that we should have the downtown public restrooms under contract within the next two weeks and after that it is a 90-day project.

7. Feeding in Pritchard Park. The feeding is occurring, however, people are not cleaning up afterwards.

The majority of Council instructed the City Attorney to look at what are the options available for regulating certain activities in Pritchard Park.

8. Proliferation of Newspaper Stands in Downtown

Economic Development Director Sam Powers said that City staff, along with representatives of the different media who utilize the stands, are working on a pilot project and he will provide Council with a report at their next meeting.

9. New Trash Cans and Recycling Cans in Business Districts

City Manager Jackson said that staff has developed some budget options and would bring those to Council in the budget process.

D. DISCUSSION OF SCHOOL BOARD

Because of the small pool of applicants for two seats on the Asheville School Board, City Council discussed re-opening up the application process for School Board candidates. It was the majority of Council's direction to instruct the City Clerk to extend the application deadline for 30 days.

Mayor Bellamy asked that if any Council Member had suggestions on other ways the City Clerk could recruit more applicants, to let her know as soon as possible.

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-71 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO VOLUNTEERS OF AMERICA OF THE CAROLINAS FOR AFFORDABLE RENTAL HOUSING ON SPRINGSIDE ROAD

Ms. Adria Hardy, Community Development Analyst, said that this is the consideration of a resolution approving a $445,269 Housing Trust Fund (HTF) loan to Volunteers of America of the Carolinas for the development of 63 units of affordable senior rental housing.

Volunteers of America of the Carolinas (VOAC) plans to construct 63 one- and two-bedroom apartments for the elderly on Springside Road in South Asheville. Tenants will have incomes below 60% of area median income, qualifying the project for the most favorable HTF loan terms. The terms requested are 2% annual interest-only payments with principal deferred for 30 years.

Shelter Development received a $500,000 HTF award for this project last fall, but their national office has since decided not to pursue tax credits in North Carolina and they have withdrawn from the project. The option to purchase has been assigned to VOAC and they plan to use the same architectural plans for the development.

The total project budget is $7.9 million. VOAC has made application for Low Income Housing Tax Credits as the major source of revenue for the project. They have also applied for $171,961 in HOME funds. The local HTF and HOME investment will earn crucial additional points in the tax credit competition.

The application was reviewed by a panel consisting of staff and outside experts and it scored well overall, with particularly high scores for the quality of development and for long-term affordability. The developer has a strong financial capacity and much experience across the Carolinas developing affordable housing, with two projects successfully completed in Asheville in the past eight years.

The project is dependent on receiving tax credits and awards will not be made until July, 2007. However, if tax credits are awarded, it is very likely the development will proceed successfully. Housing Trust Funds will not be released prior to the award of tax credits.

The Housing and Community Development Committee reviewed the application on February 12, 2007, and recommended awarding a HTF loan in the amount of $445,269 at the terms requested.

Pros:

- Creation 63 units of affordable housing in Asheville

- Increase the City tax base by about $5 million
- 30 years of affordability is guaranteed through the tax credit program

Cons:

- Ties up HTF funds for several months before results of LIHTC competition are known

Staff recommends approval of a resolution approving a $445,269 Housing Trust Fund (HTF) loan to Volunteers of America of the Carolinas for the development of 63 units of affordable senior rental housing.

Ms. Hardy responded to various questions from Councilman Mumpower, some being, but are not limited to: what percentage of dollars for this project is coming from the federal, state or local government; is any money coming directly from the developer; what are the amenities this project is proposing; and how will the loan be repaid.

Councilman Mumpower said that it is hard to speak against housing for the elderly; however, he felt this is a use of taxpayer dollars to create a fairly elaborate style of living for only a very limited number of people in the community.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-71. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. RESOLUTION NO. 07-79 – RESOLUTION EXPRESSING POSITION OF ASHEVILLE CITY COUNCIL AS TO LOCAL TAXATION, TAX EQUITY, AND THE SULLIVAN ACT

Chief Financial Officer Ben Durant said that the purpose of this report is to provide general information about: 1) the General Obligation Bond Referendum process and City's current debt capacity, and 2) the Chamber of Commerce's half-cent sales tax proposal that is being considered in the State Legislature.

GO Bond Referendum History

The following chart shows the City's GO bond referendum history and results over the last 30 years:

Year	Project(s)	Amount	Vote
1981	Parking Bonds Redevelopment Bonds	Not available	No (64%) No (63%)
1986	Street & Sidewalk Bonds Education/Arts/Science Center Bonds	$17,000,000 $3,000,000	Yes (68%) Yes (62%)
1989	Water Bonds	$40,000,000	No (61%)
1999	Parks, Recreation and Greenway Bonds	$18,000,000	No (53%)

Current Debt Capacity

To help decide how much debt to issue, it is necessary to look at bond or debt ratios. Numerous ratios are available for measuring local debt burden, but the most frequently used are:

- Debt per capita
- Debt as a percentage of assessed valuation
- Annual debt service on net debt as a percentage of general fund revenues or spending.

Asheville currently has a low *debt per capita* relative to the North Carolina population peer group average. He explained that Asheville's debt per capita is approximately $315 compared to a peer group average of $630. He also explained that the average *debt to assessed valuation* for Asheville's North Carolina peer group is 0.813% compared to Asheville's ratio of approximately .035%.

In addition, he explained that the median *debt service as a percentage of revenues* for North Carolina cities & towns with a bond ratings of Aa2 (Asheville's current rating) is equal to 8.2% compared to Asheville's ratio of approximately 5.8%.

All three of the aforementioned ratios show that Asheville has good debt capacity relative to its population or bond rating peer groups.

Current Debt Retirement Schedule

Mr. Durant explained the current debt service retirement schedule for general fund supported debt and the estimated funds that will become available resulting from a cumulative decline in our existing debt service over the next several years. A chart showed that in subsequent years the City will have the potential to issue new debt without increasing our current debt service contribution over current Fiscal Year 2007 levels.

Potential Bond Schedule

He explained to showed Council a draft schedule for a general obligation bond referendum to be held in November 2007. North Carolina General Statutes set forth specific timing requirements that are reflected in the schedule. The reason that the schedule starts so early (late July) is that the City will have to give the Board of Elections enough lead time to be able to have absentee ballots available 50 days before the election.

It is important to note that before Council actions start on this schedule, the City will have to know the amounts and specific projects/purposes to be voted on. This means that between now and July, some type of process that includes community input and support building will need to take place that defines the City's capital improvement and bond referendum priorities.

It is also important to note that the statutes require that each category of items (projects) be voted on in separate questions on the ballot. For example, we can combine all street & sidewalk construction into one question and all park and recreation related projects in another question and public safety facilities in a different question, each one asking voters to approve a specific amount for that category. We cannot, on the other hand, combine streets and parks in one ballot question for an up or down vote.

The Bond Orders referred to on the schedule are essentially the ballot question. The Bond Orders determine the scope on which the City is allowed to use the money authorized by the bond referendum. The Bond Orders can be drafted as generally as possible to provide flexibility within a category of projects or they can be drafted specifically so that the GO money that is authorized can only be used for a specific purpose (or anywhere in between). Most prefer to draft the question broadly, but discuss specific projects during the process to educate voters about the referendum.

Chamber of Commerce's Half Cent Sales Tax Proposal

There is currently Chamber of Commerce interest in the North Carolina State Legislature authorizing an additional half-cent sales tax in Buncombe County. The proceeds from this additional half cent sales tax would be dedicated to funding infrastructure improvements county-wide and would be divided between the County and all of the municipalities based on population. Five-year county-wide and City of Asheville revenue estimates are provided in Table 1 below. He also said that there is an analysis from the Chamber of Commerce detailing the impact of the additional sales tax on different consumer income groups.

Table 1
Buncombe County
¼ Cent Sales Tax (including food)

Year	County-Wide	City of Asheville
FY08	$18,389,202	$6,139,716
FY09	$18,940,878	$6,323,907
FY10	$19,509,104	$6,513,625
FY11	$20,094,377	$6,709,033
FY12	$20,697,209	$6,910,304

Based on these estimates, the City would receive approximately $6.1 million in Fiscal Year 2007-08 in additional revenue that could be dedicated to capital and infrastructure improvements. This amount of funding would afford the City the opportunity to significantly enhance its capital improvement program. By way of comparison, the City's current Fiscal Year 2006-07 General Fund capital improvement program includes $3.07 million in pay-as-you-go funding; so an additional $6.1 million would allow the City to more than double its pay-as-you-go funding. Alternatively, the City could leverage all or a portion of the additional $6.1 million in sales tax revenue and issue debt to further expand the capital improvement program. Six million dollars in available debt funding would generate between $50 and $60 million in bond proceeds, depending on several factors such as the type of bonds issued, interest rates, issuance costs, etc.

The Chamber of Commerce has requested formal feedback from City Council on this half-cent sales tax proposal, as well as specific examples of the City's major infrastructure needs. Examples of infrastructure needs that should be considered by Council include the following: 1) Public Safety (police & fire substations, training facilities); 2) Sidewalks; and 3) Public/Affordable Housing Development Programs.

City staff requests City Council provide staff with further direction or requests for analysis.

Mayor Bellamy asked if Council would be open to starting the discussion about the possibility or feasibility of a bond referendum for our community to vote on some of the needs that we have.

Councilman Newman feels that we should look at each of the infrastructure areas individually because bonds might not be the most effective strategy in all areas. He spoke in favor of more public investment in sidewalks and greenways. But in those areas there are other financial strategies that he would prefer to look at first, before bonds. He and Councilman Freeborn have been encouraging the Metropolitan Planning Organization to make the decisions on where the funding we get from the state will be used. They basically decided to allocate upwards of $3 Million a year for local projects for every year between 2009 and 2015 and sidewalk and greenway projects are the kinds of projects they will be looking for. So if the City

made a commitment to fund sidewalks and greenways every year between 2009 and 2015, we might get a 3, 4, or 5-1 match on our increased investment for those things.

Councilman Freeborn felt it might be beneficial for the Parks & Recreation Foundation to make a presentation before Council to discuss what their vision is and what kind of dollar figures they would need to be able to leverage additional money.

Councilwoman Cape felt that we need to know exactly the nature and timing of whatever issue we are interested in taking to the public in a bond referendum. It's important that the people understand the exact nature of what we are asking them to pay for. She felt it's easy to lose the vote if you don't have the time to educate the people with clear and concise information. She needed more information on the relationship between the pay-as-you-go results that can be achieved or if we are going to get a bunch of money at once, how many projects can we really do.

Councilman Davis was concerned with a menu of items, without hearing a big resident cry from the community of what they want.

Councilman Mumpower opted for a pay-as-you-go approach and felt we need some real compelling reasons to incur the debt.

Vice-Mayor Jones explained why she thinks this is too short of time period for the City to be successful in a bond referendum. She is very appreciative of our MPO members to identify this money for sidewalks and greenways.

Mayor Bellamy felt that the need to re-tool public housing in order to eliminate concentrated poverty is going to require additional money. She did not think that pay-as-you-go will get it done. She would like to see the City move forward on a bond referendum for that. Even in situations where cities are able to get a HOPE 6 grant, the city also has to contribute quite a bit of money. As far as Parks & Recreation Foundation, she is open to supporting a bond referendum for them. She felt we need to start setting some parameters about the dialogue and where we are going to go, noting that the education component is very important. She will continue to put before Council the issues that need addressing and our sidewalks are a significant issue. She will continue to get information requested about timing and the relationship about pay-as-you-go. During this budget process Council will be able to see the capital improvement needs that our City is facing. She will provide Council with that data and then Council can make a determination on what or what not to do.

Councilman Freeborn supported more conversation taking place on a synthetic HOPE-6 type project; sidewalks; and parks and greenways.

Councilwoman Cape needed more specific information on the individual projects, e.g., what do they look like, what is the timeframe, etc. She was also interested in receiving information on what other kind of bond initiatives can be used for different projects.

Mayor Bellamy said that for large projects she wants to make sure that we have community support and buy-in to make that happen.

The majority of Council gave Mayor Bellamy direction to start obtaining information in order for Council to make the best decisions regarding a bond referendum.

Mr. Rick Lutovsky, President and CEO of the Asheville Chamber of Commerce, said that discussions with Council has been occurring about the proposal of implementation of 1/2 cent sales tax in anticipation of the State giving up their 1/2 cent. Four years ago the Chamber took the position in favor of the 1/2 cent sales tax if the State gave up their half, and if we received from the City and County their anticipated uses of the funds. Four years ago the City was interested in utilizing their amount (approximately $4.5 Million) on the Civic Center. Nothing has

happened with the State up until last year, when they gave up their 1/4 cent. The other 1/4 cent is supposed to be decided this year. Our intentions were to look at a funding source that would be sustainable and would allow the City and the County and other units of government to do some of the things we need to do in this community.

Mayor Bellamy explained that the City of Asheville's sales tax, the portion that we receive, is based upon our tax rate and the Chamber's proposal is based on a specific per capita. Mr. Lutovsky noted that the per capita formula that the Chamber has developed is more favorable towards the units of government within the county.

Mayor Bellamy said that the Chamber has requested formal feedback from City Council on specific examples of the City's major infrastructure needs we would consider using our funds for. Her personal projects would include re-tooling public housing, sidewalks and public safety training facilities.

Councilman Newman said that City Council has voted previously that we are opposed to a new sales tax. In talking with some other Council Members in the last few days, he heard some common ground around some ideas of possible ways to look at this. He offered two resolutions. Resolution No. 1 would be that City Council opposes a sales tax as a stand-alone policy. City Council affirms its opposition to a new local sales tax due to the deeply regressive nature of the tax. People earning between $15,000-$25,000 are required to pay three to four times more of their income for a sales tax than people in the upper 5% bracket. According to the N.C. Employment Security Commission, there are more than 27,000 jobs in the Asheville metro area that pay, on average, $10 per hour or less, meaning they make $22,000 per year or less for full-time work Placing an additional regressive tax on these 27,000 workers in our community would drive more working families into poverty. Resolution No. 2 would be that City Council supports a comprehensive tax equity agreement for our community and settlement of the Sullivan Act dispute out of court. City Council could only support an additional sales tax if a significant percentage of the new resources are directed towards programs that directly reduce poverty and support low-wage, working families and if it is tied to an overall tax equity agreement. Asheville would support a new sales tax only under the following conditions: (1) grocery sales are removed from the sales tax, making it somewhat less regressive. This reduces the revenue projections by about 30%; (2) the per capita formula is used for distribution of revenues; (3) at least 30-40% of the sales tax revenues must be earmarked for programs and services that directly support low-wages workers and poverty reduction efforts, such as affordable housing, child care for working families, transit services, or other programs to boost wages for low income workers. From a fairness standpoint, a regressive tax can only be justified if a larger percentage of the resource directly benefit low income families; (4) Asheville is allowed to use a 1% hotel occupancy fee (either from an increase or the existing revenues) for renovation of the Asheville Civic Center. If the working poor are being asked to pay more, so should the wealthy tourists who visit Asheville; and (5) the Sullivan Act litigation is settled out of court: (a) Asheville agrees to no differential water rates; (b) Asheville agrees to no diversion of water funds to other purposes; (c) the County pays Asheville $4-$5 Million annually in tax equity. This could be a direct payment for specific projects/programs; and (d) Asheville has the authority to annex new developments proposed within one-half to one mile of the City limits in order to receive water services, as all other cities can do.

Councilwoman Cape felt this is another attempt on our part to try to work with the County. She was specifically interested, should we make this arrangement with the County and move forward, that we look for specific ways to do bonding around housing, transportation and look for creative ways at how we can really alleviate the financial burden to the people we are asking to pay more.

Councilman Mumpower said that not everyone agrees that a sales tax is a regressive tax, but a consumption tax is one of the fairest taxes. He wondered why we are considering any tax increase since he has heard nothing from this Council about supporting a tax increase. He hears

no compelling need, but just wants. Before he would consider any tax increase, he thinks there should be an effort to look hard at where we can cut costs and show some kind of restraint to the people that are paying the taxes.

Vice-Mayor Jones explained that sales tax makes people with less pay a larger proportion of what money they have.

Vice-Mayor Jones moved to adopt Councilman Newman's Resolution No. 1 above stating that City Council opposes a sales tax as a stand-alone policy. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Mayor Bellamy asked that Council break the complex issues down in Resolution No. 2 and deal with them one by one. City Attorney Oast said that Council will need a motion to divide a complex issue.

Councilman Newman moved to adopt his Resolution No. 2 above stating that City Council supports a comprehensive tax equity agreement for our community and settlement of the Sullivan Act dispute out of court. This motion was seconded by Councilwoman Cape.

Mayor Bellamy asked Councilman Newman why he was not agreeable to dividing the motion so that individual Council Members could support an individual condition. Councilman Newman responded that the argument for keeping the issue together, since we weren't supportive of the sales tax, is that that we are providing some positive outcomes to counteract the negative implications, so that there is enough positive stuff in the package that we can tolerate the tax.

Councilwoman Cape's understanding is that Resolution No. 2 says that we would like to go to the table with the County Commissioners and our State legislators and say this is were we are starting from as a body.

Mayor Bellamy said that when have large issues in previous discussions, especially when we are dealing with issues of other bodies, because of the importance, we have gone through and allowed people to have some say so. This is either all or nothing. This impacts not only this Council but future Councils. So if you don't support a little bit of it, you are basically muted at the table when we talk about issues with the County.

Councilman Freeborn moved to divide this complex issue. Said motion died for a lack of a second.

Councilwoman Cape asked City Attorney Oast if we adopt Resolution No. 2, in conjunction with the Sullivan Act litigation, does it give us the opportunity in closed session to talk about our negotiating position on these items as they are linked to the litigation of the Sullivan Acts. City Attorney Oast felt it was possible to receive legal advice with respect to our position on the Sullivan Acts litigation in closed session. We have talked about all these matters with the County openly and assume Council is willing to continue to do so.

At the suggestion of Mayor Bellamy, Councilman Newman supported amending No. 4 in Resolution 2 to read: "(4) Asheville is allowed to use a 1% hotel occupancy fee (either from an increase or the existing revenues) for renovation of the Asheville Civic Center and/or other public venues, e.g., the performing arts center."

At the suggestion of Mayor Bellamy, Councilman Newman supported amending No. 5 (c) in Resolution 2 to read: "(c) the County pays Asheville $4-$5 Million annually in tax equity with the specific uses to be determined."

Mayor Bellamy supported removing grocery sales from the sales tax. She supported the per capita formula being used for distribution of revenues. She supported using a portion of the sales tax revenue being earmarked for programs and services that directly support low wage workers and poverty reduction efforts and would like to see those funds even leveraged more by additional bond capacities. She supported Asheville being allowed to use the existing 1% hotel occupancy for the renovation of the Civic Center as well as the performing arts center. And, she supported the City settling the Sullivan Act litigation out of court (without supporting delineating what the settlement would be).

As the Council Member who seconded the motion to adopt Resolution No. 2, Councilwoman Cape said that she would be fine with removing the points delineating what the settlement of the Sullivan Act litigation would be. Councilman Newman said that he would not be willing to remove the points.

After two more failed tries to re-tool the language on the tax equity bullet, the motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

VII. OTHER BUSINESS: Resolution Book 30 - page 300

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the lack of concern the City has towards the homeless.

Ms. Karen Speed, Chairman of the Board of Directors of the Buncombe County Rescue Squad, said they are a local private non-profit 501 (c) (3). They are governed by a non-compensated Board of Directors. She said that Council Members should have received a mailed request for possible financial support for their organization. She asked to be placed on the April, 2007, City Council agenda to publicly present their request for financial assistance from the City. She learned today from Mayor Bellamy of the outside agency grant process, noting that the deadline is January. She will be contacting Chief Financial Officer Ben Durant about that process. She asked if there are any other alternatives to that process to expedite their receiving funding. If so, she would like to investigate those avenues. Mayor Bellamy said that she is pursuing this request with the City Manager.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:30 p.m.

Kisha Lee
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – March 20, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Students from two 5th Grade classes from Ira B. Jones Elementary School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 13, 2007

B. RESOLUTION NO. 07-72 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH ONTARIO INVESTMENTS FOR REPLACEMENT OF MOWING EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE

Summary: The consideration of a resolution authorizing the City Manager to execute the lease agreement with Ontario Investments for replacement of mowing equipment at the Asheville Municipal Golf Course.

The City currently contracts with Ontario Investments to lease mowing equipment at the golf course. The new lease agreement will replace one Toro Groundsmaster 4500-D rough mowing unit and a Toro Reelmaster 6500–D fairway mowing unit with new equipment of the same kind.

The current lease value for six year old equipment is $19,620 per year, whereas the proposed lease value for new equipment is valued at $32,500 per year. The new lease is $12,888 per year above the existing lease since it will replace two six year old mowing units with new equipment. The full cost of the lease is budgeted in the Fiscal Year 2006-07 golf course operating budget.

The purchase price of the equipment as specified in the agreement is a total of $85,376. The City saves $20,376 over the life of the lease by leasing the equipment rather than purchasing.

Staff completed a cost comparison with Toro and found Ontario Investments to be slightly less for the same lease period. Ontario Investments was selected due to cost, past experience and a reliable business relationship.

Ontario Investments end of lease options:

1. Return the equipment with no further obligation.
2. Extend the lease
3. Purchase the equipment at fair market value.

Pros:

- Enables the City to acquire new replacement equipment without expending capital funds.
- Reduces maintenance costs on equipment through routine maintenance provided through lease.
- Puts all equipment leases at the golf course on the same schedule and enables the golf course to replace equipment on a set schedule reducing maintenance cost and down time of equipment.

Con:

- Increases the golf course annual operating budget.

Parks and Recreation recommends City Council approve a resolution authorizing the City Manager to execute the lease agreement with Ontario Investments for replacement of mowing equipment at the Asheville Municipal Golf Course.

RESOLUTION BOOK NO. 30 - PAGE 292

C. RESOLUTION NO. 07-73 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HICKORY CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS WATER TREATMENT PLANT IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hickory Construction Company for the project known as Water Treatment Plant Improvements.

The Water Resources Department requested through its contracted engineers, Brown and Caldwell, bids for water treatment plant upgrades at the North Fork and Bee Tree plants. Both plants require upgrades to meet current and future Environmental Protection Agency (EPA), State of North Carolina and Clean Water Drinking Act requirements. A request for construction bids for improvements to the water treatment plants was submitted to utility contractors in the southeast with four bids returned.

The Water Resources Department and its contracted engineer had previously estimated the biding and construction project management and construction phase of the water treatment plant upgrades to be approximately $5.7 million in 2005. Due to funding issues of not having a dedicated revenue source this project was delayed and the cost for construction and material has escalated over the past 18 – 24 months. The treatment plant upgrades were anticipated to be funded by the Capital Improvement Program fee starting in 2003. The water fund budget was not approved with this revenue source for three years which caused the project to be postponed until a primary funding source was obtained. The approval by City Council of the CIP fee in Fiscal Year 2006-07 allowed this project to move forward.

The four bids received were:

1. Hickory Construction Company: $6,362,500.00
2. Gilbert Engineering Company: $6,667,650.00
3. State Utility Contractors, Inc.: $7,680,00.00

4. Thamer Construction/Wharton-Smith, Inc.: $8,010,000.00

Our contracted engineering firm has recommended bid award to Hickory Construction Company in the amount of $6,362,500.00. Hickory Construction Company is in compliance with the City Minority Business Plan.

This award will require allocating partial funds from the Water Fund Equity (fund balance) account and reallocating funds from other projects due to cost escalations for materials and products since the initial and previous cost estimates were completed in 2005 and in late 2006. The current engineering estimate for the construction phase of the project was $7,162,513. A future bond resolution could reimburse the water fund for these costs with the funds being reallocated to cover these projects and other pay-as-you-go projects.

PROS:

- This project will enhance the water system and ensure we continue to meet all federal and state mandated clean water drinking act regulations.
- Partial funds are allocated in the current year budget.

CON:

- Partial funding for this construction requires $2,000,000 in funds to be reallocated from the Water Fund equity account.

City staff recommends City Council approval of a resolution authorizing the City Manager to enter into a contract with Hickory Construction Company for the project known as Water Treatment Plant Improvements.

RESOLUTION BOOK NO. 30 - PAGE 293

D. ORDINANCE NO. 3452 - BUDGET AMENDMENT FOR THE CONTRACT WITH HICKORY CONSTRUCTION COMPANY FOR UPGRADING WATER TREATMENT FACILITIES AT NORTH FORK AND BEE TREE WATER PLANTS

Summary: See Consent Agenda "C" above.

ORDINANCE BOOK NO. 23 - PAGE 287

E. RESOLUTION NO. 07-74 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System will operate an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Riverbend Marketplace, Veteran's Administration Hospital, and multiple residential areas. The service will

operate five times a day, six days a week. All financing will be provided by the State (maximum of $196,500), the Town of Black Mountain ($13,500), Mountain Mobility ($4,000), and Fare Box Revenue ($19,000). The total budgeted cost is $233,000. The contract has a period of performance of 12 months - from July 1, 2006, through June 30, 2007, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. These funds are currently programmed in the City budget, with no City funds being expended. Ridership on this route in FY 2006 was 19,727, with ridership in FY 2007 (the period of this contract) expected to be approximately 32,000.

This action conforms with the City Development Plan 2025 in Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

This action conforms with the Strategic Operating Plan in Strategic Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion. In addition, this action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

RESOLUTION BOOK NO. 30 - PAGE 294

F. RESOLUTION NO. 07-75 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO WEAVERVILLE

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Weaverville.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

The Asheville Transit System will operate an intercity bus route between the City of Asheville and the Town of Weaverville along US 25 Business with stops at UNCA, along Merrimon Avenue, in downtown Weaverville, at the Rose's Shopping Center, SonoPress, and other locations along the route. The service will operate five times per day, six times per week. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The total budgeted cost for this project is $124,500 for the Fiscal Year July 1, 2006 through June 30, 2007. The State of NC is providing $110,500 for this Intercity Project. The Town of Weaverville has budgeted $10,000 to this route. The balance of $4,000 is expected from farebox revenues. There are no City funds in this operation, and the City is specifically

exempted from funding any of these operations in the contract from the NC DOT for these routes. Ridership on this route in FY 2006 was 6,254 from the inauguration of service in Mid-August through the end of the fiscal year. Ridership in the current fiscal year is expected to be approximately 14,000.

This action conforms to the City Development Plan 2025 in Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region, Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

This action conforms with the Strategic Operating Plan in Strategic Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion. In addition, this action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

Pros:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.
- Increased accessibility to jobs in Weaverville (SonoPress being the largest employer in Weaverville), and access to jobs in Asheville by those living along the route.

Con:

- None

City staff recommends City Council endorse a resolution authorizing the Mayor to enter into a funding agreement with the NC DOT for the provision of transit services to the Town of Weaverville, and the associated budget amendment.

RESOLUTION BOOK NO. 30 - PAGE 295

G. RESOLUTION NO. 07-76 - RESOLUTION AUTHORIZING BILBERRY LANE IN THE ASBURY ROAD AREA TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Bilberry Lane as a publicly maintained street in the Asbury Road area.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Bilberry Lane is a developer-constructed street that has an average width of 24 feet and a length of 0.07 miles. Transportation and Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Bilberry Lane will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Bilberry Lane in the Asbury Road Area as a City maintained street.

RESOLUTION BOOK NO. 30 - PAGE 296

H. ORDINANCE NO. 3453 - RESOLUTION TO DISSOLVE THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The services of the Educational Access Channel Commission are no longer necessary.

ORDINANCE BOOK NO. 23 - PAGE 290

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. GREENWAY COMMISSION PRESENTATION

Ms. Linda Giltz, Chairman of the Greenway Commission, explained that a greenway is (1) a protected corridor of open space managed for conservation, recreation or non-motorized transportation; (2) often follows geographic features such as ridges or rivers, or sometimes built along canals, utility corridors, or abandoned rail lines; (3) may include a trail or bike path, but others may be strictly for environmental or scenic protection; and (4) may be publicly or privately owned.

She said that the Greenway Commission was established in 1999. The Greenway Commission's 2006-07 efforts include (1) assist City staff with land acquisition by talking with land owners along priority greenway corridors; (2) develop criteria to rank/prioritize greenways and prioritize all greenways in the Master Plan; (3) work with the City and other organizations to explore a bond referendum and other sources that could provide significant funding for greenways; (4) assist with the Master Plan update; and (5) work closely with the Asheville Parks and Greenways Foundation.

The Greenway Commission's 2006 accomplishments include (1) assisted staff with land owner outreach and negotiation (a) downtown to A-B Tech greenway; (b) Reed Creek Greenway; (c) French Broad River Greenway (Progress Energy sections); and (d) Beaverdam Greenway; (2) worked with staff to refine alignment of greenways; (3) reviewed development plans for new developments along Reed Creek Greenway; (4) reviewed and toured proposed greenways; and (5) education/outreach.

One criteria used for greenways is community benefits. They include (1) provides connectivity to an existing greenway, expands neighborhood connectivity, extends an existing greenway; (2) close proximity to natural features or potential to improve water quality, mitigate flooding, improve wildlife habitat, etc.; (3) provides safe corridor/connections for alternative transportation; (4) highly visible to the public; (5) in an aesthetically pleasing location and/or corridor has historic significance; and (6) potential to promote economic development.

Another criteria used for greenways is also affordability. They include (1) potential for partnerships with other organizations or funding sources; (2) cost of acquisition; and (3) cost of development; (4) property is owned, controlled or available publicly.

Ranking the greenways includes community benefits vs. affordability ranked separately and together. Top ranked greenways are French Broad River (Dog Park to Haywood Road), French Broad River (Amboy Road to Hominy Creek), Reed Creek (Weaver Boulevard to downtown), and Swannanoa River (Azalea Park to Riverbend).

Use of criteria and ranking involve (1) prioritizing fundraising and work/effort; (2) evaluating requests for new greenways; (3) providing ability to respond quickly when funding opportunities arise; (4) updating the Master Plan; and (5) refining alignments.

Other observations are (1) challenge - need additional staff and funding - formed a committee to explore bond referenda, identify organizations to collaborate with and test the political climate; and (2) demand for greenways is getting stronger; and (3) greenways provide multitude of benefits (health, water and air quality, economic, tourism, habitat protection, quality of life).

Ms. Giltz responded to various questions/comments from Councils, some being but are not limited to: what is the process for the Master Plan update; what is the relationship with new property owners who buy land that a proposed greenway is planned; what are the economic benefits for the City and for the property owners; when development proposals are reviewed, is there a mechanism in place to talk about greenways; and is there an overlap between the Pedestrian Plan and the Greenway Plan.

Upon inquiry of Councilman Freeborn, Mayor Bellamy said that the Greenway Commission request for additional staff and funding will be a part of the budget process.

Councilman Mumpower felt that greenways are a good concept, however, until we can effectively police the parks that we have now and can start controlling traffic problems and the public safety issues in public housing, he could not support spending money on something nice, but not necessary.

Councilman Newman said that during the City Council retreat, sidewalks and greenways were a top priority. He explained the process of the Metropolitan Planning Organization's (MPO) allocation of additional funding for local projects between 2009-2015. He asked if Council would be open to increasing annually the amount we spend on greenways and identify, between now and 2015, what projects we really want to accomplish and partnership with the MPO and other sources to complete those projects.

Vice-Mayor Jones said that there is good data about the tourism related benefits of greenways and felt the Buncombe County Tourism Development would be a source to inquire about funding as well.

Councilman Davis said that when this issue comes back to Council during the budget process, he would like information about maintenance costs and crime statistics regarding greenways.

Mayor Bellamy thanked Ms. Giltz for her annual report and said that we will take a comprehensive look at parks and greenways during the budget process. She also cited the many improvements the City has undertaken in our various parks, noting that we will continue to improve on our quality of service for the community's quality of life.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH BILTMORE FARMS, LLC, AND TOWN SQUARE WEST FOR THE DEVELOPMENT OF BILTMORE PARK TOWN CENTER

RESOLUTION NO. 07-77 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH BILTMORE FARMS, LLC, AND TOWN SQUARE WEST FOR THE DEVELOPMENT OF BILTMORE PARK TOWN CENTER

Mayor Bellamy opened the public hearing at 5:49 p.m.

Economic Development Director Sam Powers and Urban Planner Julia Cogburn said that this is the consideration of: (1) a resolution approving an economic development agreement with Biltmore Farms, LLC and Town Square West for the development of Biltmore Park Town Center; and (2) adoption of an ordinance annexing Biltmore Park Town Center (petitioned annexation). This public hearing was advertised on March 2, 2007.

Regarding the economic development portion, Mr. Powers said that Biltmore Park Town Center is a proposed high-density, mixed use development project in south Buncombe County, in an area abutting the current City limits. The development program consists of approximately 200,000 sq. ft. of retail/dining; a 50,000 sq. ft. 15-screen cinema; 100,000 sq. ft. of new office space; 150 room hotel; approximately 264 housing units (175 rental/89 condo); and 1,850 spaces of structured parking. The estimated capital investment for the project is $123-130 million. Job creation of 1,200 new jobs is expected at build-out. Construction employment is estimated to create 300 jobs. The developer has requested that consideration be given for this investment in the form of an economic development grant agreement.

The economic development incentive agreement under consideration calls for payments to be made in 5 annual installments, which take into account the prospective tax revenues (property, sales, etc.) from the property coming to the City, beginning with calendar year 2008. The estimated total incentive for this project is $2.5 million. The City's obligation to make payments would terminate after 5 years.

Regarding the voluntary annexation portion, Ms. Cogburn said that as structured, the City's obligations under this incentive agreement do not arise unless and until the property is annexed into the City. Accordingly, the owner of the property has filed with the City a petition for voluntary annexation pursuant to N.C.G.S. 160A-31. That statute requires the City to investigate the petition as to compliance with certain criteria (contiguity with existing boundary, owners sign petition, etc.).

This investigation has been completed and the Certificate of Sufficiency was presented. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in NCGS 160A-31.

Mr. Powers said that this project will require two actions, both of which are interdependent on each other for City involvement:

1. Adoption of a resolution authorizing the City to enter into the economic development incentive agreement; and
2. Adoption of ordinance annexing the area into the City.

Though it is a separate action, the request for annexation is set out in the economic development incentive agreement. The law requires a public hearing on ten days notice for the voluntary annexation. Council also holds public hearings for economic development incentive agreements, and these public hearings require notice as well. Both public hearings have been properly advertised and scheduled to coincide. Should City Council decide to proceed, the effective date of annexation would be April 30, 2007.

Pros:

- Provides for orderly growth of City and growth of tax base through acceptance of appropriate areas into corporate limits where owners desire annexation.
- Provides new economic development anchor opportunity for the City, by providing new City area to attract new employers and jobs, including construction jobs for extended periods.
- $123 million increase to City tax base at project build-out.
- Meets the City of Asheville's definition of Smart Growth: "...makes efficient use of land, fully utilizes urban infrastructure...promotes variety of transportation & housing...protects architectural & environmental character of the City through compatible, high quality, & environmentally-sensitive development practices...implemented through effective policies, regulations, capital projects & incentives".
- Increase Asheville's efforts to develop Sense of Place and additional destinations to enhance tourism and length of visitor stays and increased visitor spending.
- High density mixed use and structured parking reduces land use by 23 acres.
- Use of means other than water to encourage annexation.

Cons:

- Marginal increase in service costs.

Staff recommends approval of a resolution approving the economic development incentive agreement, and adoption of the ordinance for voluntary annexation.

Mr. James Downs, Vice-President of Crosland Retail, explained Crosland's market focus. He outlined some of the projects Crosland developed. He then explained the project in detail. Under the economic development agreement, the developer would (1) build and own four parking decks: 80% public parking, 20% (up to 30%) reserved for residents; (2) build, obtain financing, lease, and assume financial responsibility consequences of project; (3) pays 100% of city (and county) taxes upon annexation; and (4) provide office space and connections for building inspector. The City would (1) provide one full-time building inspector; and (2) make five annual grant payments equal to incremental ad valorem taxes on the project for 2008 through 2012.

He said the economic benefits include (1) one time job creation of 310 construction jobs; (2) on-going job creating of 1,223 jobs; (3) high quality retailers provide benefits/wages, including part-time; (4) upon completion, $651,548 estimated annual revenue to city; (5) avoid legal cost and delay of city-initiated annexation; and (6) catalyst for future growth in Technology Park and southwest Asheville.

The environment benefits include (1) density - better use of the land, prevents 23 acres of sprawl; (2) car trips reduced by 11.7%; (3) integrated stormwater management; (4) of the larger 76.5 acre, Urban Village District, 24 acres are open space; (5) voluntary conservation easements preserve 2.9 acres of wetlands; and (6) developer will endeavor to use Energy Star appliances.

He explained how this meets the City of Asheville's definition of smart growth development.

Mayor Bellamy closed the public hearing at 6:05 p.m.

There was a brief discussion, initiated from Councilman Mumpower's concern about the City taxpayer paying for the City providing a full-time inspector. Mr. Powers said that a full-time inspector will be able to expedite the reviews for a quicker build-out.

In response to Councilman Mumpower's concern regarding the cost of street and sidewalk maintenance, Mr. Squire said the City will own approximately 95% of the streets, except in the small residential areas, which will be privately maintained streets. Mr. Squire said that they

would sign an agreement with the appropriate City department stating that the developer would be responsible for replacement of sidewalks that have more expensive pavers, anything other than basically concrete.

Mayor Bellamy noted that the City will receive additional Powell Bill funds and once the condominiums are sold, the City will receive increased property taxes. She also noted that this action shows that the City is willing to work with individuals on the front end of a development so people who buy there already know what taxes they will be paying.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-77. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 198

B. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE ANNEXING BILTMORE PARK TOWNE CENTER

ORDINANCE NO. 3454 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE BILTMORE PARK TOWN CENTER

Mayor Bellamy opened the public hearing at 6:28 p.m. and said that the information pertaining to this public hearing is contained above in Public Hearing "A".

Mayor Bellamy closed the public hearing at 6:29 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3454. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 291

V. UNFINISHED BUSINESS:

A. BEAUCATCHER OVERLOOK PARK

City Manager Jackson said that at the request of City Council, staff has reviewed a finance plan and purchase agreement option, and preliminary development and annual maintenance cost considerations for Beaucatcher Overlook Park. He briefly reviewed the following information prepared by the Parks & Recreation Department.

Finance Plan: The City's finance director recommends the City to fund the entire amount of its commitment for the land purchase in the current fiscal year. Trust for Public Land offered the City a three-year financing option with an interest rate of prime plus one percent. At the current prime rate, this offer would require the City to pay an annual interest rate of approximately 9.0%. For this reason, it is recommended the City appropriate fund balance to pay for this land purchase in the current year and thus avoid the interest costs. Based on current financial estimates for the General Fund, staff does not anticipate this appropriation will have a negative impact on year-end fund balance levels.

Purchase Agreement: Based on review by the City's attorney, Trust for Public Land would use funds and pledges of funds from a variety of sources, including City funds, to contract the acquisition of Beaucatcher Overlook Park. Trust for Public Land would be responsible for performing due diligence work with respect to the property such as title search, environmental assessments, etc. Trust for Public Land would then acquire the property, with closing anticipated in April. Trust for Public Land would then enter into a purchase agreement with the City, whereby the City would acquire title to the property (subject to restrictions as to use of the property placed on the property by Trust for Public Land), and agree to pay Trust for Public Land the City's pledged amount. A public hearing would be required prior to the City entering into this arrangement. This is similar to the manner in which the property for the Azalea Park was acquired. It does not appear that this transaction is subject to approval by the North Carolina Local Government Commission although the legal staff is seeking confirmation of this.

Development: Beaucatcher Overlook Park is intended for passive recreation with minimal development and preserved predominantly as a natural area. When considering park development, the City follows a process of site analysis, engineering and environmental studies to determine feasibility, and public input prior to park design which leads to cost estimate of development. The following may be considered as minimal development based on preliminary cost projections without a comprehensive site analysis and review of all options. Cost will vary and should not be viewed as final cost estimates.

Development may include the following at a minimum cost of $325,000: Trails; Overlook(s); Picnic area(s); Parking area(s); Benches, trash receptacles, signage; Access road and park entrance improvements; and environmental and biological assessment.

Other cost considerations listed below may increase development cost by 30% to 50%.

- Accessibility as required by the Americans with Disabilities Act
- Security
- Emergency response accessibility
- Maintenance accessibility
- Forest management and environmental options
- Design and engineering
- Escalation
- Funding plan

Annual Maintenance: Maintenance for a 30-acre site with minimal development designed predominantly as a natural area may cost approximately $5,000 per year for the first five years, followed by $7,000 to $10,000 per year thereafter. Minimal maintenance will include the following: Trash collection and litter control; Mowing; Repairs; Vandalism; Trail Maintenance; Forest Management; and Miscellaneous.

Ms. Maggie Clancy, Project Manager with the Trust for Public Land, said that the Buncombe County Commissioners today approved their $575,000 commitment to the purchase price of the Greenberg tract, contingent upon City Council's approval.

Councilman Mumpower said that even though the City is making progress, he hoped that the City can strengthen its efforts regarding public safety on our streets, in public housing and in neighborhoods.

Councilwoman Cape moved to commit $575,000 for the City's contribution to the purchase of the Greenberg tract. This motion was seconded by Councilman Newman and carried unanimously.

VI. NEW BUSINESS:

VII. OTHER BUSINESS:

Councilman Mumpower expressed appreciation to people who attended the For Our Kids event in Hillcrest.

Councilman Mumpower announced the March 2007 Drug Commission poster.

Vice-Mayor Jones announced the modification to the School Board schedule. She said that the new application deadline is March 26, 2007.

Councilman Davis explained a Sister Cities event that took place, noting that the proceeds will go to help our Sister City in Greece.

Mayor Bellamy advised the community to contact 211 to see which agencies are offering free tax service.

The following claims were received by the City of Asheville during the period of February 23-March 15, 2007: Christina Sperandeo (Streets), Aaron Dison (Police), Kaleb Geise (Streets), Marble Slab (Streets), Jeff Lovelace (Streets) and David Stevens (Community Development). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alton Scott explained how it is his desire to build affordable housing on Mardell Circle, however, he has been informed that there is no water availability in that area. He asked for Council's assistance in providing the resources to upgrade the system. Mayor Bellamy said that this matter will be referred to the Housing & Community Development Committee.

Mr. Walter Plaue spoke to Council regarding raising the minimum wage and urged Council to look at the pros and cons of such before implementation.

CLOSED SESSION

At 6:50 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Victoria Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:20 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:20 p.m.

Kendra Lyle
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – March 27, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn (arrived in meeting at 5:18); Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Cub Scout Pack 45 led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B" and "C" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 20, 2007

B. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING AIRSPACE AT 11 BOSTON WAY

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING AIRSPACE AT 82 PATTON AVENUE

This item was removed from the Consent Agenda for an individual vote.

D. ENERGY AND THE ENVIRONMENT POLICY UPDATE

Summary: Since the Sustainability Advisory Committee on Energy and the Environment (SACEE) initial meeting in late January, the Committee has met bi-weekly in an effort to formulate two (2) short term goal recommendations by March 31st, as directed by City Council in their December 13, 2006, meeting. Due to the volume of information and a need for further research, the SACEE requests a 30-day extension.

In December City Council directed the newly formed SACEE to bring forth two specific recommendations before March 31, 2007, as follows:

1) Define (with benchmarks) specific energy & conservation goals for Asheville; and,
2) Develop specific guidelines for future municipal facilities to be LEED certified.

The SACEE's membership has been diligently researching the multiple options available. Furthermore, benchmarking data has shown a wide variance in the goals and logic behind them; therefore, in order to confidently bring forth thoughtful, attainable and pragmatic recommendations for Council review and action, it is the consensus of the Committee that there is insufficient information to make such recommendations by March 31st.

The SACEE is confident that an additional 30-day extension will provide the time to more thoughtfully formulate sound recommendation(s).

Staff recommends City Council approves a 30-day extension to the Sustainable Advisory Committee on Energy and the Environment.

E. RESOLUTION NO. 07-78- RESOLUTION AUTHORIZING THE CITY MANAGER TO INCREASE THE NUMBER OF SWORN POLICE OFFICER POSITIONS BY ONE FOR THE PURPOSE OF HAVING A DEDICATED SPECIALIZED CRIME PREVENTION OFFICER ASSIGNED TO PUBLIC HOUSING IN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to increase the number of sworn police officer positions by one for the purpose of having a dedicated Specialized Crime Prevention Officer assigned to public housing in the City of Asheville and associated budget amendment, in the amount of $58,137, which includes necessary equipment and vehicle purchases.

The Police Department in an ongoing effort to facilitate quality of life improvement in Asheville's public housing, in conjunction with the Housing Authority of the City of Asheville and to further assist in the reduction of illegal drug sale and use in public housing needs to expand crime prevention programs solely dedicated to public housing residents. There is not sufficient staff to dedicate full time efforts to the unique problems and concerns of public housing residents. This additional position will work closely with the Weed and Seed Coordinator as well as the Drug Suppression Unit to ensure that effective programs are in place to maximize positive returns for overall improvement for residents. The uniqueness of public housing issues must be a multi-level approach and a dedicated crime prevention officer will facilitate educational, protective concepts and functions for a safer living community in public housing.

Pros:

- Continuing education of public housing residents as to strategies for safety and protection
- Introduction of programs designed to encourage community bonding and increased security
- Facilitation of cooperative programs which will assist a variety of needs in the area of health care, jobs, child care, home security and overall quality of life improvement
- Community programs specifically designed for children and youth mentoring
- Closer relationships between residents and police
- Increasing the sense of ownership and responsibility for residents
- Safer communities

Cons:

- Budget ramifications for one additional sworn officer position

City staff recommends City Council approve a resolution authorizing the City Manager to increase the number of sworn police officer positions by one for the purpose of having a dedicated Specialized Crime Prevention Officer assigned to public housing in the City of Asheville and associated budget amendment, in the amount of $58,137, which includes necessary equipment and vehicle purchases. Staff recommends that this additional expense be funded with sales tax revenue.

RESOLUTION BOOK NO. 30 – PAGE 299

F. ORDINANCE NO. 3455 - BUDGET AMENDMENT FOR A DEDICATED SPECIALIZED CRIME PREVENTION OFFICER

Summary: See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 23 - PAGE 295

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS TAKEN OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES

Because the two items removed from the Consent Agenda are of a similar nature, discussion of them both took place at the same time.

B. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING AIRSPACE AT 11 BOSTON WAY

Summary: The consideration of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 11 Boston Way.

A bid has been received from Kessler Asheville LLC in the amount of $11,665 for the purchase of air space at 11 Boston Way.

The property at 11 Boston Way is the former Exxon Station across from the Biltmore Estate entrance. The project which is called Bohemian Hotel at Biltmore Village proposes to construct a four (4) story, 89 key boutique hotel. The project received approval from the Historic Resources Commission on October 11, 2006, approval from the Technical Review Committee on November 6, 2006, and approval of the building plans by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies.

The air space for the balconies over the sidewalk totals 890± S.F. beginning at approximately 18 feet above the sidewalk and projecting over the sidewalk 5.25 feet. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using an appraisal of the property at 11 Boston Way dated February 13, 2006, adjusted for time. The estimated value of the air space is $11,665.

The bid from Kessler Asheville LLC is to acquire the air space for the balconies for the sum of $11,665.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate characteristics of the building design intended to conform to the historic nature of Biltmore Village.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 11 Boston Way.

C. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING AIRSPACE AT 82 PATTON AVENUE

Summary: The consideration of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 82 Patton Avenue.

A bid has been received from Urban Capital LLC in the amount of $3,350 for the purchase of air space at 82 Patton Avenue.

The property at 82 Patton Avenue is the former First Union Bank building. The project which is called Capital Center proposes to renovate the building into office condominiums. Along with interior redesign the building will receive a new facade which will include balconies extending out over the sidewalk in a bowed pattern to a maximum distance of 4' with a view of Pritchard Park. The project has received Level 1 approval from Planning & Development, unanimous approval from Downtown Design Review and the plans have been approved by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies. The air space for the balconies over the sidewalk totals 216.6 ± S.F. and begins at approximately 16 feet above the sidewalk. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 82 Patton Avenue. The estimated value of the air space is $3,350.

The bid from Urban Capital LLC is to acquire the air space for the balconies for the sum of $3,350.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate the connectivity of public and private space for a more robust downtown environment.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 82 Patton Avenue.

Real Estate Manager Ed Vess responded to Councilman Mumpower's concern whether Asheville is getting fair value for the air rights.

Councilman Mumpower moved for the adoption of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 11 Boston Way and 82 Patton Avenue. This motion was seconded by Councilman Davis.

Mayor Bellamy felt this amount doesn't reflect the true market value for air rights in our community.

Councilman Mumpower asked that in the future City staff provide Council with additional research to substantiate the price for air rights.

Councilman Davis suggested Mr. Vess benchmark other cities of our size and type to see how they determine the amount of their air rights. Until that information is obtained, he withdrew his second.

Upon inquiry of Councilman Mumpower, Mr. Vess said that a delay of this action, until further information is obtained, will delay the projects.

Councilman Newman seconded Councilman Mumpower's motion to adopt the resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding airspace at 11 Boston Way and 82 Patton Avenue. This motion failed on a 3-3 vote, with Councilwoman Cape, Councilman Mumpower and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones and Councilman Davis voting "no."

It was the consensus of Council to instruct Mr. Vess to look at comparable cities that are selling air rights that have a market similar to Asheville.

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE REGIONAL AIRPORT AUTHORITY REPORT

Councilman Freeborn, Chair of the Asheville Regional Airport Authority, presented Council with an Airport overview. He said that the 2006 traffic statistics revealed 572,228 total passengers, with the major uses being commercial aviation, corporate aviation and general aviation. Using a chart, he showed, the passenger traffic growth for Fiscal Years 2002 - 2007.

Regarding community benefits, based on a 2006 economic impact study by the N.C. Dept. of Transportation, the Asheville Airport has a total of 2,466 jobs, an annual economic impact of $238,349,900 and an annual payroll of $22,172,300. The Airport also provides the County with a significant source of property tax revenue with 134 based aircraft at a calculated value of $63,200,000, which would result in ad valorem taxes of $372,800 based on the County rate of $0.59 per $100. This study estimated that there were 174,250 visitors to the area that utilized the Asheville Regional Airport.

He then reviewed the financial information, outlining the revenue/expenses, net income during Fiscal Year 2002 through 2007, and the proposed budget.

There are 23 non-stop flights to 8 hub cities: Atlanta, Charlotte, Cincinnati, Detroit, Houston, Newark, Orlando and Minneapolis/St. Paul. Those flights are on 4 commercial air carriers: Continental (11%), Delta (43%), US Airways (34%) and Northwest (12%).

New/additional hub service opportunities include: Atlanta, Boston, Chicago, Denver, Memphis and Washington, D.C. New non-stop service opportunities include: Boston, Chicago, Ft. Lauderdale/Miami, Tampa and Washington, D.C.

New customer service initiatives include (1) a Guest Services Program for Fiscal Year 2007-08 (ground transportation coordination; luggage assistance/skycap/porter service; airline assistance; place to obtain area information/maps directions; paging; services - stamps, shipping, faxing, copies; lost and found; and meeting point for large groups); (2) Arts in the Airport Program - (a) The inclusion of arts in the public eye adds immensely to the dimension, depth and character of a community; it inspires our youth, fortifies local identity, and adds to the quality of life; (b) A changing art exhibit will distinguish the Asheville Regional Airport and help integrate it more fully into the culture of the region; (c) The display of art in the terminal will make a unique contribution to the experience of travelers by educating them about Western North Carolina area and creating

an aesthetically pleasing environment; (d) additionally, a changing art exhibit will allow for a variety of artwork by many different area artists to be displayed throughout the year, giving the terminal a fresh look with each new rotation of art; and (e) another amenity providing a more pleasing terminal as an enhanced traveler experience; (3) Art Gallery location and remodeling (a) former Welcome Center location; (b) includes art in various mediums (sculpture, paintings); and (c) $50,000 of improvements including: remodeling of space, insurance, printing, publicity; air/dust collectors, pedestals/vitrines for sculpture; and signage.

Councilman Freeborn explained the development of the Airport, explaining the $22,149,660 2007-08 capital improvement program. The Airport Authority is under contract with PBS&J/GreenPlan for a Land Use Planning Study. The Land Use Study will address land use planning for the north, east, south and west areas of the Airport. In addition to a Land Use Plan, the deliverables will provide the Airport Authority with marketing and development materials. The Plan will provide the Airport Authority with a proper guide to the future development of both aviation and non-aviation Airport property.

Regarding environmental initiatives, the Airport Authority is installing electrical based (1) pre-conditioning air systems for heating and cooling aircraft at the gates; and fixed ground power systems for the provision of electrical service to aircraft at the gates. This will eliminate the need for the majority of flights for PC Air and Ground Power to be supplied by fossil fuel based units, thereby improving overall air quality at the Airport.

The Airport Authority is working with Land-of-Sky, Carolina Mountain Land Conservancy, DNER, and Clean Water Management Trust Fund on the potential for the establishment of a conservation easement on Airport property along the French Broad River. Potential for grant funds that may be used for other property acquisition if such property is included in the conservation easement. Conservation easement would allow for bike and walking trails. In addition, this would be a great opportunity to give back to the community.

Regarding an independent Airport Authority, draft legislation has been submitted through the House, sponsored by Representative Goforth. This legislation will enable the City, County and Airport Authority to work out the details of proposed legislation while preserving the ability for action to be taken during the 2007 legislative session. Over the next 60 days City and Airport Authority staff are completing an analysis of valuation alternatives of the Airport land and the City's original dollar investment in the purchase of land for the Airport. Alternative governance structures are also being evaluated.

In response to Councilman Newman regarding passenger traffic, Councilman Freeborn said that we are above the 2001 numbers across the board throughout the county.

Responding to Councilman Davis, Councilman Freeborn explained how they are constantly monitoring pricing.

Mayor Bellamy made a couple of suggestions for the airport terminal, being (1) a sign be placed stating that drinks cannot be taken through security; and (2) an additional television set be placed in the back waiting room due to the size of the waiting area. She thanked the Airport Authority for going wireless and for the increased landscaping.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT 253 BILTMORE AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3456 - ORDINANCE TO REZONE PROPERTY LOCATED AT 253 BILTMORE AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:13 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property located at 253 Biltmore Avenue from Regional Business District to Central Business District. This public hearing was advertised on March 16 and 23, 2006.

The parcel requesting rezoning is located on the busy Biltmore corridor. The current use is a commercial automobile repair business with a one-story building. The owners have requested the rezoning because the change would be in-line with their personal goals and with the anticipated long term growth and redevelopment of the Central Business District (CBD). Over the years the CBD has expanded and moved southward. About six years ago the CBD was expanded to its present boundary adjacent to this parcel. In 2005 and 2006 the Downtown Commission presented a proposal for a wording amendment to the CBD and expanded the design review overlay area to include all properties that are located in the CBD. The proposal was approved by City Council in April 2006. During that time the Downtown Commission discussed expanding the CBD boundary south to incorporate the Regional Business District properties leading to the Institutional zoned hospital campus. No action was taken at the time to pursue that initiative. The other changes to the CBD were the first priority. The property that is the subject of this request was in that CBD expansion consideration. Properties to the north of the proposed parcel are zoned CBD.

The Regional Business District is established to provide areas for large scale commercial operations. The district is not intended to create strip-style commercial centers but rather a concentration of commercial uses with a coordinated design theme. This district is designed to be located around the intersections of high traffic volume thoroughfares such as interstate highways and arterial roads. While the automobile and transit are the primary modes of transportation, pedestrian connections are also noted as important considerations.

The Central Business District is established to reinforce the downtown as the urban center of Asheville and western North Carolina by encouraging private and public investment to preserve the district as the primary retail, office, hotel, institutional, cultural, entertainment center of the community. A high priority is placed on design, integrating new uses into and with existing architecture in a cohesive manner. Development balances pedestrian circulation and streetscape requirements with the automobile circulation and efficiency. Development in the CBD has the potential to embody the smart growth and sustainable development policies adopted by the City.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This rezoning was recommended for approval by a 5-0 vote by the Planning and Zoning Commission. No one spoke during the public hearing regarding the rezoning proposal.

Pros:

- Staff and the Downtown Commission have discussed expanding the CBD to include this RB zone southward to the Institutional Zoning, although no action was taken to initiate this change.
- Development in the CBD is expected to expand into this area as the Biltmore Avenue corridor redevelops.
- The comprehensive plan and smart growth policies encourage opportunities for high-density infill growth and redevelopment.

Con: No items of concern are noted regarding this request.

The Planning and Zoning Commission voted to recommend approval of the request by a vote of 5-0. Staff concurs with this recommendation.

2007		
Festival Area	**Recommendations**	**Financial Impact/Considerations**

Mayor Bellamy closed the public hearing at 6:16 p.m.

Councilman Davis hoped that the Central Business District be extended down Biltmore Avenue as the corridor redevelops.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3456. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 297

V. UNFINISHED BUSINESS:

A. BELE CHERE COMMUNITY COUNCIL REPORT

Ms. Debi Smith, Chair of the 2007 Bele Chere Board of Directors, presented the recommendations for formal adoption by City Council as a result of the Bele Chere Community Forum.

The purpose of this report is to provide recommendations to City Council on behalf of the Bele Chere Board of Directors as a result of community input on how to enhance the City's Bele Chere festival. Approximately 75 citizens participated in the Bele Chere Community Forum on January 30, 2007, to develop a consensus on two key questions related to Bele Chere. In addition, more than 100 citizens provided their input in writing.

The Bele Chere Board of Directors was charged with reviewing the feedback at a board retreat in order to make recommendations to City Council for modifying the festival to ensure it represented what citizens want in a community festival. Based on citizen input, the board has developed recommendations related to three key community goals. The board's recommendations are further organized by suggestions that can be implemented in the 2007 festival, potential suggestions warranting further review for the 2008 festival and suggestions that would be reviewed and researched as part of long range strategic planning for the event.

She reviewed the following recommendations:

Community Goal: Make Bele Chere more local and reflective of Asheville's unique character.

Music & Entertainment	• Changing WNC band selection from 25% to 35% of total band composition. • Changing Regional band selection from 35% to 45%. • Changing National band selection from 40% to 20%.	No financial implications

Arts & Crafts	Award more points for local artists in selection process	No financial implications
Arts & Crafts	Make selection committee all local artists	No financial implications
Kids Activities	Reduce cost of kids' rides by 20% and incorporate local Appalachian history educational activities	No financial implications; vendor is amenable to reducing cost to public
Food & Beverage	Implement pilot program for a local microbrewery beverage booth	No financial implications
Impact on local business	Move stage to N. Lexington and Hiawassee to support Lexington revitalization and LAMA	No financial implications
Impact on local business	Hold merchant meetings to promote $50 booth space for entire festival	No financial implications
2008		
Food & Beverage	Add additional local food booths (Reduce fee for local vendors from $1800 to $500 per booth)	Revenue loss of $1,300 per booth space with a potential loss of $80,000
Food & Beverage	Evaluate microbrewery pilot program and expand if successful for local brewers	No financial implications
Long-term Strategic Planning		
Music & Entertainment	Renegotiate talent buyer contract in 2009 and open to local and regional promoters	TBD

Community Goal: Change the Date of the Festival.

Long-term Strategic Planning		
Festival Area	**Recommendations**	**Financial Impact/Considerations**
Date of festival	Analyze financial impact of moving date to alternative times of year. Work in partnership with CVB to determine optimal dates and impact on festival revenue.	TBD

Community Goal: Explore funding models and sponsorship opportunities to reduce financial burden on taxpayers.

2007

Festival Area	Recommendations	Financial Impact/Considerations
Festival Operations & Financing	Work with festival experts to evaluate 2007 festival and provide recommendations for long-term financial viability and sustainable operations with the goal of reducing tax burden.	$20,000 fee for services
Festival Operations & Financing	Reduce expenses in festival budget by 20% for FY07-08 budget.	Less funding dedicated to securing entertainment acts and less contingency in budget.
	2008	
Sponsorships	Evaluate possibility of contracting with an outside sponsorship agency to attract new festival partners.	Potential to increase revenue from sponsorships.

The board is also committed to continuing to focus on festival areas that the community values most. These areas include:

- Fostering community pride through volunteerism and nonprofit organization involvement
- A free festival with free music
- The quality and diversity of music
- Visibility of the region

The Board recommends: (1) City Council formally adopt the 2007 suggestions that have no financial impact; (2) direct staff to provide Council with more information within 60 days in order to develop recommendations to reduce taxpayer burden; and (3) City Council direct staff to come back to City Council in December to provide additional information and recommendations for 2008 and long term strategic planning. This will allow time for additional research and review as well as an opportunity to evaluate how specific changes impact the 2007 festival.

Ms. Smith and Ms. Melissa Porter, Festival Coordinator for the City of Asheville, responded to various questions/comments from Council, some being, but are not limited to: if the date of the festival move, in what year would that take place; what kind of information would we get from the festival consultant; do other festivals have brand names; when the expenses are reduced, is there a corresponding reduction of revenues; and what are some of the environmental changes that could be made.

Councilman Davis was not particularly interested in making Bele Chere bigger and better and would like to try some of the recommendations that came out of the forum. Until those ideas are tried, he would not be supportive of hiring a festival expert.

Councilman Mumpower was concerned about spending $20,000 for a festival consultant since Asheville has good people who are familiar with this festival.

Vice-Mayor Jones felt there are a lot of variables in the size of the festival, e.g., making it shorter by two hours, quit selling alcohol earlier, etc., noting that bigger is not always better. She felt that the festival might benefit from a finance subcommittee and she would be happy to talk with the Bele Chere Board further about that.

Mr. Dwight Butner, President of the Downtown Association and downtown property owner, offered two suggestions: (1) stopping the event in earlier in the evening; and (2)

boundaries of festival be expanded with the view that no operating retail establishment be blocked from the streets by booths or staging.

Councilman Mumpower moved to adopt the 2007 recommendations as follows: (1) increase percentage of required local/regional acts; (2) award more points to local artists in selection process and make selection committee all local artists; (3) reduce cost of kids rides 20% and offer Appalachian history educational activities; (4) pilot microbrewery beverage booth; (5) move stage to N. Lexington and Hiawassee to support revitalization; and (5) hold merchant meetings to promote $50 booth space for entire festival. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Councilman Davis moved to not spend $20,000 to contract with festival experts to evaluate the 2007 festival and develop recommendations for reducing taxpayer contribution. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilwoman Cape said that since one of the national "green" festival organizers is here in Asheville she suggested they be invited to a Bele Chere Board meeting to give us some hints about how we can do a better job with that.

It was the consensus of Council to direct staff to come back to City Council in December to provide additional information and recommendations for 2008 and long term strategic planning, along with (1) a review of Mr. Butner's suggestions being incorporated into the results; and (2) a review of a finance subcommittee for the Bele Chere Board.

VI. NEW BUSINESS:

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. David Allen Wilson, Asheville resident, urged Council to take appropriate measures to reduce crime in downtown Asheville by placing police officers where we currently have crime.

Rev. Christopher Chiaronmonte spoke about the lack of concern the City has towards the homeless.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:23 p.m.

Kesha Lipe
CITY CLERK

MAYOR

Tuesday – April 10, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

The Asheville Division of the US Navy Sea Cadets led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

ANNOUNCEMENT

Mayor Bellamy asked that the community join together in a Day of Prayer on April 11, 2007.

I. PROCLAMATION:

A. PROCLAMATION PROCLAIMING APRIL, 2007, AS "CHILD ABUSE PREVENTION MONTH"

Vice-Mayor Jones read the proclamation proclaiming April, 2007, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, who briefed City Council on some activities taking place during the month and the importance of preventing child abuse.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "D" and "E" were removed from the Consent Agenda for individual discussion.

At the request of Councilwoman Cape, Consent Agenda Item "C" was removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 27, 2007

B. RESOLUTION NO. 07-80- RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

From Staff Report: Summary: The consideration of a resolution authorizing the Mayor to apply for a grant and enter into an agreement with the North Carolina Department of Transportation (NCDOT) to fund the Transit Planning Program.

The Metropolitan Planning Organization (MPO) Section 5303 planning grant is a grant of federal and state funds renewable annually to be used for transit planning. This funding is in the amount of $59,460, $5,956 (10%) of which is required to be a local match. This will continue funding that has been received in prior years, it is not new funding. The last agreement for this funding was signed in 2001 and NCDOT has requested a new agreement. The money will be used to partially fund a transit planner position and for staff training.

Since the City of Asheville is the lead planning agency for the MPO, the City must approve this grant.

The grant revenue and the match of $5,946 are currently budgeted in the Transportation and Engineering Department's budget.

Pros:

- This money helps fund an existing position.
- Approval allows $53,514 of federal and state money to be received for transit planning.

Con:

- Funding requires a 10% match ($5,956).

City staff recommends City Council approve a resolution authorizing the Mayor to apply for a grant and enter into an agreement with the NCDOT to fund the Transit Planning Program.

RESOLUTION BOOK NO. 30 – PAGE 301

C. BUDGET AMENDMENT TO AUTHORIZE THE PASS-THROUGH OF FEDERAL TRANSIT FUNDING TO HENDERSON COUNTY

This item was pulled from the Consent Agenda for an individual vote.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

This item was pulled from the Consent Agenda for an individual vote.

E. BUDGET AMENDMENT FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

This item was pulled from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

C. ORDINANCE NO. 3457 - BUDGET AMENDMENT TO AUTHORIZE THE PASS-THROUGH OF FEDERAL TRANSIT FUNDING TO HENDERSON COUNTY

From Staff Report: Summary: The consideration of a budget ordinance amendment, in the amount of $303,700, to authorize the pass-through of federal transit funding to Henderson County.

The Federal Transit Administration (FTA) applies a formula each year to allocated federal transit funds to each Metropolitan Planning Organization (MPO). This formula considers population, population density and transit system performance. The same formula is used to allocate resources between Henderson and Asheville as was used by the FTA to allocate resources to the MPO. This directly reflects the contribution each system made to the federal formula that determines the total transit funding that comes to the MPO.

By this formula Asheville Transit is entitled to $1,324,300 of the $1.628 million in federal transit funds appropriated to the French Broad MPO by the Federal Transit Administration. Of the funds allocated to the Asheville Transit System, approximately $1,011,787 can be used to defray operational expenses.

In turn, Henderson County is entitled to $303,700 of the $1.628 million in federal transit funds appropriated to the French Broad MPO by the FTA.

The Asheville Transit System is the sole and designated recipient of all federal transit funds allocated to the French Broad Metropolitan Planning Organization (MPO). Therefore Asheville Transit will be the recipient of both systems' share of the federal transit funding and is responsible for passing Henderson County's share on to them, subject to the provisions of the Sub-Allocation Recipient Agreement approved by the council on March 13, 2007.

This action conforms with the City Council Strategic Operating Plan in Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

Pro:

- Expended regional transportation opportunities to the citizens of Asheville.

Con:

- None identified at this time.

City staff recommends City Council approve a budget ordinance amendment, in the amount of $303,700, to authorize the pass-through of federal transit funding to Henderson County.

Mayor Bellamy - Item "C" on the Consent Agenda, Councilwoman Cape.

Councilwoman Cape - I apologize that my glasses saw the "C" on our drive and thought it was the "C" agenda item. I was looking for the bathrooms.

Mayor Bellamy - I would just like to highlight that the City of Asheville is working with another partner, that would be the County of Henderson, to be able to provide some transit funds for them. So I'm really happy to have this on the agenda.

Councilman Freeborn moved to approve Ordinance No. 3457. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 301

D. RESOLUTION NO. 07-81- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA

CORNERSTONE CONSTRUCTION FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

E. ORDINANCE NO. 3458 - BUDGET AMENDMENT FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

From Staff Report: Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Carolina Cornerstone Construction for the renovation to the public restrooms in the Rankin Street Parking Deck and the associated budget amendment in the amount of $117,330.

In February 2002, the public restrooms in the Rankin Street Parking Deck were closed due to continuous vandalism. Due to the lack of public restrooms in downtown Asheville, City Council directed staff to pursue the re-opening of the restrooms. In working in conjunction with the Police Department, Office of Economic Development, and Transportation and Engineering Department, the Parks and Recreation Department prepared bid specifications for the renovation. The construction will be done in accordance with the International Building Code and to standards equivalent to those of North Carolina Department of Transportation rest area restrooms, in order to keep the vandalism to a minimum. Estimated time of completion is the end of July 2007. Request for bids was distributed to various contractors. The following two contractors responded:

Carolina Cornerstone Construction	$108,630
Buncombe Construction	no bid

Carolina Cornerstone Construction was the lowest responsible bidder at $108,630. The bid process and Carolina Cornerstone Construction have complied with the Minority Business Plan.

The budget amendment includes the construction cost of $108,630 plus $8,500 for the necessary architectural design fees for a total of $117,330. The Finance Department recommends that funding for this project be appropriated from the City's general fund balance. Based on current year-end revenue and expenditure estimates, staff anticipates that this appropriation will not have a negative effect on the City's fund balance reserves.

PRO:

- This project will provide public restrooms to the downtown Asheville in accordance with the current input from the Downtown Commission and the Downtown Social Issues Task Force.

CON:

- The City of Asheville will spend $117,330 for this project beyond the current capital improvement budget.

The Parks and Recreation Department recommends City Council approve a resolution authorizing the City Manager to enter into a contract with Carolina Cornerstone Construction for the renovation to the public restrooms in the Rankin Street Parking Deck and the associated budget amendment in the amount of $117,330.

Mayor Bellamy - Councilman Mumpower, did you have a question?

Councilman Mumpower - Yes, questions of staff. Mr. Richardson, are you going to be the point of contact on this?

Assistant City Manager Richardson - Councilman Mumpower, I believe we've also got with us folks from Parks & Recreation staff as well as Bruce Black from Transit.

Councilman Mumpower - Mr. Black would be great then. A couple questions. Frankly, this one needs to be highlighted anyway because we are creating something we haven't heard in a long time, at least not functionally had in a long time - that's a bathroom downtown and the successability of pretty much anybody who wants to treat it properly. I wanted to clarify a couple of things. The problem that we've had in the past with a bathroom at this location is that it was vandalized, and abused, mistreated in any other way imaginable. My understanding this is designed, built, for where it's low vandalism potential and then there is some other safeguards for building in place. The question is, what is those safeguards?

Transit and Parking Services Manager Bruce Black - It will be built to interstate standards, which would be a beginning to making it difficult to vandalize. The other safeguard in place is that it will be attended at all times when it is open.

Councilman Mumpower - And what now is the hours of operation?

Mr. Black - Right now the hours are planned to be from 7 a.m. until 6 p.m., six days a week.

Councilman Mumpower - And the City is paying to have the bathroom attended to?

Mr. Black - Yes, sir.

Councilman Mumpower - Mayor, I'll make a motion to approve. Can we do these agenda items together, Mr. Oast?

Mayor Bellamy - Yes.

City Attorney Oast - Yes.

Councilman Mumpower - Approve the agenda items D and E. Thank you Mr. Black.

Mr. Black - You're welcome.

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments? Councilwoman Cape.

Councilwoman Cape - Mayor Bellamy, I would like to apologize. My glasses were crooked and this is the one I wanted to talk about also. I saw the "C" on the top and so I apologize for that. I guess my real concern comes from the fact that I know we need bathrooms downtown desperately. Last week we sat with real estate investors, or consultants, about the possibility of selling this building for redevelopment. So, the question that I have is that $117,000 is a lot of money that we will be. Is this the only option since we have put this on the list to get bathrooms quickly. We haven't been given a price of the portable, or the bathroom stations, that could be moved to someplace else. Do we have a staff member who can give us some information on the cost of those enclosed stations that would maybe stay open past the renovation point?

Economic Development Director Sam Powers - We may need to do some kind of team effort on this Councilwoman. In the initial research, we looked at a number of options, including some of the self-contained units. We did gather some cost information on those. I think the ultimate decision at the time was the most cost-effective method, was to go ahead and renovate the existing space into the standards of interstate accessibility and vandalism-proof. What we would be looking at is at a minimum of probably several years before, if that piece of property that

the bathrooms are going to re-open in, was offered for sale and someone submitted a proposal that would be acceptable and that the City would want to pursue. By the time all of the qualifications were evaluated and a proposal evaluated, I think we are probably talking a number of years, and so, we would get several years of life out of that facility and then ultimately anything that would replace that facility, I think would be designed in a manner that we would still be able to have public restrooms available. I think it's clear that is Council's goals. So, we do have some short-term costs involved. I think in the long-run the public benefit and the cost would be recouped whichever way we go. If it is still a desire of the Council to get some other options, like these self-contained units for other places, we can do that. Stephanie, do you remember off the top of your head in a ballpark figure what we were talking about?

Urban Planner Stephanie Monson - Around $100,000.

Mr. Powers - A similar cost.

Councilman Mumpower - I think you raise a good point. This is one of what, one of four properties that have been targeted for sale and I'm glad you raised the concern.

Councilwoman Cape - I mean, I know for myself when we talked about opening these bathrooms, I thought we were talking about a $40,000-$50,000. I didn't think we were talking about a $100,000-plus endeavor to open two bathrooms. And I apologize that I didn't bring this to our attention sooner. But, with the cost, may I ask the question, what is the turnaround delivery cost on a $100,000 stationary unit? Is that something you can get and have delivered in the same amount of time that we could have these two units renovated?

Mr. Powers - I can't answer that question.

Councilwoman Cape - Are they stock items that people have?

Ms. Monson - There are two different companies that make those units and I would have to do more research to answer that question.

Councilman Mumpower - The comment that folks who get this property are going to be supportive of a public restroom on that side, when you look at the dollars involved, I think there is a big question mark around that. I'm glad you brought this up. You're making others feel more strongly about it. But I'm going to withdraw my motion on that basis, because I don't believe we should invest this many dollars on something that may have a short shelf-life.

Councilwoman Cape - I want bathrooms sooner than later. But if for the same amount of money we can order some and have them dropped off a truck and put in place in two or three weeks, I sure would like to have the option of having that choice.

Mayor Bellamy - Councilman Davis.

Councilman Davis - Mr. Powers, let me ask. How far along are we on the process? I know we are a good way into it at this point as far as. Have we signed a contract or anything for the bathrooms?

Mr. Powers - No, sir. And Mr. Orr is here and can answer those specific questions. But we have not. By the same token, we're not into that process with the potential properties either. There has been no decision about whether they would be made available and at what time. So again, as we were looking at this bathroom option, at the time, that appeared to be the most cost-effective over a period of time, and this other potential option for real estate redevelopment came up after we were well into that process. It's certainly a valid concern. I think the access from the Rankin Street Parking Garage to Haywood Street would be reserved and would be available no matter how the property is developed in the future. That is a reservation that the City can make.

Mayor Bellamy - Councilman Davis.

Councilman Davis - I was just heading there with that comment. I agree with Councilwoman Cape. I think that sooner than later is better for the bathrooms, but I see that, in my opinion, there is a great opportunity here because even if we sell that building, we would probably maintain that access. I also feel that there is an opportunity that we could use that hallway for other things as well. It might provide some income. Councilman Freebom and I and the Mayor were talking about the possibility of stalls or booths in there that might generate some income as well. I think we desperately need the bathroom facilities and this one is moving along at a pretty good speed. I hate to derail that at this point. So if Councilman Mumpower has withdrawn his motion, I would move that we accept Consent Agenda Items "D" and "E".

Vice-Mayor Jones - Second

Mayor Bellamy - Councilman Freebom.

Councilman Freebom - That is what I was going to do.

Mayor Bellamy - All right. And I do want to add this comment that, first, are there any other comments from Council? Councilman Davis you really said what I was going to say in that regardless of what is going to happen with the offices over there, that we will have to maintain access for the corridor to get to the Parking Deck, which is were the bathrooms would go. And, ultimately people want restrooms downtown and I think that it would be hard to take something that can come off a truck and place it anywhere downtown without a visible fight. I think this is a great alternative to be able to solve a solution that has been a problem for a long time. And I think that the company that we would want to sign a contract with will do a phenomenal job. I think the cost has to do with the quality of development that we want. This isn't just what we had before - just some stalls and a toilet. We've asked that they be self-contained and be able to address graffiti and vandalism in a way that it is sustainable for years to come. So I think that we are going to have to pay for it. Councilman Newman.

Councilman Newman - From your standpoint, you think if we put the restrooms in this facility, in the hallway, but we do decide to redevelop that property that it's very likely that where these are located would not be part of the redevelopment - would not be affected by the redevelopment and still have a useful lifespan for years and years to come, even with that property redeveloped? Is that what you're saying?

Mayor Bellamy - That's what I'm saying.

Councilman Davis - I don't know that we know that, but there's a good likelihood that it would be built around.

Councilman Mumpower - But to development that property, would you not have to tear it down?

Mayor Bellamy - I'm not sure.

Councilman Mumpower - I think you know you'd have to tear it down and if you tear it down then you destroy that point of access so it creates some real limitations on it.

Mayor Bellamy - That would be part of the process that if they tear it down then they have to put it back and it won't be at the City's expense.

Councilman Davis - And it's very possible that that would be in the RFQ. And I suspect that the value of that building might also include that restroom that has been improved. So we would have the option of accepting or denying in this process.

Mr. Powers - I think any development agreement for the redevelopment of that property could contain any stipulations that Council was interested in. And if that was, throughout any redevelopment process, that the redeveloper provide public restrooms, that certainly could be a part of the process.

Mayor Bellamy - I think it would not only be restrooms, it would have to have adequate access to the Parking Deck. Because I think we would not want to have a parking deck where we are used to having that connectivity and that connectivity gone away. Councilwoman Cape.

Councilwoman Cape - I would just caution us that redevelopment of a site like that could involve temporary lack of access through there. We would have access on the other streets. And my limited knowledge says that likely the bathrooms would be destroyed, even if they are rebuilt and put back there. The ones that come off, you know, these stands are not like port-a-johns. They are constructed, urban bathrooms that would be lasting through the renovation process. And that's just my concern too. It was just brought to my attention sitting there asking them to redevelop this building and then seeing this. This is not an insubstantial amount of money. Especially if we've got something that could sustain through the process for a similar amount of money. So I do have reservations that that will stay in place through the design process. And then we will be out of bathrooms at that point in time. As far as where we can put them, we've got spots in Pritchard Park that we are looking at re-designing. We also have a spot right next to the Rankin Avenue Parking Deck. There are places downtown that could be easily accessible on City property for the location of something like this. Those are just my reservations and I support getting bathrooms downtown 100%.

Mayor Bellamy - Councilman Freeborn

Councilman Freeborn - With these off the truck stalls, do they not require plumbing?

Councilwoman Cape - Of course they do.

Mr. Powers - They do.

Councilman Freeborn - So we have to put them in a place - we have to pay for plumbing. The logistics of getting something like that in place is going to take us a lot longer and it probably - I would even say, at the rate we're going on this, redevelopment of this property would happen before we would have the port-a-johns in place.

Councilwoman Cape - They're not port-a-johns.

Councilwoman Freeborn - Okay. They're great looking port-a-johns, but anyway, I really think, I know this is a lot of money, but this is one of the highest request needs for downtown right now. And I think we would really be putting a lot of people off by not going forward with this, thinking that we might potentially redevelop this building sometime 3-4 years from now. I understand your concern and I think it's well placed, but it's kind of silly for us to not take urgent action that is needed now because we might do something in the future.

Mayor Bellamy - Councilman Newman.

Councilman Newman - I guess I would just say too that I was just down in Georgetown, South Carolina, last spring with a little trip with my family and Georgetown is this quaint little town, historic downtown, and they had one of these facilities that we are talking about. I don't think I'd ever seen one before, but it really works very well and fit well into the historic downtown. I am

persuaded by the potential cost end, but more so the fact that we may again lose the public restrooms downtown because it sounds like we are going to get people coming to us with a specific recommendation to do a Request for Proposals to redevelop this property. So it just seems like we are planning to do two different things at the site that are going to be, at least for a period of some time, are going to be incompatible. So anyway, I would support looking at this other option as well.

Mayor Bellamy - So it sounds like we have a motion on the floor and request to staff to get us some additional information regardless of the motion.

The motion made by Councilman Davis and seconded by Vice-Mayor Jones carried on a 4-3 vote, with Councilwoman Cape, Councilman Newman and Councilman Mumpower voting "no."

Mayor Bellamy - There sounds like there is enough support for us to get additional information on additional options for additional restrooms downtown. It never hurts to have too many restrooms downtown.

City Attorney Oast - Mayor, because that last motion didn't receive a 2/3 vote, it needs to come back.

Councilman Newman - Then can we re-vote on it again because I'll change my vote if it means that things can move forward. If we're going to do it, I'd just assume we go ahead.

Mayor Bellamy - Actually since you were on the negative part, somebody on the positive part of the motion would say that they would like to re-vote again, we can re-vote again. Councilman Davis, Vice-Mayor Jones or Councilman Freeborn, would you like to re-vote?

Councilman Davis - I'd like a re-vote.

The motion made by Councilman Davis and seconded by Vice-Mayor Jones carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 303

ORDINANCE BOOK NO. 23 - PAGE 303

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE DOWNTOWN COMMISSION ANNUAL REPORT

Urban Planner Stephanie Monson - Thank you Mayor and members of the Asheville City Council. I'm Stephanie Monson with the Office of Economic Development. As staff to the Downtown Commission I want to thank you for your consideration this evening and I also want to give special thanks to Jan Davis who is a full fledged member of the Downtown Commission. I also want to thank the Mayor for coming to the Downtown Commission's Annual Retreat last month. She gave a lot of precious feedback regarding the possibility of a master plan for downtown Asheville. I want to share two things with you tonight. The first, you may have already seen. We sent it to you in February. It is actually the annual report of the Commission. The second thing is actually just an introduction. We do have a new Chairman of the Downtown Commission, Mr. Pat Whalen. He's going to come up and give a presentation to you tonight.

Mr. Pat Whalen, Chairman of the Downtown Commission - I'm Pat Whalen, Chairman of the Downtown Commission. Thank you for the opportunity of speaking to you. The Downtown Commission is excited about the work you have assigned to us because we believe downtown can help the City face and deal with a lot of its challenges. A little history is in order, I think. Your

Downtown Commission was originally called the Asheville Revitalization Commission. It was called that for a reason. Your downtown was dead for 30 years. Our motto, as represented by downtown, was "that will never work here, don't even try." There were years of efforts to resuscitate downtown. One of the things we tried was aluminum - lots of aluminum and that didn't work. We also considered a giant downtown mall. And sensibility voted that down. Other communities talked about doing festival marketplaces, pedestrian malls and big bang projects like that. We did our own big bang projects, which were great projects and brought a lot of hope to downtown, but didn't generate a lot of people. Along with those big projects, local government provided great leadership in the 1980's and early 1990's, approving liquor by the drink for restaurants, the City approved sidewalk dining; the City built parking garages without which we wouldn't have the prosperity we have today; and keeping major public buildings downtown, which has been a big part of downtown's success. Local entrepreneurs responded to those efforts by government, but we were still missing people. That was then. Now we have a great livable downtown. We've discovered the missing piece which was having people live downtown, doing what downtown residents do. People responded to the opportunity and downtown became the fastest growing residential area within the City limits. In 1990, there were just 7 residential projects downtown and in 2005, there were 27. Obviously there are many more on the drawing board. People were tired of Anywhere, USA, and they responded to the small, diverse local businesses we have in our downtown and the pedestrian-friendly, eclectic place which our downtown is. People returning generated excitement and people built new buildings. Why does downtown matter to the rest of the City? There is good news about downtown and how does it matter to the rest of the City as well. The downtown is the beating heart of our community. It is also how outsiders judge us and it's a reflection of how we thing of ourselves. Studies have been done showing the way downtown goes directly correlates with the whole region's economic health. We've seen it here and in 20 years we've gone from "that won't even work here, don't even try" to being named over and over again in the Top 10 and Top 20 lists for the country. Would any of that be happening if we still had that boarded up, abandoned downtown I showed you in the earlier slides. Numerous other studies have shown the direct connection between downtown vitality and prosperity for the region. There is a simple dollars and cents calculation as well. We did a study of the taxes generated per acre by various kinds of real estate use, ranging from undeveloped property in the County, which is generated at $30 per acre to City residential generating near $4,000 an acre. Biltmore Park - $4,000 an acre and up to the Asheville Mall generating $18,000 an acre. When we studied what downtown was generating, we had to change the scale. You see the Asheville Mall at $18,000 an acre. The entire CBD is averaging over $32,000 an acre. The City Center close to $60,000 an acre. And, going up to downtown mid-rise projects, really over 10 stories, can generate over $1.5 Million an acre annually in taxes for the City, County and our schools. That translates into 2 acres of downtown mixed-use generating the same tax revenue to the community as the 64-acre Asheville Mall. Or, one 3-acre project in downtown generating double the tax revenue of Biltmore Park's 183 acres. By 2025 our community is supposed to add 80,000 people. And if they move into downtown, they can be accommodated in approximately 350 acres, which is the size of that little CBD in the center of that map, or they can take whatever color your projector has converted that big splotch in the middle of the northeast corner of the County, which is over 68,000 acres. By citing people in our smart growth downtown, we also save on public infrastructure, we protect our air and water and conserve energy. We have an obligation as a community to be part of the national solution on issues like global warming and declining petroleum supply. This is how dense, urban development would affect our use of resources in this community if 80,000 people move here. This is how it compares to suburban development and the production of things like CO2, miles driven, gasoline used, and kilowatts consumed. I've talked about now and then - what about our future. On the Commission we feel like we have an opportunity, with good planning, for downtown to reduce the tax loads on our neighborhoods; conserve our land, air and water; help preserve our architectural heritage; improve our economy and job opportunities for our people; reduce unnecessary costs for infrastructure; and provide good homes for our people and good locations for our local businesses. But we may not be ready to take advantage of that opportunity. Our goals for the Commission this year are to (1) help the Council and the City develop an updated Master Plan for Downtown; (2) to complete our promised Phase 2 guidelines

for the Downtown Design Guidelines which would help us meet those goals I discussed on the prior slide; and (3) to provide better communication and service to Council on pressing community issues. The last master plan for downtown was done in 1922. There are many vacant lots and underutilized property in downtown. The City has dozens of acres of property which could contribute readily to how downtown and the community develops. We have specific questions we need to get answered, which are not currently answered by any of our planning documents and would help us accomplish the goals I talked about earlier. We may need more staff resources to meet these challenges I have discussed. You can see in 1991 we had 5 staff equivalents when the downtown was valued at $104 Million. Now in 2007 we are down to 3/4 of a staff equivalent and we have $552 Million of value in our downtown. The new downtown buildings proposed for 2006-2007 equal the tax value of all the downtown buildings that have been built over the last 100 years. We need a downtown master plan which will require a master plan consultant. We need to plan our physical environment to help deal with social issues, which we are all familiar with. And help Asheville's economic development to where people have good jobs and can afford reasonable livelihoods. The cost of hiring a consultant would help us plan the Center City we would like to have for the next 100 years would cost less than one moderately priced condominium downtown or less than one year's taxes on a well-planned 1/2 acre lot downtown. Downtown's vitality presents an unprecedented opportunity for this community. We would like to help City Council take advantage of that opportunity. We believe Asheville can be a model for the nation of what a small city can be.

Mayor Bellamy - Thank you and well done in 10 minutes or less. Thank you so much for that. Council, any questions for Pat or Stephanie? And we'll let Councilman Davis start since he is liaison.

Councilman Davis - Let me make a small statement before we begin the questions. First of all, Pat, great presentation. We were all worried about that with that many slides. It was very graphic to look at the buildings we all remember downtown and the aluminum fronts and stuff like that to see what we have today. This Commission works very hard and I think we had a very good retreat. There are some Commission members in the room and I would like for those folks to stand if they would. These people are very dedicated and they meet on a very regular basis and they form task forces. We appreciate the work that you do. And sometimes with commissions as often as commissions do, they feel a little under appreciated and a little over worked. And these people are doing a good job and they care about it. They love the downtown. When we came through our retreat, there was a little bit of angst. I think there is always a little concern when we start asking for consultants at this day and time, but I think Pat very graphically points out that it's a fairly inexpensive price to pay for something that we've only got one shot at. I think that's what his presentation is saying here. I've very reluctant to be a person who advocates consultants, but the realities are that we don't have the staff to make this City a better Center City. We react instead of being proactive. I appreciate what Pat said and appreciate the way you're delivered it and I think you make a very good case. With that, questions.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - Pat, I've very supportive of us doing this work. What do you think the time span is? What do you think the process looking like?

Mr. Whalen - Depending on when we get the go ahead, obviously, because we need to create a structure for what we expect from a consultant. This would be a public process. Here in Asheville we do very exhausting public processes which can be very helpful to the end product. I can see putting out an RFP for a consultant and structure that on the Commission with input from staff and City Council. I think that's something that can be done in a 3-4 month period. The process itself, again, we would want the consultant's input on that, but it could take anywhere from 6 months to one year. We really do, it has been since 1922, we have amazing changes in the community. We have a Center City Plan that was done by staff back around 2002, 2003. Back when that Plan was done, nobody projected things like that slide, where I said in two years

were going to equal the tax value of everything that has been built in the last 100 years. Also that Plan depends on a Downtown Development Office keeping track of what's happened to meet the changes and there is no Downtown Development Office anymore unfortunately. So, we kind of have a new day and need a consultant to do that time period. I can't tell you off the top, but I'm obviously saying something like 10 months to 1.5 years. That is the period I'd expect.

Councilwoman Cape - And at the end of that 10 months to 1.5 years, the product of what we will receive, will it be just a plan or will it have - I guess this is one of the things we can decide - will it have components of, say, the forms, the ordinances that structure the plan. Will it be a framework for delivering the product of the plan or will it just be the plan and then we have to go through the delivery. How do we get the document to deliver the plan to us. Do you understand what I'm talking about?

Mr. Whalen - I do. And I really, I mean, my goal and my goal from talking to the members of the Commission, I think, are to get the answers to questions like these - specific answers to questions like these. I don't know whether that will include forms. It's really more of an issue of how we get these things in our downtown which I hope all the community will agree are the kinds of things you want in our downtown. And what we need is a specific roadmap for how to accomplish that, particularly as it relates to public property. I'm not talking about starting to have a million new zoning regulations for downtown. I don't think we need that. There is an issue for how the public space is dealt with so it enhances and helps us accomplish these things in our community. The plan really needs to be very specific about how it recommends things to the City on doing those things.

Councilwoman Cape - So since we already have the Downtown District, one of the products that can come out of it is defining what public space, and what we want the public space to be. And then could that be formulated into the forms of an ordinance or something for the downtown area?

Mr. Whalen - Certainly, if I misunderstood you. When you're talking about forms, we clearly have to end up producing some ordinances. I know City Council loves to wrestle ordinances.

Councilwoman Cape - I would just hope that as we finish this, that would be part of the deliverable is that we would have a product that could be then put in place instead of taking another year to create the product. Because if we are looking at more buildings this year, we're already going to be behind by the time we get the product.

Mr. Whalen - I think all of us on the Commission respect the need for speed on this, as well as thoughtfulness, and that it does not become some never-ending process that doesn't produce a product which immediately starts impacting how our downtown grows.

Councilwoman Cape - That would be my input on what I would like to see.

Mayor Bellamy - As we continue to question, I did want to highlight one thing for the members of the community who are watching, as well as for Council Members, that this presentation that we are receiving from the Downtown Commission is not everything they have done. They have given us their annual report and we get that monthly. The goal today is to hear what they want to do with their time for the City of Asheville. And, as Council Members, they need to hear if that doesn't work, or that works for us, or these are other things we would like to see you take on as a Commission. The goal ultimately is that we are walking together - the Council and the Commission - in the same direction accomplishing the goals that we would like for our City. And so, it would be good if we could give good feedback so we will know the next steps that we need to take to say what we want to happen, happen. Councilman Freeborn.

Councilman Freeborn - I really want to thank the Downtown Commission for bringing this forward. I think this is pretty timely. When I talk with downtown developers, a lot of what is being asked here is concerns they have. How do we address the amount of development that we are going to see in our downtown over the next few years? How do we address the public infrastructure aspects to that? And how do we do this in a coordinated effort so that it is not just hodge-podge development that most people may feel dissatisfied with by the end of the day? My question to the Mayor and Council is, at what point in time do we want to go ahead and show our support and get this process going?

Mayor Bellamy - I think articulating that support to move it forward will help me dictate the process. Like next week we are going to talk about the budget and where we are. So, we are going to do some one-time capital expenses, i.e., invest in this, or a consultant, and/or other things, but we need to make sure that staff knows some of the things we have in mind or would like to see on our list of potentially being supported by some of the successes we've had. Or, we can do it in a budget process which starts in May which is a little more detail and we can look at everything together. So, I just need to know what Council likes or doesn't like or doesn't want to do so we can lay out that process. And so I have one atta-boy and I know Jan is an atta-boy.

Councilwoman Cape - Mine was an atta-boy.

Mayor Bellamy - Okay.

Councilwoman Cape - Mine was an atta-boy and there are a couple of other things that I would ask as we do this RFP. What would be the items that would encourage and incentivize people to develop downtown? What could we offer as a City for that kind of thing, or in the areas we want them to come to, rather than neighborhoods or out in the peripheral. And secondarily, we've got affordable workforce housing there, and that's really important, but we also need to maintain affordable entry level entrepreneurial places. What makes Asheville so unique is that we have home-grown businesses and we do not just want to be replaced by everybody who sees the golden apple from Gap, or larger corporations. So maybe looking at something like a formula ordinance would be good for downtown. Those would be additional questions.

Mayor Bellamy - Councilman Mumpower

Councilman Mumpower - Mayor, is your question whether we want to invest in a consultant, or?

Mayor Bellamy - Yes, that will help. Say if you don't want the consultant, do you feel like it can be staff driven and you would like to see more staff. I need to know what is on your mind as far as I like the idea, but the Commission members should do all the work. That would help guide the next step for us to put before Council again.

Councilman Freeborn - There are two things that I think we really need to spend money on.

Mayor Bellamy - Let's let Councilman Mumpower finish.

Councilman Mumpower - That was the end of my comment.

Councilman Freeborn - Going off what Councilman Mumpower is saying, two things we really need to spend money on, and I know they sound kind of weird because just like Jan was saying, we hate to spend money on studies, but if we spend our money on a study that produces a result and a plan that we can actually follow and provide good leadership in developing infrastructure in a community, I think that's what we need to spend our money on. A downtown master plan - we need that. We also need a new UDO. I think the community has voiced that

both on the development side and our citizens. Those are two things we need to spend money on this year. And I really hope we can find the money for both of those.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - It would be hard to argue with the success of our downtown. I think you can't argue about where that success came from. Some of it we had hands on and some of it - a lot of it - we did not. We're not the only city in Buncombe County or Western North Carolina that has succeeded. About every one of them are. Hendersonville, ..., Weaverville. They've all gone through essentially the same renaissance that we have and have essentially the same period of time that we have - smaller scale. But economics and the natural urban flow of this world that we live in played, to my way of thinking, a bigger part in our success than anything. The point of all that is, I don't think we have a good history of take consultant's reports and turning them into action. You are talking about a lot of money. If you look at the big pool of money, it's a small piece. But there are lots of hands reaching into that pool of money, wanting it for various good and maybe not so good things. So I would not speak in support of investing monies on consultant dollars at this point. If we can narrow our focus down a bit. We've been there before. We've done things, I recall from my experience, and I know this gentleman does and others. As you illustrate so well in your slide presentation, we've created these great things that people didn't come to. I'm not in support of creating new reports that lead us down places of marginal value and would rather see us narrow our focus before we consider spending city dollars for that purpose. Thank you Mayor.

Mayor Bellamy - Councilman Newman.

Councilman Newman - Great presentation. Thanks for everything you are doing. I guess I would also. I mean there is a whole bunch of different things in there, on your list of things to look at, and each one of them - or at least many of them are - you could have a pretty intensive study on each one of them. I mean, I'm very interested in the question of how can we create a world-class mass transit system for a small city. Really great question. That could be a study in and of itself. I do think that there are several of these items where there are some separate analysis going on related to them and we have hired and spent a lot of money to hire folks to help us evaluate the City-owned property. And the conversation we were just having about public restrooms, we are getting some initial information back from that. There has been a lot of thinking about the parking and there are several parking projects that are getting underway. And it looks like we are going to try to do one on some property we own. I'm open to doing what you are talking about, but I wonder if it could be narrowed down a little bit more. There are several of these items, maybe there are some other commissions, maybe like the Transit Commission who should take some of these pieces and develop it. Maybe there are some of these other things that need to be studied, maybe other folks are studying. We've got this Energy & Environment Commission and they are really looking hard at the green building sustainable piece. I just wonder, since there are so many things on the list, that maybe the Downtown Commission should do some of them, but it looks like a lot of work here and I wonder if it's biting off a little bit more than one commission needs to. There are two things I am real interested in getting folks thinking about. We know our community is going to grow. I know your presentation makes a great case for why encouraging much of that in the urban core as possible, if we are going to grow - that that's a great place for that to happen. So I definitely am very interested in, you know you talk about how many people could fit in there and how much growth have we really taken downtown. That is one piece I really would like to see more thinking on, more modeling on. How much infill development can our downtown really absorb? And how much as a community are we willing to absorb in the downtown? I think those are questions I don't see anybody else really wrestling with those questions, and so I think that is one piece, speaking as one member of Council, I really hope you will consider. I know you are wrestling with it and would love to see more drilling down on that. Just one other piece. I know that this is going to be an item that is going to be, we're going to hear a presentation about in I forget which Council meeting it is but in the near future, we are going to hear some feedback from people like the design center. Those folks who are looking

at the I-26 Connector and how that interfaces with the downtown. And I'm sure a lot of your members are involved with that as well. I think that is just one other piece that I think is extremely vital and extremely time urgent because there are decisions being made right now and that are going to be made in the very near future that are going to create great opportunities for downtown or not. So, I don't necessary have a question, but I wanted to share that thought of how that process interfaces with your downtown - if there are ways to have synergy on that, I think that is a vital question for the future of downtown.

Mr. Whalen - Can I interject a response at some point, without interpreting the flow of the Council?

Mayor Bellamy - You go right ahead. That's quite all right.

Mr. Whalen - In terms of Dr. Mumpower's point, I do want to be clear that we are not talking about hiring a consultant to come in here and produce a master plan for downtown. As a consultant's job. We really want a planning consultant to help the Downtown Commission and our community produce that plan. So I don't see this as a consultant's product, I see it as the community's product. In terms of your points, Councilman Newman, the issue of all these other commissions doing work and the design center. As far as we're concerned, from the Downtown Commission, those are wonderful resources to be a part of the process. We don't intend. This isn't our baby, this is the City of Asheville's baby and all the people who live here. We want to include those people. The design center could be a big part because a lot of this is talking about our downtown design issues. And in terms of transit and the things you seem are a lot to bite off, they are a lot to bite off, but all we're talking about however is the way we're going to deal with those issues in the Center City area. And obviously we want input from people who are wrestling with those things on a city-wide or regional-wide or county-wide basis as well.

Mayor Bellamy - Vice-Mayor.

Vice-Mayor Jones - Just short and sweet. Echo everything being great about the presentation and powerful frankly in terms of the environment and our future. I guess I saw that the investment in the consultant would be kind of this orchestrating of the resources that we already have and maybe leading them to deeper questions based on their expertise. So I don't really see it as an either/or. I see it as kind of a coming together. I am very supportive. I think we should be clear that we are not talking about a study, we are talking about a plan. It's a different situation. I also will be the first one to jump out there and say that I'm hoping in the budget process that we do look at increasing some staff for this office because I think there is a lot of wheels that are being spun and I'm wondering that if a piece of those we could be a lot more efficient with a little more investment in staff. If you just think of all the things that have come before us in the last few months in terms of downtown social issues, you know - the cleanliness campaign, and on. And we almost back-tracked today. After nine months about talking about these public restrooms, I really would have jumped straight over the dais had we done that, and I think you brought up good points. But I wonder if we had a little more investment in staff if we wouldn't be kind of recycling these questions up here, because this is not the best place for those kinds of operational conversations to be. Painfully worked out. So, I'm on board for the consultant and I hope we can get a good deal on it. I hope we can get started soon and would like to really look at getting some additional support for the Economic Development Office downtown. I will say too, that, I wasn't here to see all that, so those were powerful slides to see because I didn't experience that. My Asheville experience has been all what we see now. I'm relatively new to the area. But I do think that we owe some tribute to some people, and maybe there is some forum that we can thank those folks. I know Leslie Anderson was Downtown Development Director during a lot of this and there are some people in the audience that had a lot to do with downtown. Julian Price had a vision and there are names I don't even know that I think we probably need to recognize - I know Roger McGuire. I didn't have the privilege of knowing him either. So, as we think about going forward, I think we also need to recognize the people that have kind of launched us on our way.

Mayor Bellamy - Okay. I think before I call on Councilman Davis you brought up a good point about celebrating those who did help with our downtown. I think it's important to point out that Leslie Anderson did work for the City and she was very hands on at that time with the administrative offices over here and Doug Bean and the vision for downtown. And I think having that additional staff that could hold the hands of developers to be able to address the concerns of the community dealing with the transit issue, because at that time, the transit station that we have beside the Post Office was actually at Pritchard Park. So, we talk about issues with Pritchard Park, but there were significantly more issues at Pritchard Park at that time. And so, when we had the budget cuts in early 2000, we had to dwindle the staff downtown in the Downtown Development Office and that is what happened. That is why you saw that gradual decrease, thinking that eventually we would ramp up here at City Hall, but we've kind of stayed stagnant up until recently. So you do point out good points and I have that on my list to celebrate. Councilman Davis.

Councilman Davis - Lots of great points have been brought up and I think that it can be summed up very well from where Councilman Newman was coming from on Page 58 of the report. It's hard to see on the projection screen. But, the former Chairman, who has just recently stepped down - Peter Alberice - is in the room, came up with this flow chart. And it really distilled what we were talking about. This thing came up at the retreat and we started looking at it and the idea, very clearly, suggests that a master plan can be developed by using a consultant to incorporate these principles - the economic development end of it, physical environment and social issues. These are things we are wrestling with. It's too big to bite off by a volunteer commission or even to enlarge our staff. So, we felt like clearly the best way to do this would be the drilling down of what Brownie is talking about by the public, with the consultant at the helm. Because this is precious stuff and has organically grown over the years. This is stuff that happened because the good people, and a lot of them on this Commission, made an investment in the downtown and have brought it to where it is, but we are running out of those opportunities. And this is the point in time where we as a City are starting to look at not selling off public land, but perhaps leasing it or making it available for public/private partnerships and will have a great deal to do with the way the City looks in the future. That needs to be incorporated into what is going on out here with the private sector. And we have social issues, large things that are outlined and bullet-pointed here that this is just a big-ole project that needs to be approached sooner rather than later. And I think the cost of this depends on the scope of what we are looking for and I would hope that when we leave here this evening, we have given staff the idea of what we need in the RFQ to move forward with. The scope of what we are looking to do and what we are hoping to accomplish. So, I think it's real positive stuff and I think for anyone to give a big nay-say is not giving good thought to what needs to happen in this City in the future. We have limited resources out there to use and if we make wrong mistakes we are seeing big buildings come before us all the time and I think, if they build them, will they come? That's a big question at this point. I think we need to have some direction greater than we are.

Mayor Bellamy - Council, it sounds like there is enough to move it forward. How about the next process would be for the Commission to really take what they have heard from Council and focus it and go ahead and take it to the PED Committee so you can help with guidance and have Council input and then we will go ahead and put in a process for the funding, and look at some of the pricing. Councilman Newman.

Councilman Newman - What is a moderately priced condo?

Mr. Whalen - A moderately priced condo would be between $200,000 - $300,000. We don't want to build an expensive condo, that would be a mistake.

Councilman Newman - I would just say that is a pretty big sticker shock for me. That's a lot of money. I would like to set some priorities and figure out if there is a more moderately priced condo on the market that we could potentially look at.

Mr. Whalen - We could buy a really, really cheap condo somewhere, but again, that 1/2 acre of downtown planned well pays for it in a year.

Mayor Bellamy - Thank you very much.

B. DISTRICT ATTORNEY'S OFFICE OVERVIEW

District Attorney Ronald L. Moore (presented Council with a packet of information) - I moved here in 1980 and watched the downtown change and it has been amazing, although the question then becomes do you become a victim of your own success, as you said. Whether it's your infrastructure or criminal justice system, which I'm hear to talk about. When you were talking about 80,000 more people in the next 20 years in our County, I just see what we are going to have to do over in the Courthouse. But at any rate, I sent some information over today. I did not put it on slides since I'm not that quite sophisticated. Next time I come, I will try to do that. But I do want to highlight a few things. There are 42 District Attorney's in the State. Buncombe County is a single county district. As of January, I'm allocated 13 Assistant DA's. And we've been very blessed to have gotten two this past year. We got a new judge so we started running another court to try to ease the crowding. The Fire Marshal has been visiting us over the last several months to tell us we need to do something with all the people in the hall. With all the people we are dealing with. We deal with tens of thousands of people on a yearly basis. We run anywhere from 3 to 8 courts every day. Today, I believe, we had 6 courts running. Tomorrow we'll have 5-6 running. So we are full at the seams and a lot of it is driven by population. The crime rate has gone down through the years. Asheville generally has a crime rate that is better than most of the towns in this state. You can't look at a one-year snapshot, you have to look at 3, 5, 7, 9 years. Because you could have 2 or 3 homicides, or whatever, that would change your rate over a one year period. I included a chart for you, marked Exhibit A, that shows a snapshot of the last 12 months, the number of people that have been sent to prison. It's the 8 most populous counties. Basically I took the counties with 200,000 or more people and then I looked at the population figures which are included in the back which I found on line. And you can see that we sent more people per capita than anyone in the state, amongst those counties. The state average was 322 and we're at 420. We sent twice per hundred thousand. We sent twice as many as Durham, for example. We sent more people, well we only sent 14 less than Mecklenburg County in the last 12 months. So we send a lot of people to jail. We send too many people to jail. We need more people to behave themselves. Deterrents are what we need, which I will talk about in a minute. We need more police officers to have more deterrents so that people won't commit crime. Then at the bottom of that sheet, I think you have received this before because I was talking to the Police Department awhile back about arrests and things like that, and in the Police Department's file you see our reports every year. All city and county police departments. I suggested to them that they look at comparing those per officer per municipality. And you can see that the City and County here are almost twice the average state-wide and they are better than any of these jurisdictions. So, we arrest a lot of people here. One of the things that I thought would be instructive, I was looking through a file and in fact a case we were supposed to try tomorrow, but the attorney has some illness and can't do it, is on Exhibit D. This is a typical drug arrest. Someone coming out of Pisgah View that we arrested that had ecstasy and mushrooms that wound up testing out. But you can look at this and see the amount of work for this officer who is assigned to the DSU unit put in. One, the observations he was doing. Two, the stopping of the car and waiting for back-up of the drug dog. The exchange he had with the person arrested. Taking him to jail. Processing that. Then writing this report. This is a very thorough report. A very well written report. This is not the only piece of paper he sent to my office, but it's pretty instructive. You can't go out and make an arrest every 5 minutes is the point I'm trying to make to you. I thought that might be of interest to you. The second document, Exhibit B, is we generally keep up with our habitual felons. We have a full-time habitual felon program that removes people who continually comes through court. January and February of this year, we sent 13 of them to prison. Trafficking, manufacturing (and that involves meth labs), in fact we sent one off yesterday. We sent 4. And then sexual assault, we dealt with 17. Fifteen of

them who actually went to prison. Two were put on probation. I've included a sentencing chart. A lot of people don't understand our sentencing system we have in this state. We changed it in 1994. Formerly all our sentences were in years You would give someone a 10-year sentence for breaking into a home and the concept back then, the criminologist said we need to give people incentives so that every day you serve on the front end you get a day off the back That would be 5 years in the middle. You could get extra time for working in the kitchen or on the road. So, when I first started practicing law in the 1980's, you serve 40-45%. So, if you got a 10-year sentence for breaking into a home, you would serve 4-4.5 years. By the time I became DA in 1991, because of the overcrowding in prisons, you were serving about 15%. So you were serving 1.5 year on a 10-year sentence. There was a public outcry about "you're lying to us, you're giving people 10 year sentences and they're back home in no time," so we set up a Sentencing Commission in this State that looked at structured sentencing, which is what we have now. You can see the sentencing that we classify our felonies A through I. And then you see columns going across the top and that is how many points you have. Basically, that is your prior convictions for the most part. So whatever class of crime, whatever column you land in, that is where the judge has to choose a defendant's sentence. Cases were fed into a computer and they can tell you in this State how many breaking and enterings we will have on an average year. How many cases of selling cocaine. How many forgery and utterings. How many homicides, etc. We have a lot of breaking and enterings. That affects more people directly than any other property crime. We have a lot of drug sales, drug possessions. So they fed it into a computer and so breaking into a home is classified at the lower end - Class H. Someone breaks into your home now, where formerly they could get 10 years, now they may get 6-8 months. And they will do all of the 6-8 months, but that's all they are going to do. Misdemeanors, down at the bottom, where we basically decriminalized misdemeanors, other than drunk driving or serious misdemeanor assaults. I know from time to time you pass ordinances here in town and those are Class III misdemeanors. You can look at the very bottom of the page and see what our legislature has said what happens with a Class III misdemeanor. Up at the top, where you see the letter "C" or "I" or "A", "C" is a community punishment, "I" is intermediate, and "A" is an active. Unless there is an "A" they cannot go to jail. So if you pass a misdemeanor Class III, unless you have five or more convictions, you cannot even go to jail and a lot of people we deal with, especially people who are itinerant, we don't really know who they are or if they came from another state, we will not be able to pull up their misdemeanor record. So a lot of times, we don't have the ability to give them a minute in jail. Sometimes when you have misdemeanors, I know that are of a concern to you about things that go on downtown. This year, we are paced to handle 4,000 cases in Superior Court. That is where we try our most serious cases. Probably another 1,000 in probation. So, roughly 5,000 cases. That is not people. That is about 2,000-3,000 people in that range. But we have 47 weeks of court generally. And so, you see we do 100 cases a week basically, which is 30-50 people. That is every week. Now if we have a murder trial that lasts 3-4 weeks, you can see that we have to catch up on that to stay our average. That is the kind of situation we are dealing with. We do 50-75 jury trials a year. Last week I think we had a couple of jury trials. This week we'll get one tomorrow, because of the sickness of the attorney we won't be able to do. We have a lot of programs that we try to defer people from going to prison, whether it's drug court, worker's check program, deferred prosecution. We're always looking for other alternatives. The jail today has 452 people. I look at the list every morning. It's probably designed to hold 375-400. Prison has 38,144 people in prison today. We are about to have a crisis in prisons again. We had one in the early 1990's. That was when we started turning people loose serving small percentages. The legislature passed a bill to build 6 prisons back in 2000. The last two went on line last year. They were all 1,000 bed prisons. We have 80 prisons. They hold about 38,000. We are very inefficient in this State on how we build our prisons. It came out of the depression era where prisons were employers in small counties. We have prisons that only hold a few hundred people still in this State. We don't have 1,000 prisons, except the newest ones. To build one of those prisons is $85 Million and to operate it is $25 Million. But there are no more prisons on line. The prisons next summer will be, if nothing else happens, will be 1,100 over capacity in this State. There is pressure on the legislature, there are bills introduced. I was talking to one of our representatives today. There is going to be pressure on the legislature to reduce sentences instead of being 6

months for entering into your home, it's going to be 5 months. Not because it's good public policy, but because unless they build some more prison beds, that is where we are going to be. So, the criminal justice system is in a mess in terms of the funds. Now everyone wants us to lock up everybody that comes to court, but it costs. The criminal justice system is expensive. If you want people to go to jail, then sentences don't need to be cut and prison beds will have to be built. If we don't do anything in our State, then we are going to have more people than we have room and there is going to be pressure for the legislature to let folks out. That is where we are. There is an article in there that is pretty good. And there are some other items in there. The bottom line is that we have a lean criminal justice system. Most places have one prosecutor for 10,000 people. In this State, it's about 18,000. But that's by design. If you give us more people and more courts, we will send more people quicker to prison. And that has not been the public policy of this State. But at any rate, I do want to brag on the police here. I know they get a lot of criticism from time to time. I've worked with them now for 16-plus years on a daily basis and I've been out at night with them for 16 years, in the middle of the night in housing areas. The DSU group is one of the best things you've done here. They are out everyday. And they are lying in the bushes, they are spraining their ankles when they are chasing people, fighting people. The report I showed you was written by one of the DSU people. It takes time, it takes energy, and it takes commitment, but it's a tough job. People are going to - as long as drugs come into this country and I'd say 90% are coming across the border is my observation based on what we have seen the last 4-5 years, we are going to have drug issues. And deterrents is one of the best today is getting more officers that are highly visible. We will continue to process what they bring to us. Our labs are backed up. The SBI lab we were getting reports 8, 10, 12, 14 months and now we are down to maybe 4 months. We have done so well in the western part of the State, when I went to a DA meeting a couple of weeks ago, the lab director from Raleigh said that "we're sending cases to you from Raleigh and Wilmington." They send 1,500 cases up here to be tested. And I told him I didn't think that was a very good idea because the lab personnel will have to go to Wilmington to testify and they will lose a day or two worth of work. That makes no sense to me. But those are the kinds of things we deal with everyday. But I do want to say the officers work hard and they do a good job here. Asheville has a good police department and they need to be supported and they need to be supported financially. Most of them have to work second jobs. They need to be supported with enough help to get the job done. Our City has grown. Our County has grown. And that is what I've observed. When we deal with so many more people in the justice system because so many more people live here. I wish I had more time, but I'll entertain questions.

Mayor Bellamy - Thank you so much. Councilwoman Cape.

Councilwoman Cape - Thank you very much. Part of the question I have, and it sounds like you said, first of all I want to know if you say we have a better crime rate. Does that mean we have more or less crime.

Mr. Moore - Less. Our rate is lower.

Councilwoman Cape - I must say though it really is a sad state of affairs that we send more people to prison. In my heart, there are children, many of them, that have gone in the wrong direction and so it is a larger social issue than just putting them in prison that we have to look at addressing in a more constructive way, hopefully. And that's up to us to start being productive with how we help kids stay in school. All of those things. How they have hope outside of what they have right now. Go ahead.

Mr. Moore - The three themes we see everyday is the lack of education (people's lack of job skill), drugs and alcohol, and peer pressure. And a lot of those relate to the young people as they are coming up and the directions that they take. I had to go up and handle a matter in juvenile this morning. This kid is 16, so he is now out of juvenile if he commits more crimes. He was going to Swain recovery. He had a drug and alcohol problem. I sat there and talked to him and his momma and his attorney for about 15 minutes in the back room and said "look, you're on

the wrong path. I see how this works. This is your last chance, or you will spend most of your adult life in prison."

Councilwoman Cape - You know I sit on a lot of economic development boards and the conversation exists that we have people coming here that want to hire people. We have good jobs that people can have if they stay in school. And so it is incumbent on all of us to help kids understand that and help see that there is an opportunity for them, other than fast food job, or a life of crime. The thing that I am curious about and have had some conversations about people and would like to have more conversations are the ideas of alternative sentencing processes that have. I know the drug court is one and it works real well. But we have some of these misdemeanors. I'm a part of the Police and Citizen Advisory Committee also and we had a presentation by the Police Chief one day and he said one of the hardest thing is when there is no consequences. The police stand in the face of crimes all the time and people are almost like, essentially spitting on them, like who cares, what's the big deal. Nothing is going to happen to me. As a mother of a teenager, I know there has to be consistent consequences. If you're going to have laws, there has to be some consequences. The consequences you have to offer are eroding because of the pressures. What are the options for this community? I know in other places they have citizens courts, not courts like vigilantes, but where there is community consequences. If you are a consistent litterer, you spend time picking up. First of all you come to grips with your part of this community and you face your peers and then you spend a lot of time picking up litter. What are our options? What are other things we can do as a community?

Mr. Moore - I've always wanted a pile of cow manure outside the Courthouse, you can move it from one circle to the other, but I didn't think you'd let me get away with it.

Councilwoman Cape - We have lots of little things that can be done.

Mr. Moore - I've probably talked to 200 kids a year and their mothers and their attorneys trying to decide what to do to see what alternative there is. I go through the night court line and will have some 16 year old who has done some reckless act and will talk to them and try to develop a sense of what is the appropriate thing. I will send them to wash fire trucks. We wash a lot of fire trucks in this town. But misdemeanors were so decriminalized. Formerly misdemeanors would carry 6 months to 2 years, but when we changed the system, we put it at such a low end, that there is not much of a consequence. The only people you can really put into alternative sentences at the misdemeanor level, are people who care about having a record. We probably put 600-700 people a year on deferred prosecution where generally first time offenders, low level crimes, if they will go and do community service, then we will dismiss their case. People who have been around crime, they don't really care about a low level misdemeanor because they know that the State of North Carolina does not treat it very seriously.

Councilwoman Cape - So, I guess I would ask that if we could partner in any kind of way. If the City of Asheville could be a partner in any kind of way in helping this situation of making. If we are going to have laws on the books, it's counter productive for there to be no impact to breaking those laws.

Mr. Moore - I was on the Sentencing Committee for six years. And you could ask that a law be changed. Arson was one I always tried to get upgraded because we treat it as a property crime and I view it as a crime of violence because you don't know if somebody is in the building, you don't know if a firefighter is going to get hurt. And Wilma Sherrill would introduce bills to try to raise it. And the first thing that happens is any criminal law bill in Raleigh goes to the Sentencing Commission and they use their computer, they know how many arson cases there are, how many burning of churches, whatever, and they will tell you this will cost - I think in the case of arson, it was five hundred and some prison beds over 10 years. So every time you try to make a change, that is the first line if inquiry in Raleigh is how many prison beds does this equate to. So that is the difficulty. Here, like in many communities, is our jail is full. So a judge has a tough time taking the next 25 litterers and saying, if they qualify - it's not putting them in jail, it's the threat of

putting them in jail. That is where you get the deterrents. The threat. That is where you get people to comply with alternatives. You have to have a threat - the carrot and the stick if you will.

Councilwoman Cape - You can't make people comply with alternatives without jail being the other option. What if their consequence is you do the ... well, I guess if you don't do the alternative, then you go to jail.

Mr. Moore - Right. And you have to have people who care about that or that it is a realistic threat. In a lot of cases and in a lot of people that we deal with that are doing these types of things, they don't have the instinct in them to walk over to the trash can - they are going to throw it on the ground. That's just the way they are. So, I don't have an answer for you.

Councilwoman Cape - You paint a pretty hopeless picture.

Mr. Moore - Well, for low level misdemeanors, there is not a whole lot of consequence.

Councilwoman Cape - What about as we move up? I'm also thinking of the young kids who get into this entry level drug dealing. What are the options for this community? Understanding the legislative restrictions we have. Are there any options for us to partner with you in alternative sentencing, community justice, whatever those tools are? Are there any options for us?

Mr. Moore - I think job programs are one thing this town has always needed. For kids in the summer, especially.

Councilwoman Cape - Before they get into trouble.

Mr. Moore - Or even if they have gotten into a low level the first time. A lot of kids that are first timers, we put on deferred prosecution and basically deferred prosecution is a contract between me, the defendant, their lawyer and the judge that if you do these things, whatever they are, sometimes it says stay in school, sometimes it says work, sometimes it says get your GED, do community service, whatever it might be, pay restitution if somebody has broken a window on your car. We may give them deferred but we wanted them to repay you. You can certainly add go get a job, and if they do that then the case is dismissed and they get it off the record. They can still go into the military or they can still go to school in certain places that might not let them in if they had a record. Again, it's a carrot and a stick. There has to be somebody who cares about the consequences we have.

Councilwoman Cape - Well Mayor Bellamy, towards that end, if there is anything that we can do to participate, I would like us to explore that.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - Mr. Moore, thank you for being here. We appreciate your efforts on our behalf. In terms of things that we can do, you mentioned more officers on the street as a deterrent.

Mr. Moore - Yes, sir.

Councilman Mumpower - We know better than most of us in this room that as these officers arrest people and find them back on the street quickly, they find themselves recycling the same folks over and over again. It's a morale buster and it leads to complacency on all levels. This is not a good guy, bad guy thing. It's not about lazy DA's or lazy judges or lazy officers. It is about a dysfunctional system that you articulate very well. What can we do? You mentioned job programs, more officers. What can we do to tackle what amounts to a paralysis. When you look at what you are really describing here, a system that has to rely on plea bargains, a system that

can't provide prompt justice because, as you suggest, can't provide accountability. What can we do to tackle that paralysis of a system that is funded as roughly 48th in the country. I think you have a good quote, we have a 1980 criminal justice system in the year 2007. What can this City Council do to help you and your compatriots up there in that system to address that?

Mr. Moore - Before I respond to that, can I say, given when we arrest people repeatedly before we get to deal with them, bond in our state and our nation is not to keep people in jail. That is not what we're allowed to do. Now if we can show they are a danger to the community or it's first degree murder, then yes, we can keep them in. But all other crimes, the purpose of bond is for people to show up in court. So that is the argument that is made in court on a daily basis - "My client has lived here all their life. They had 4 crack rocks, or whatever it is. Judge they are not going anywhere. They have a job at Bojangles or McDonalds, or working in a park facility or whatever it might be. They are a good person other than this one little deal, so let them out." There was a case a week or two ago, a guy you wrote an e-mail about. I forget his name - Jeffries I think, that had been bonded out four times. And I got to looking at his stuff and we got him in prison last week. And the feds are going to pick up his new case. So he's going to be history, I believe. But the point being, he had made an $8,000 bond on the case we handled a week or two ago, so whether he had $8,000, or whether somebody put their home up, or whether he had 15% to pay a bail bondsman, I don't know. But that is the continuing problem we had. That is one of the reasons we started the habitual felon here. We started it full-time in January 1997. The legislature gave me an Assistant DA and the County gave me an investigator here to help with violent criminals, habitual felons and things like that and we started a task force. So we do 40-60 a year and those are people that had come through continually and to define a habitual felon under our law, they are coming through the Superior Court system at the felony level for the 4th time. They have committed their first set of felonies, then maybe one felony, then maybe breaking into 10 homes, it may be breaking into 50 cars and we deal with those cases and that counts as one for habitual purposes. So after they have done that three time and they are on their fourth trip we can treat them as a habitual and any felony will do. So most people who go off as habitual felons here are going for 70-90 months, somewhere in that range, opposed to going off for 6, 8, 10 or 12 months. So it's at that level that we can finally do something with them. But, it's not much of a deterrent, especially we're about ready to get out of the group, but for awhile where you had the old time criminals who were used to getting 20 years and serving 8 or 10 or 7 or 8, and then they get these 6 month sentences, I think we almost create a situation where the system became a joke for those going to prison because 6, 8, 10, 12 months was no big deal. They'd been used to serving 5-10 years and at their age they are out now. But with the young kids coming up, 6, 8, 10 months, it's almost a right of passage for some of them, I think. But, if you want a justice system that functions, you have to adequately fund it. We spend more on indigent defense than we do prosecution. We have a public defender's officer here that does a good job, but they only handle 40-50% of the cases. I handle a 100% and I only have a couple more Assistant DA's than they have public defenders. So that is the type of. We are spending a lot of money there. We have inefficient prisons. I mean there is a whole overhaul. If we don't look at, and I think we are going to put together a group in this County to look at our system. We've got to look 20 years out because we are going to have 80,000 more people. We are building the jail next door that probably will be full in a matter of months, because people are making bond and because there is no room at the inn.

Councilman Mumpower - Your point. We did put it on our legislative agenda asking our local delegation to look as hard as possible on this issue. You're behind on technology. Most of your basic computer system is what, the early 1990's now?

Mr. Moore - They have spent a little money. If they spend a million or two here and there we do great with technology - that's how cheap it is in terms of the overall. But again, the number one issue that I see is the prison beds are full, the pressure to lower sentences, and the citizens will have less respect for the system if we do it again, after telling them in 1994, "trust us, truth in sentencing, here is what we're going to do." Breaking into your home hasn't suddenly become a

6-month punishment as opposed to a 7-month punishment. That is no way to run a criminal justice system.

Councilman Mumpower - One last question and I think this Council will continue to encourage our legislators to look at this roadblock to the functionalism of our criminal justice system. What percentage of felonies are plea bargained?

Mr. Moore - Probably 98%. We try about 2% of our cases and if we have 4,000 cases, we try in this County 50-90 Some years it may be on the high end, some years it may be on the low end. So we try state-wide, nation-wide somewhere between 1.5 and 3% of our cases. That's all we can try. Again, I have 47 weeks of Superior Court. We try a 3 week murder case and there we go.

Councilman Mumpower - I offer no criticism with that question. It just points to the fact that maintaining accountability for people that get involved in criminal activities is tough under that system and by the time we catch up with so many of these young people, they are career criminals. And they are lost.

Mr. Moore - What you also have to do, and we did this when we got in 1991, prior to my getting in there were not that many trials. We tried 11-12 murder cases the first 12 months I was in office. I only had 6 Assistants then. But we established that we could and will try you. And we still do that. Habitual felon. If you don't plead guilty, we are going to try you or you can take this 70 or 80 months, or whatever the number is. And so, we will go through a cycle with sex offenders the same way. You can see on the sheet I gave you we had some people who got 300, 400, 500 months. They had a trial and the judge ... them where we offered them 100 months or 200 months, or whatever the number might be. You have to be willing to try them which we are, but you also have to figure out what the settlement value is on a frequent occasion because we can't try everybody.

Councilman Mumpower - Mr. Moore, one last question. If I did crack cocaine and was caught and convicted, how many times, an estimate, would I have to be caught and convicted to do jail time?

Mr. Moore - Depends on what judge on what day. But if you look at the chart on "C", if you sell crack cocaine, it is a Class G. If you have never been in any trouble before, you're in the first column and you could get 16-months sentence active. But, as a practical matter, very few people go the first time. If you get caught a second time, you will move over a column and face a couple extra months, but if that is the system we operate under. Again, the judges get memos on how many people are in jail. I have probation officers come in from time to time who tell me in one ear that they would like to see this person be revoked, but because of the pressure from the Probation Department out of Raleigh, when they staffed it with their supervisor, they were told to say, let's do this to give them one more chance. We have one of the highest revocation records here. They are always telling me they are getting memos, nasty-grams, about Buncombe County because we revoke a lot of people. That means a lot of people got on probation, but we were able to revoke them. Again, we handle 4,000 cases at the Superior Court level every year.

Councilman Mumpower - Thank you Mr. Moore.

Mayor Bellamy - Vice-Mayor.

Vice-Mayor Jones - I just want to talk a little bit about, because there are so many levels and we've kind of touched on the hardest core today as well as those folks who are just entering the system and how do you either deter them from entering, or you stop it before they are so far down. I definitely heard you say that one piece for you of deterrents is more police officers. I'm actually of the mind-set, in addition to obviously, this visibility of our law enforcement, that there are environmental - and nothing is perfect, and nothing is fail safe - but if we are investing in

some environmental deterrents, for example, and we know a lot of them. Like the red light camera. That ultimately deters people, I think If they are getting caught by traffic, and you can kind of say that traffic is not the most important thing. We know, this is what we know. We might not like it. As someone who likes her little glass of wine from time to time, if we raise the alcohol tax, we know that drunk driving goes down. This is what we know because of the correlation between people being able to get alcohol. Anyway, in addition to more police officers and better computer systems, that we've got to put all these pieces in our brain. A silly thing, and I think one of the reasons why my house has not been broken into is that I always have a dog. My house is not fool proof, but if somebody is going down the street, my house is going to be less attractive. And I'm not saying that everybody go out and get a dog. But you see where I'm going. How can we as a community start talking about these other types of deterrents to help you out and to help our pocketbooks out? That is part one. What do you believe, in your experience, are effective deterrents for some of the entry level problems that we are seeing?

Mr. Moore - Starting kids with a good education. Probably the number one thing we see. And I've gone into schools and mentored under Big Brothers and Big Sisters. I have a young child and I've been in the schools a lot. You have kids that come to school that nobody is helping them at home and you can see some of them coming. I coached Little League Football and Baseball when I first moved here. I had two kids that I saw that I thought would be violent. They are both in prison. One for murder and one for drug dealing and assaulting people. But you could see them at age 10 or 11. That's where you have to start in the community with the little kids. A couple things you said, one, you said the drinking and driving. Buncombe County has one of the highest conviction rates in the State. We have for 40 years here. We're always in the 90% range. You are talking about raising the taxes. Well, go to Raleigh and try that and the lobby will be all over you. There should have been a no-brainer to take the pseudo-ephedrine off the shelf to do something about meth labs. And we had a tremendous fight down there. I was down there several times and the merchants were against it because they made so much money. One of the examples they gave was at the truck stop in, I think, Oklahoma and how much money they made versus selling Coca-Cola vs. selling ephedrine or pseudo-ephedrine products. It was unbelievable. So the merchants fought us even though you talk about a public health crisis that the meth labs and things like that that we had. So, it's very hard to do that. I think invest in education is the number one thing. I think to try to get kids trained, if they are not going to go to college and get their Masters, then do the vocational. We almost made a turn away from that in the State, and I think we are catching ourselves and go back and have a vocational track in school. I think education is the key to the drug and alcohol issues and the other education in those. I think people smoke cigarettes less now than they used to, so it's got to be an educational issue.

Vice-Mayor Jones - Can I have one follow-up? How do you feel about, if we raise the driver's license age to age 18? How do you see that as potentially a deterrent?

Mr. Moore - To punish the parents.

Vice-Mayor Jones - Here's an idea. If you have to do driver's license in school, thus then you have to stay in school.

Mr. Moore - I think the driver's license is one of the biggest carrots you have to try to get people to do right. But we have situations now where we have graduated license and I have people in my office all the time, the kid did something dumb, and if they are convicted of it or it's not reduced, then they are going to be back in the situation at age 17 than they were when they first got their license. And that is only going to punish the parent who needs to carry them to this activity, or whatever it may be. So, it's not an easy answer, but that is one of the few things. So, if you raise the age of staying in school, then that is a whole another issue.

Vice-Mayor Jones - Do you think that would help?

Mr. Moore - I don't know. I didn't have the time to think that out fully. But, those are the things, whether it's staying in school, your license or whatever. We will have to adapt how our schools are run if we are going to keep people in school. Some people drop out, I think, because they get so far behind.

Mayor Bellamy - I agree and I think for me I don't have any questions about your statistical data that you presented. The numbers are what they are. But what you said hit home to me. The education of our students. That, more than anything, is important. If you look at the statistical data of how many drop-outs we have in the system now in the jail right next door, you would be astounded at home many high school drop-outs we have. For me, it's an SOS to our community. We have to have more mentors and tutors assisting our school system to help educate our kids.

Mr Moore - And another thing we did when we cheapen their sentences, people that we send for selling crack cocaine for 6, 8, 10, 12 months or for breaking into a home, they don't stay long enough like they used to, to get into the vocational or the education, or even some of the drug treatment. You know we have the DARE program in prison, but if you have a 6 or 8 month sentence and you spend two months in jail before you got there, you don't have time to go through the program. That is one thing we have done with the way we have done our prison system. We don't help people like we used to. When I was in Law School, I went to .. prison a couple of times, right across from the State Fairgrounds. There you could get your certificate to be a barber, you could learn to be an upholster. You could get out and make $10-$15 an hour upholstering furniture. So we had vocational programs, but now, because so many people stay for such a short period, and the majority of people, we sent 28,000 people to prison in the last 12 months in this State. Well probably 20,000 of them have circulated out in a 1-1.5 year or so. So they are not staying long enough for us to do much with them in prison, other than we go there and feed them 3 meals a day and they get out, not necessarily coming out with a plan on behaving themselves.

Mayor Bellamy - I think our emphasis should be definitely on police officers, but prevention and education of our citizens. If you have an hour a week to go tutor a child, invest it. You are paying for it sooner or later in either your time or your taxes. I think it's important that people to look beyond themselves and get back to helping someone else - help our children. I think that's important. To create jobs for our teens. That's imperative that we have more jobs for our teenagers in this community so our teens can have some resources to be able to see themselves in a different light. Councilman Newman.

Councilman Newman - We have a population of folks who get arrested, not just 2, 3 or 4 times, but about 40, 50, 100 times. And in some cases, most of them are not real serious things.

Mr. Moore - Drunk and disruptive would be number one.

Councilman Newman - Things like that. Obviously not the most serious crimes in the community. We are trying to do things to really address some of the root causes of that - mental health, plan to end chronic homelessness, and things like that. We are trying to be proactive on that. And seeing some initial good results from it. But for folks who are not taking some of the options the community is presenting them, is there, in light of the situation with the crowding in our prisons, is there any way that we can hold those folks more accountable than we are now?

Mr. Moore - I've been practicing law here now for 26 years or so, and we have always known who the 10 or 15 people are who will, when it's cold, they are coming to jail. Or after their check comes the first of the month, they spend it and they are going to come and be with us. And what happens with those people is, they get down in the court after 10-15 days, whenever their case cycles through and they are going to plead guilty and get time served. And then we are going to see them again in a week, or the next first of the month when the check comes. That is a fact of life that we have seen again and again. What you do about that, I don't know I have an

answer for you. The mental health issue is another whole ball of wax. Our State, because they just did away with the system without being prepared to deal with the consequences, we have more and more people we're seeing that have issues that have to be dealt with and have no where to deal with it. So I don't know that I have a good answer for you there. But you are going to have a group of people, at least historically it would appear, that are going to spend 200-300 days a year in jail because they are going to get arrested and get out for a week or two - maybe until their check comes and they have enough money to go buy some alcohol. We all know who they are.

Mayor Bellamy - Vice-Mayor are you going to wrap it up for us?

Vice-Mayor Jones - I really appreciate your being here even though we're all like, what can we do. We want to help and we want to be part of the answer. But I did want to end on one positive note that is coming out of your office. There is more than one positive thing, but this is an initiative with Assistant DA ... with Gang Prevention and specifically kind of getting to the groups that are having the early indicators of gang activity and trying to get to them on the front end. So I think that is a fabulous collaborative effort and so I think she deserves a lot of credit for her leading that up and hopefully that is something we can replicate in a lot of other ways to get to the issues we are talking about.

Mr. Moore - She worked very hard and has spent many hours. In fact we talked about that before I came over here today. You know, just like you are talking about a consultant to give you a plan, if we had somebody who had the time to write grants all the time you could get lots of money like this. But, most of us have full-time jobs and having time to do that is a problem. But this is one that she took on, on behalf of my office, and did very well. Thank you.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE ADJUSTMENTS TO ENFORCEMENT PROCEDURES

This public hearing was originally scheduled for Council consideration on March 13, 2007, but was continued to this date at City staff's request.

Councilman Freeborn - Is there a reason why we need to delay it? What was the justification?

City Attorney Oast - If it's what I think it is, there were some fine-tuning that needed to be done at the Planning & Zoning Commission meeting so it went back there first. Then the Planning & Zoning Commission took action on it at their last meeting and it will come to you on May 8. There were a couple of changes that were recommended. Most of them came from my office.

At staff's request, Councilman Mumpower moved to continue this matter until May 8, 2007. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS EAGLE'S LANDING LOCATED AT 179 JOHNSTON BOULEVARD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT FOR A 26-LOT SUBDIVISION WITH SETBACK, LOT SIZE, AND OPEN SPACE MODIFICATION REQUESTS

ORDINANCE NO. 3459 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS EAGLE'S LANDING LOCATED AT 179

JOHNSTON BOULEVARD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT FOR A 26-LOT SUBDIVISION WITH SETBACK, LOT SIZE, AND OPEN SPACE MODIFICATION REQUESTS

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 179 Johnston Boulevard, for the project identified as Eagle's Landing, from RM-6 Residential Multi-Family Low Density District to RS-2 Residential Single-Family Low Density District/Conditional Zoning for a 26-lot subdivision with setback, lot size and open space modification requests. This public hearing was advertised on March 30 and April 6 2007.

From Staff Report: This site is located in the city limits on the west area of the City. The surrounding neighborhood is zoned residential multi-family low density (RM-6). Until recently the two parcels were a single property with a smaller home on it. The request is to change the zoning to residential single family high density (RS-8) to provide a cottage-style major subdivision. The plan will provide 25 home sites. Five of the residential units will be sold at an affordable rate. The existing home will be relocated and will be remodeled to follow the patterns provided with the project. None of the units in the development will be larger than 1,500 square feet. Most of the units are being offered at between 1,000 square feet and 1,200 square feet. A small number of units will be offered at 700 square feet. The affordable units will be the one and two bedroom units. Although three bedroom units will be offered, the majority of homes will be two bedroom units. The site plan provides a cul-de-sac design and a sidewalk along one side of the street. The developer is seeking modification from City Council for several items: lot size, side setbacks and a reduction in open space. The lots require a minimum of 5,000 square feet in the RS-8 District. Of the 26 lots in the subdivision proposal, 20 of them will need a modification of the lot size. Although one lot requires a 1,600 square foot modification, the average request is for about 600 square feet. In addition the development will require a side setback from the six feet standard setback to five feet. This will accommodate the placement of the homes and driveways. Finally, the developer is seeking acceptance to provide 4,200 square feet in open space instead of the 13,000 square required in the UDO (500 s.f. per home). Without the open space modification two additional lots will be required to meet this number and so two fewer affordable units will be provided. All in all the reduction in lot size, side setbacks and open space modifications are not expected to diminish quality of life in the community. The houses are smaller by design and fit well on a smaller lot.

A number of site elevations are provided with this proposal. The homes are smaller cottage style plans that should blend in well with the character of the area. The developer has committed to use quality materials including hardi-plank and shingle, board and batten siding, standard wood shingles, heavy bracket and porch detailing and asphalt roof shingles. Some of the windows, trim and details may vary from that shown on the elevations. Some of the market rate homes may be modified from plan to allow such things as an extra rear addition to accommodate individual preferences. In addition some stand alone rear garages may be added for some of the market rate homes but will meet setback requirements. The units will range in size from one, two, and three bedroom units. If approved, the elevations will govern the style of the homes built in the development. Major deviations from the elevations provided in the presentation will require reconsideration by reviewing boards.

Staff has reviewed the request and feels that the plan provides a positive addition to the community. The units will be smaller and will fit in with the surrounding area and provide residential units at lower cost. Five of the units including the existing home (to be relocated and refurbished) will be offered at an affordable rate. The Comprehensive Plan encourages proposals to provide workforce and affordable housing in the community. This plan does that. The designs of the homes will be compatible with the wider community. The Technical Review Committee (TRC) reviewed the project and noted minor items to be revised on the plan. A sidewalk section along Johnston Boulevard will require additional grading. The developer has the

option to provide a fee in lieu of sidewalk if approved by the Engineering Department. The open space for the development will be provided on lot 24 on the plans. The three large existing trees located there will be preserved as a part of the open space amenity. These trees are the most substantial trees on the entire project. The developer has committed to providing variety within the development by limiting the number of any one plan that is built and also by not allowing the same design to sit side by side to another. By varying the materials the development should take on a 'craftsman character'.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposal has been reviewed by the TRC and will not endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The development of the site will alter it. The current site is open and rolling without a lot of existing vegetation. The development is compatible with the topography of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development is expected to building value in the community through home ownership.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The development with its single family cottage homes will be in harmony with the surrounding neighborhood. On the whole the proposed lots will be smaller than neighboring residential lots but the houses will be of similar scale.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This type of residential in-fill development with affordable units is supported by the comprehensive plan and other official plans adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   Utility infrastructure is in place to support the development. The property is not located on a bus line but there is a line a few blocks away. The property is located in the City limits and will be served by police and fire protection.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The development is not expected to generate undue traffic or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional zoning request was recommended for approval by a 6-0 vote by the Planning and Zoning Commission. Two people spoke at the Planning & Zoning Committee meeting, with their comments centering on technical issues related to the project.

Pros:

- In-fill development is recommended in City adopted plans.
- The project provides affordable units.
- The housing units are compatible with the surrounding area.
- The modifications requested for development are not expected to negatively impact quality of life.

Cons:

- Open space is limited for this development.
- Sidewalk infrastructure is needed in areas like this to provide connectivity throughout the community.

The Planning and Zoning Commission voted 6-0 to recommend approval of the conditional zoning proposal with project submittal materials and the TRC staff report included as conditions. Staff concurs with that recommendation.

Mr. Glines - Thank you Madam Mayor and members of City Council. We are reviewing a project of two parcels along Johnston Boulevard, totaling about 3 acres to be rezoned to Residential Single-Family High Density/Conditional Zoning. Another image is Exhibit B. There is a single home on the site that is mostly cleared and there is a few existing trees here which will stay for open space. The plan is for a cul-de-sac development with 25 house sites. A total of 26 lots. One of the lots will be used for open space. The project includes street trees and the usual subdivision products, including sidewalk and City infrastructure. The lots in an RS-8 District typically require a minimum of 5,000 square feet. Of the 26 lots in the subdivision, 20 of them are requesting modification of the lot size, averaging of about 600 square feet. In addition the development will seek a side setback from the six feet standard setback to five feet. Finally, the developer is seeking acceptance to provide 4,200 square feet in open space instead of the 13,000 square required in the UDO (500 sq. ft. per home). Without the open space modification two additional lots will be required to meet this number and so two fewer affordable units will be provided. All in all the reduction in lot size, side setbacks and open space modifications are not expected to diminish quality of life in the community. The houses are smaller by design and fit well on a smaller lot. I have some details about the house sizes and the scale. It is a cottage sized subdivision. None of the units are larger than 1,500 sq. ft. The average will be 1,200 sq. ft. The smallest units will be 700 sq. ft. There are about 800-900 sq. ft. units. One and two bedroom units. There are lots of amenities such as front porches and detailing that will encourage strong community. As I said, five of these units will be provided at an affordable rate. That will be the one and two-bedroom units. It provides a community need with affordable housing. Another note about the details and materials used. The developer has committed to use quality materials including hardi-plank and hardi-shingle, asphalt shingles for roof, board and batten siding, and other details to make those homes comfortable and attractive with the craftsman and character. Staff has reviewed the request and feels that the plan provides a positive addition to the community. The units will be smaller and will fit in with the surrounding area and provide residential units at lower cost. Five of the units at an affordable rate, including the existing home (to be relocated and refurbished). The Comprehensive Plan encourages proposals to provide workforce and affordable housing in the community in an infill design setting. The designs of the homes will be compatible with the wider community. The Planning & Zoning Committee did review this request and recommended approval with a vote of 6-0 and staff concurs with that recommendation. Thank you.

Mayor Bellamy - I will open the public hearing at 6:51 p.m. Are there any members of the community wishing to address Council on this particular item?

Mr. Tom Overholt, developer and builder - I just wanted to ask for your consideration because we are going to try to do affordable, which we all know is very, very difficult in this day and age with the cost of land. We are trying to keep it not upscale, but not cheap so that people can feel proud when they drive in their own community. At the same time, we can't offer quite as much land wise, and what-not, to be able to make the numbers work, so this is profit driven, but it's not profit driven to the point we know there is less money in this type of project. So we are having to scrimp and save with different items we are asking for, like reduced lot size and still be able to get a decent sized house by ... and setbacks. We ask for your consideration on this tonight.

Mayor Bellamy - Thank you. Any other members of the community wishing to speak on this matter? All right. I'll close the public hearing at 6:56 p.m. Council, any questions, comments and/or a motion? Councilman Freeborn.

Councilman Freeborn - Quick question for Mr. Glines. Where is the closest bus stop to this location? How far away is it? Do you know?

Mr. Glines - Let me check on that.

Mayor Bellamy - It's probably either Deaverview or Leicester Highway.

Councilman Freeborn - Is it more than 1/4 of a mile?

Mr. Glines - I think it's less than that. I think there is one on Bear Creek. I might need to verify that.

Mayor Bellamy - I don't think the bus runs down Bear Creek. Actually it doesn't go on Bear Creek. I think it's on one street over, but you may need to check on it. Oh we have someone with a bus map. Just give it to the City Clerk.

Mr. Glines - Sorry, I don't know that answer.

Councilman Freeborn - That's okay. I should have checked that before I came in today. I apologize.

Mayor Bellamy - The bus may go up Bear Creek and cut to Deaverview.

Mr. Glines - ... one of our maps in City Hall. I didn't note the line, but I did note that we had one not so far away. At least I felt that way about it.

Mayor Bellamy - It would be the one that goes to Camelot and Deaverview and further out to the DMV - that bus route. That will be my route on "Strive Not To Drive Day" and I don't have my car because it's at Jan Davis'.

Assistant City Manager Richardson - It looks like Deaverview or Patton Avenue would be the closest.

Councilman Freeborn - Okay. Thank you.

Mayor Bellamy - Any other questions? Councilman Mumpower.

Councilman Mumpower - There is no one here from the public to raise questions about this development. It looks like a nice thing. It's pretty intense though. It's not a dramatic zoning change, but still the level of density is much more dramatic than the surrounding environment. Any flags that have been brought to your attention by the folks who live in that area?

Mr. Glines - No. One neighbor just had called to ask about infrastructure for stormwater and stormwater controls in this area. And a second neighbor did call to comment that they wished they were going to build larger homes, for property value sake. I kind of explained that with the housing need in this community for affordable housing, that this was a great product and it should add value through home ownership.

Councilman Mumpower - Mayor, on that basis I move for the adoption of Ordinance No. 3457 to conditionally zone property located at 179 Johnston Boulevard, for the project identified as Eagle's Landing, from RM-6 Residential Multi-Family Low Density District to RS-8 Residential Single-Family High Density District/Conditional Zoning, along with the requested UDO modifications, subject to (1) the site plans and conceptual home elevations included as conditions; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mayor Bellamy - Is there a second?

Councilman Newman - Second.

Mayor Bellamy - Any further questions or comments? Councilwoman Cape.

Councilwoman Cape - I just have a few. Alan, could you outline just what the differences are. I want to talk about that here. If that RM-6 on 3 acres we could have 18 units, with multi-family dwellings typically, right?

Mr. Glines - Correct.

Councilwoman Cape - Okay, so that's a difference. We are going from 18 to 27 individual units.

Mr. Glines - 25.

Councilwoman Cape - 25 units. We are going from lot sizes, in the RS-8 from, the lot size is typically 5,000 and we are going down to 600 sq. ft.

Mr. Glines - On average they are seeking a request to about 4,400 sq. ft.

Councilwoman Cape - So they are asking us to take away 90%. I guess, I'm seeing some complications in that, I mean, I love a good plan for putting houses in a nice place. And we're also going from 13,000 sq. ft. of open space down to 4,000. So we are putting a lot of people in a very small place and we're reducing the amount of open space we are giving them for compacting them together to virtually 1/3 of what we have decided is decent, open space for people to live around. Those are the areas where I'm having concerns about. Where is the closest park? One thousand, five hundred foot square houses are not necessarily a couple. We are looking at families. Where are the kids playing? On the street? That's a lot of houses for a street. Where are the parks? Where is this trade-off that makes this work?

Mr. Glines - I just wanted to point out that most of the lots are within 4,000 sq. ft. of the proper size. They are about 4,000 sq. ft. lots. Most of them.

Councilwoman Cape - You said they were 600. Oh, you're dropping 600. Okay, I thought that was pretty ridiculous. I didn't see how that was working.

Mr. Glines - There is one lot that is 1,600 sq. ft. of modifications, meaning that it's about 3,400 sq. ft.

Councilwoman Cape - So the modifications are what you were taking off. Thank you.

Mr. Glines - In the RM-6 District too, the other thing that is a challenge is there is a lot frontage requirement that is greater than 50 feet. It's 70 feet. And I'm going to look at staff to make sure that is the correct amount. I believe that is right. So, on a street like this with a fairly shallow width, it's not so wide, you would really be cutting out - you would have to have 70 feet on the street and you would have a lot fewer lots than 18. So we are still cutting back because RM-6 has a different standard.

Councilwoman Cape - I like it but I am a little concerned that there is too much with very little space. If we could take one or two out and put a children's play area. Someplace where the kids could go. The houses are 10-feet apart?

Mr. Glines - This is probably on par with some of the best west Asheville neighborhoods with the scale of lots.

Councilwoman Cape - I didn't hear that part. I'm sorry, what?

Mr. Glines - There's some great neighborhoods in west Asheville that we could probably study and see what the density is and how tight the lots are. Some of them go deep. The only modification from a visual standpoint won't be side to side, but the depth of the lot. Most of the lot depths are shallower which is why they are smaller than 5,000 sq. ft. They don't go 100 feet back.

Councilwoman Cape - So it's the side to side. But once again.

Mr. Glines - It's the dept of lot. The side to side works pretty much as a standard RS-8.

Councilwoman Cape - Where is the closest place for kids to pay? People to play? I mean where are the kids playing? In the street?

Mr. Glines - I guess the closest place for kids to pay is the old elementary school, which is up the street. It's just a little ways up.

Councilman Freeborn - And are there sidewalks?

Mayor Bellamy - There are no sidewalks.

Mr. Glines - They will do a sidewalk for their front. I know that's a challenge on Johnston Boulevard is sidewalks in general in that part of the community. That part of the community was sort of one of those recently annexed areas. I don't know exactly the year, but I imagine we are still catching up with community infrastructure.

Councilwoman Cape - This is the first generation of kids that will not outlive their parents because of diabetes and lack of outside exercise and ability to walk to school. I'm very supportive of doing infill. It creates a healthy neighborhood. I would really like to see one place, besides the street, for the kids to play in. Something. Is there anything the developer perceives that he would be able to offer us? I do have a question of what affordable means. Affordable is a tricky question. What are the five affordable? You're basically saying if you take away a few lots,

we lose the affordability. Can you tell me what the difference between the affordable and the non-affordable homes are?

Mayor Bellamy - If we could have the developer up. And the first question that was presented, could we take away one to two houses for open space for children.

Mr. Overholt - Let me address the open space first. If this was a 20-lot subdivision, no open space would be required. And if you consider that the average subdivision has 3-bedroom homes and usually the bedroom dictates the size of the family - that would be 60 bedrooms. This average is 2 bedrooms. So we have 25 homes with two bedrooms average and that impact would be 50 bedrooms. We are actually having a less impact than your ordinance that is already in place.

Councilwoman Cape - So, we have ten less kids and the size of the yard differences.

Mr. Overholt - The size of the lot is about a 5,000 sq. ft. lot. I don't know what all you can do approximately. It might be 4,500.

Councilwoman Cape - Is there not a place to put a playground down at the corner or down at the end?

Mr. Overholt - A playground could be put on the open space lot?

Councilwoman Cape - Where is the open space lot?

Mr. Glines - The open space lot will be right here. It's where the existing trees are located that we are going to save.

Councilwoman Cape - So there is an open space lot? Would you consider building a playground for these kids?

Mr. Overholt - Well, I would have liability issues. The City has not agreed to take it if I build it.

Councilwoman Cape - Is there going to be a homeowners association in this subdivision?

Mr. Overholt - Probably. Because there is some common space.

Councilwoman Cape - So could the homeowners association. I just want a place to get the kids out of the street. You know, it's a little thing, but.

Mr. Overholt - It's a 5,000 sq. ft. It's a regular lot. It's probably the best one because it has the best trees.

Councilwoman Cape - About twice the size of this room?

Mr. Overholt - It's much bigger. I'd say it's bigger than that.

Councilwoman Cape - That would be a nice place. I didn't see that lot and I apologize for not seeing that sooner. That's good.

Mr. Overholt - As far as a playground and even maintenance of the lot, it looks as though it will fall back possibly on the homeowners. That hasn't been decided at this point.

Councilwoman Cape - That's okay. I guess they can decide as a community if they want to build something or just let the kids play outside. There are sidewalks getting to that?

Mr. Overholt - There are sidewalks. The sidewalk is across the street and comes around half-way. I believe the sidewalk was put over there. It could be put on that side of the street probably without any problem. It's just that the topographical is more difficult. There is a tree we are really trying to save that is close to the street. We actually moved the street trying to save it and it would be much more difficult to put the sidewalk on that side.

Councilwoman Cape - What about a crosswalk speed-bump kind of raised thing? Before we get there. If not, people are going to ask us to put it in.

Mr. Overholt - It's a very short street.

Mr. Glines - Do you mean off-site like on Johnston Boulevard?

Councilwoman Cape - Oh no, I'm talking about right across from that lot to your connecting sidewalk on the other side so that everybody who is walking on your sidewalk can cross the street. One thing we looked at on Burton Street is a raised sidewalk crosswalk. It kind of serves the purpose of slowing people down and seeing who is walking on the crosswalk much easier. What did they say, $6,000 for something like that. So the idea is that you are building a sidewalk on one side for topographical. Is there someway we can make it a safe crossing for kids to get across the street? I don't want to micro-manage your project, but these are the kinds of things that makes folks - here's our opportunity to say, can we make it a nice place to live. We are putting a lot of houses in here.

Mr. Overholt - I'm not sure what it would take to make it safe. I believe the cars will be going very slowly. It's like one block long. I have a feeling that the kids are going to be in the street whether we ask them to or not. I don't anticipate this being a large children community because of the type of response I'm getting. It's a lot of single people that have been contacting me and wanting to be put on a list and what-not. It's people that have been trying to buy houses and can't buy houses.

Councilwoman Cape - Single people often get married and want to stay where they are. That's what makes a nice place. It's where people can stay. What is the affordability aspect?

Mr. Overholt - The affordability is your standards that we have to meet. I think recently it has been changed. They originally were $100,000 for a one-bedroom; $120,000 for two; and $135,000 for three. In order for us to build that, obviously, it's probably going to be our cost is greater than that. But I'm agreeing to do at least five for the concessions. The rest of the houses may not be in that price range, but they will still be affordable by today's standards.

Councilwoman Cape - $150,000? And then the other ones, what are they selling for? Just curious.

Mr. Overholt - Well, we are still, because we don't have approval yet we don't have the plans completed, but we are expecting somewhere between $150,000-$250,000.

Councilwoman Cape - One last question. Alan, is there no landscaping required around the peripheral of this project? You are changing the density pretty dramatically?

Mr. Glines - There is not a standard for single-family subdivisions ... street trees.

Councilwoman Cape - This is almost a change of use which we are looking at with the landscape standards. It's an increased impact even though it's a funny thing on our chart it goes from RS to RM as an increased impact but this is a lot more houses. Is there no sense that is going to be a problem?

Mr. Glines - We don't have a standard for that. I don't think it's really going to be a problem. I think in the past we have allowed single-family subdivisions to meet the minimum, which is the street at this point and there is not another buffer required from single family and other single family uses.

Mr. Overholt - Could I address that too? The house sizes are very similar to the neighborhood. The lot sizes are not as similar. The house on the property that we are going to move was only 850 sq. ft., which is plus or minus very close to a neighborhood. That is adjacent to it.

Councilwoman Cape - I see some places where you see two lots per one lot. It's going to feel thicker.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - I'm okay.

Mayor Bellamy - Maggie, who made and seconded the motion?

City Attorney Oast - I have Councilman Mumpower as making the motion and seconded by Councilman Newman.

Mr. Overholt - May I make one comment on the motion before it's complete?

Mayor Bellamy - yes.

Mr. Overholt - When you mentioned about the elevations, we had talked about there will be minor changes to the elevations to these houses. I don't know how strictly you're interpreting that.

Mayor Bellamy - That is a great question.

Mr. Overholt - We want to be adding some brackets to some of the houses. Some of the houses won't have brackets. Some of the houses are shown with metal roofs which we won't be doing. They will be a single roof and that type of thing. So, some of the houses have smaller porches. We may want to have a little larger porch. There are just some changes. We will keep the overall concept of the house, but there will be some minor changes because there are different architects in houses.

Councilman Mumpower - Mr. Glines, would you recommend any language on which to modify the motion to support this gentleman in this effort?

Mr. Glines - I tried to include a comment about the materials to be used and some modifications that would be allowed. What I would say is that if we had houses that were unrecognizable to the general eye, so to speak, of looking at them and they are nothing like we are looking at on these plans, then we will be bringing something back to you. We will be watching that carefully.

Councilman Mumpower - So our current language provides the flexibility he suggested he needs?

Mr. Glines - I believe so.

Mr. Overholt - The other comment I have, we've been building for many, many years and we have done projects where we thought something was a seller and early on we found out that people weren't interested in that design. And we do want to be able to add a designer, if we have

to, to be able to meet what the people needs are. I need to know what my requirements with that if we decide to do that.

Mr. Glines - I would say something like this picture of the house with rock in front. It's not one of our materials. We're not going to see this in rock because of the cost, but it will be made out of other materials that we have listed in the staff report.

City Attorney Oast - And if you wanted to, you could add language such as the houses will be characterized by pitch roofs, with shingles, porches.

Councilman Mumpower - With the eyeballs that will be on this and on this gentleman's presentation, I'm comfortable unless Mr. Glines' offers caution with the existing language. But thank you Mr. Oast. Mr. Overholt, you've done exactly what we ask people to do. You have provided some nifty ... housing and made good use of the land and did it without assaulting folks in the neighborhood and we appreciate what you're doing.

Mayor Bellamy - I also want to say that your clarifying questions were great. I'm glad you asked those because it clears it up for staff, for Council and for the community so we know the expectations going in. And I think that's important to make sure that everyone is on the same page as we move forward.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 23 - PAGE 305

C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY LOCATED AT 18 AND 20 MEADOW ROAD FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT

ORDINANCE NO. 3460 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 18 AND 20 MEADOW ROAD FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a portion of property located at 18 and 20 Meadow Road from CI Commercial Industrial District to Urban Place District. This public hearing was advertised on March 30 and April 6, 2007.

From Staff Report: The property under review with this application is split zoned between Commercial Industrial District (CI) and Residential Single Family High Density (RS-8). The CI portion of the property is located at the bottom of the slope adjacent to Meadow Road. The property had a metal building on the property and this was recently removed. A smaller residential style building was also located on the site but has now been removed.

The property is located along the route of the Wilma Dykeman Riverway Master Plan that was adopted by City Council in 2004. The Plan is a vision document that encourages redevelopment of the river area and valley floor to be a mixed-use district in Asheville. Part of the proposal is to improve the roadway system along the French Broad and Swannanoa Rivers with improvements to be called the Wilma Dykeman Riverway. Mixed-use and recreational opportunities are proposed in the document. Staff have identified that the Urban Place District is appropriate for many areas of this district. Even though the property is not located in the River District Design Review area, the River Design Committee has commented that the areas along Biltmore Avenue and surrounding areas should be part of a mixed-use node. The area could have special pedestrian significance because it is near to Biltmore Village.

The rear section of the property is zoned RS-8. This section of the properties would be difficult to access from Meadow Road and relates most closely with the St. Dunstan's neighborhood. Any access for this portion of the property would come from an un-opened right of way from Roebling Circle.

The Urban Place District emphasizes a mix of uses within the district and in the same building. A strong emphasis is placed on how the buildings relate to the street and create a streetscape that is pedestrian friendly. Buildings are also required to be two stories to support the mixed-use goals for the district and to add value to the area. As with other mixed-use districts in the UDO there are also some design and operational standards which ensure that that the building is pedestrian friendly and interacts with the street. Parking is allowed but not between the street and the front of the building. A higher density is allowed in Urban Place to encourage an urban vitality and provide an array of housing options.

The Commercial Industrial District is established to allow a wide range of commercial and industrial uses and was applied in areas considered as transitional districts and areas where redevelopment has potential. While a mix of uses would be allowed in the CI District, this is not a specific goal of the district.

The rezoning request was recommended for approval by a vote of 6-0 by the Planning and Zoning Commission. No one spoke at the public hearing.

Based on the above analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The rezoning proposal meets goals of the comprehensive plan to encourage redevelopment of infill parcels.
- Urban Place District supports the goals of the City Council adopted Wilma Dykeman Riverway Plan.
- The City Council Goal and Vision Plan encourages the economic development and growth of the river area.
- The portion of the property zoned RS-8 provides a natural buffer from the St. Dunstan's neighborhood.

Cons:

- No items of concern are noted

The Planning and Zoning Commission at their meeting of March 7, 2007, voted 6-0 to recommend approval of the request. Staff concurs with that recommendation.

Mr. Glines - We have a request to rezone a portion of a lot located at Meadow Road from Commercial Industrial to Urban Place. The rear section of the property is zoned RS-8 and will remain so with this proposal. (Using a map) This is Meadow Road here, this is the property in question and in the rear section you can see the blue line that cuts the zoning line, that is in the rear. This is sort of up in the St. Dunstan's neighborhood that you classified as a local historic district. This is Biltmore Avenue and this is sort of Biltmore Village just off the plans to the south.

The property is located along the route of the Wilma Dykeman Riverway Master Plan that was adopted by City Council in 2004. The Plan is a vision document that encourages redevelopment of the river area and valley floor to be a mixed-use district in Asheville. Part of the proposal is to improve the roadway system along the French Broad and Swannanoa Rivers with improvements to be called the Wilma Dykeman Riverway. Mixed-use and recreational opportunities are proposed in the document. Staff have identified that the Urban Place District is appropriate for many areas of this district, including this site. Even though the property is not located in the River District Design Review area, the River Design Committee and some of our

reviews that we had has commented that this area and areas along Biltmore Avenue would be likely areas for a mixed-use node. This site could be a part of that. The rear section of this property will not be changed. It is at a different grade and is part of this parcel, but will not be affected by this rezoning request. The Urban Place District emphasizes a mix of uses within the district and in the same building. A strong emphasis is placed on how the buildings relate to the street and create a streetscape that is pedestrian friendly. The Commercial Industrial District is mixed use commercial district. It can accommodate a mix of uses, although is not really a goal of that district. The Planning & Zoning Commission did review this request and recommended approval by a vote of 6-0 and staff concurs with that request.

Mayor Bellamy - Thank you. Does any member of the community wishing to address Council on this matter tonight? Yes, sir.

Mr. Nathan Bryant - I'm with Carlton Architecture here in Asheville. We're representing the applicant on this property. I just wanted to follow Alan's report by saying that we are excited about this proposal to rezone this to Urban Place. We feel that this is a more compatible use to the neighboring St. Dunstan's neighborhood. We wanted to be ahead of the curve implementing the Dykeman Plan. This is what you want and this is what we want to do as well. We will utilize smart growth techniques such as pedestrian scale streetscapes, ground level retail and mixed use constructions. I urge you to vote in favor of this rezoning. Thanks. If you have any questions, feel free.

Mayor Bellamy - Thank you so much. Any other members of the community wishing to address Council on this matter this evening? I will close the public hearing at 7:15 p.m. Council, any questions, comments or a motion? Councilman Freeborn.

Councilman Freeborn moved for the adoption of Ordinance No. 3460 to rezone a portion of property located at 18 and 20 Meadow Road from CI Commercial Industrial District to Urban Place District and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Mumpower and carried unanimously.

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Mayor Bellamy - Can I have a motion to go into closed session? We are going to do that while we take our break.

At 7:19 p.m., Councilman Mumpower moved to go into closed session for the following purposes: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Victoria Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; County of Buncombe; and Gabriel Ferrari. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:48 p.m., Mayor Bellamy stated that the closed session would continue after the completion of the agenda for the regular meeting.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE LANDSCAPE STANDARDS

Assistant Director of Planning & Zoning Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) relating to revisions to the landscape standards. This public hearing was advertised on March 30 and April 6, 2007.

From Staff Report: Staff has identified challenges to reviewing required landscape plans; specifically, staff has noted that in reviewing plans it is extremely rare that the existing landscape standards are interpreted and applied correctly. This results in multiple revisions and re-reviews and requires additional time to be spent on the project for both the applicant and City staff. Additionally, City Council has requested that staff examine the 'Alternative Compliance' component of the landscape standards and propose a more objective set of standards to apply when a project requires additional flexibility. Lastly, the existing standards are virtually unchanged from those adopted almost ten (10) years ago and are somewhat out-dated; the new draft will better reflect current practices and current city goals and objectives. This draft is intended to replace, in its entirety, the existing Landscape and Buffering standards (Sec. 7-11-2).

To examine the existing standards, staff felt it best to assemble a group of individuals who could review the existing standards and help identify opportunities to clarify, update, and/or enhance the existing standards. This "Landscape Committee" met every other week for almost four months and would often reference common practices in communities across the country; committee members included:

Planning & Development - Shannon Tuch, Scott Shuford, Alan Glines

Public Works - Mark Foster (City Arborist), Richard Grant (Assistant Director)

Tree Commission Representatives – Peter Loewer (Botanist), Peter Gentling (Retired Physician), Bob Gale (Landscape Designer & Environmental Planner), Starr Silvis (Water Quality Engineer), Bill Jones (Nurseryman)

Design Professionals – Suzanne Godsey, RLA (Site Work Studios), Stephanie Pankiewicz, RLA (Land Design), Jason Gilliland, RLA (Land Design)

Additionally, staff has presented this draft along with a summary of the changes at the last CIBO meeting in January and has also circulated the same draft to a number of other design professionals in the area as well as to representatives of CAN and CREIA. As a result, a number of additional comments have been received and addressed in this latest draft.

This ordinance is intended to replace the existing *Landscaping and Buffering* Section (Sec. 7-11-2) in its entirety, with this new revised and updated version.

The following is a summary that describes the changes proposed by the planning staff, influenced by the Landscape Committee. Some of the more significant changes have been noted with an asterisk (*).

**Re-organization/Re-formatting* – The Committee and staff all agreed that it was in the City's best interest to produce a revised *Ordinance* that was easier to understand and apply. Paring down and re-organizing the content of the section was proposed by staff with input from the Committee. The Committee was particularly helpful in identifying opportunity for illustrations and construction details. The illustrations in this draft are very rough and will be replaced by more refined computer generated drawings as part of an effort to uniformly replace all drawings in the *Ordinance* at a later date.

Purpose Statement – The Committee felt quite strongly that the existing purpose statement was too generic for Asheville's unique plant diversity and geology. This revised statement is the work of several Committee members and has not been altered by staff.

* *Buffering Between Zoning Designations (not uses)* – This was one of the most significant changes and was proposed by staff for the Committee's consideration. The rationale behind the change was to support a stronger relationship between parcels to minimize the number of non-conformities and to encourage the re-development of non-conforming uses to better support the development goals of the community at large. The Committee was concerned over the possible reduction in the total amount of plant material required for a project but agreed to support the change with the enhancement of other standards.

* *Elimination of the 5' Planting Strip Requirement* – Staff proposed the elimination of this requirement due to the frequency of misinterpretation and misapplication that was responsible for a large number of revisions that consumed staff time as well as that of the designers and developers. Again, as with the changes to buffers, the loss of plant material by the elimination of this standard is proposed to be counter-balanced by enhancing other standards.

* *Enhanced Requirements for Parking Lots* – the total number of trees and shrubs has been increased by 25% (trees) and 100% (shrubs). Additionally, new requirements were added to improve the growing conditions of the plant material while maintaining flexibility in site design.

Establish Compliance and Maintenance Standards – Staff worked with the Committee to develop some basic pruning standards not formerly addressed in the *Ordinance*. Additionally, compliance with these standards has been strengthened with the simultaneous development of a separate set of "destruction" fines that would apply to excessive pruning, topping, or unpermitted removal of required landscaping. This amendment to Enforcement (Article XVIII) will be handled separately and prepared by the City's legal department. In the interim, the fine table shown will be utilized.

Changes in Plant Specifications – these changes were recommended by the Committee to better reflect the standards used in the plant nursery industry.

Changes in the Species Composition of the Buffers – again, these changes were proposed by the Committee to better reflect naturally occurring plant communities. These changes resulted in less evergreen material but more mid-sized material in order to continue to offer effective buffering; total plant numbers were slightly increased.

* *Providing Objective Standards for Alternative Compliance* – Recent scrutiny over the City's application of "Alternative Compliance" has guided staff to develop objective standards for consideration. Given the varying standards and circumstances in which they are applied, plans reviewers were polled for the most commonly applied alternatives to develop a list specific to each standard. Additionally, opportunity for consideration for other alternatives is provided through a review by the Asheville Tree Commission who will act as an advisory board and provide a recommendation to the Planning Director. For those who disagree with the recommendation may then appeal that recommendation to the Asheville Board of Adjustment.

* *Required Tree Preservation/Building Landscaping* – The Landscape Committee and staff were interested in exploring the possibility of requiring tree and shrub preservation as a new requirement to help off-set some of the proposed reductions; however, developing a simple and fair standard proved to be extremely challenging given the varying nature of possible development proposals. As an alternative, staff has proposed a new standard of requiring 1 tree and 4 shrubs for every 1000 square feet of building footprint. This is intended to help balance the loss of plant material through the elimination of some buffers and 5' planting strips.

This ordinance is intended to replace the existing *Landscaping and Buffering* Section (Sec. 7-11-2) in its entirety, with this new revised and updated version.

Pros:

- Provides a format that is easier to read and comprehend – reducing review times.

- Eliminates problematic standards that offered little value while enhancing other standards that will result in increased health of the urban landscape.
- Provides objective standards for alternative compliance and creates an appeal process that was previously unavailable.
- Establishes a separate set of fines for the improper maintenance or unapproved removal of required landscape material (public education will be provided prior to the initiation of these fines).
- Better reflects City adopted goals/objectives and current practices.
- Encourages 1) the redevelopment of non-conforming uses in commercially zoned areas; 2) preservation of existing plant material; 3) smaller building footprints.

Cons:

- Some projects may result in more landscape material than currently required.
- Some projects may result in less landscape material than currently required.
- Will require a period of learning and adjustment by staff, developers, and designers.

Planning and Development staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville establishing landscape and buffering requirements.

From Memo dated April 10, 2007, from Ms. Tuch - Recommended Changes to the Landscape Standards Amendment (Sec. 7-11-2): Planning staff has been engaged in an ongoing, collaborative effort with representatives of CAN, and other members of the community, to address a number of comments and concerns regarding the proposed amendment to the landscape standards. The large majority of these comments have been easily accommodated or addressed in various revisions and the interest and input has been greatly appreciated believing that this effort has resulted in a better, more comprehensive product.

Most recently, several new comments have been raised that staff feels can be easily accommodated and incorporated into the recommended draft. Staff was already working on several of these items when new comments were received from Mr. James Judd. In most cases, staff feels that all items raised by Mr. Judd can be easily addressed through minor revisions to the current draft. The following is a summary of those revisions presented in the order of Mr. Judd's most recent comments:

1) 7-11-2(e) *Alternative Compliance.*
As Mr. Judd indicated, we have "agreed to disagree" as to whether alternative compliance requests need to be quasi-judicial. However, staff has continued to work to address some of Mr. Judd's concerns and would like to revise the subsection 7-11-2(e)(5) *Other alternative compliance* requests to read:

All other alternative compliance requests not identified in this subsection may be reviewed by the Asheville Tree Commission who will act as an advisory board to the Planning Director. The applicant for such a request shall notify by mail all adjacent property owners at least 10 days in advance of the meeting of the Tree Commission where the request is to be considered. The notice shall state the time and place of the meeting, and shall include a general description of the request. The Commission, upon consideration of such a request may recommend approval, approval with conditions, or denial of the request. After receiving the recommendations of the Tree Commission, the Planning Director shall make the final decision on such requests, and shall provide a copy of that decision to any adjacent property owners who have requested one. Under no circumstances may the Tree Commission recommend or the Planning Director approve an alternative that reduces the standard requirements by more than 50%. Applicants or other aggrieved parties may appeal a recommendation to the Asheville Board of Adjustment as outlined in Article VI of this chapter.

a. *Alternative compliance standards.* No request for alternative compliance under this section may be approved unless the information provided in support of the request shows the following:

i. The site in question is affected by physical conditions or constraints, not attributable to proposed site design or building design, that make compliance with the standard requirements practically impossible.

ii. The physical conditions or constraints are not a result of the applicant's own actions.

iii. The proposed alternative will not present a safety hazard.

iv. The proposed alternative will, upon maturity, provide landscaping that is equal to or better than the standard requirements.

v. The proposed alternative is designed to address plant health and vigor.

vi. The proposed alternative is reasonably compatible with the natural and topographic features of the site.

2) 7-11-2(d)(1)g *Corner Lots and Through Lots.*
Again, as Mr. Judd has mentioned, staff had been working on a refinement to this standard and would like to propose that we remove a portion of last sentence and add definition of "pedestrian oriented"

Pedestrian oriented design. Means a building design and orientation that is conducive to pedestrian access and comfort. These designs shall at a minimum include the following features: buildings shall be oriented towards the appropriate access corridors; access corridors must be identified on the pedestrian thoroughfare plan, evenly distributed windows shall be provided at the pedestrian level; no uninterrupted expanse of wall greater than 20'; a well defined, operable public entrance on side of building with direct access to a public sidewalk or courtyard within 15'.

3) Non-Screened Fences with 50% buffer yard reduction.
The current version of the ordinance [7-11-2(d)17d] contains the ability to reduce the buffer yard by 50% with installation of a fence or wall under the condition that trees/shrubs are spaced closely in front of the wall to screen at least 50% of the fence. The proposed ordinance covers this in the alternative compliance section [7-11-2(d)1e] but has NO requirement for screening of the fence with trees/shrubs. It is my impression that staff has knowingly removed this It is very tough to understand why we are reducing the buffer yard by 50% in exchange for getting a blank wall or fence possibly RIGHT on the property line with all of the shrubs / trees hidden behind it. Why should this be allowed or why is it even necessary to not abide by the current standards? A requirement for plantings along a fence is, in fact, included in the new draft where it reads, "buffer widths and plantings may be reduced by 50% with the installation of a 6' high, opaque privacy fence. . ." This results in more vegetation than what is currently required. Not requiring plantings to be placed on the outside of the fence was an intentional change suggested by the committee due to typically encountered site constraints. This can be amended to require the plantings to be placed on the exterior of the fence, should the Council desire this.

4) Fence Screening for Dumpsters etc. Should specify that the trees and shrubs for screening the fence needs to be "on the side which faces the abutting property owner" [7-11-2(c)6]
Staff addressed this in the new draft requiring that the "landscape . . . screen at least 50% of the fence or wall" but this can very easily be further clarified to state that the requirement is to screen

the "exterior" of the fence or wall. Staff is happy to make this adjustment.

5) Alternative Buffering from Street Should consider adding similar fence screening wording as proposed above. Should consider if a 3 foot high berm covered with grass is the intended standard for "completely covered with vegetation". [7-11-2(d)2]
Requiring the vegetation on the exterior of the fence or wall is very easily accommodated, staff can easily make this adjustment.

Regarding the second comment, berms are often covered with other plant material besides "grass" and can include ornamental shrubs, hedges, trees, groundcovers, or any combination of theses materials. Staff would prefer for the standard to remain as proposed to encourage more ornamental alternatives than a simple "grassed" berm.

6) Applicability [7-11-2(b)] This section discusses what developments must be brought into full compliance with Article 11. I am concerned about the following:

- Cohesiveness with the new Article 7-17 on nonconforming items. To be cohesive with Article 7-17 need to at least define Appraised in the context of 50% renovation and need to put a time span on accumulation of costs.
- Because it requires compliance to all of Article 11 and not just Landscaping (7-11-2), this section was slated to be moved (and made it at least to Planning & Zoning) to the beginning or Article 11 (7-11) instead of being at the beginning of 7-11-2

Staff revised this portion of the draft to conform with a recent amendment to Article 11 (approved 11/28/06) that sets forth applicability standards for the entirety of Article 11, including the landscaping section. This information is duplicated in 7-11-2 because there is an existing requirement (new additions/expansions less than 50% of pre-existing structure) that is applied only to landscaping and not to the other sections of Article 11 – staff felt it best to duplicate the information rather than cross-reference. The 11/28/06 amendment also included several definitions, including one for appraised value. Mr. Judd's other comments regarding the accumulation of renovation costs is addressed in Mr. Shuford's amendment to Article 17 but can also be addressed through a minor amendment to Article 11 – this is a good suggestion but should be covered in both 7-11-1 and 7-11-2. Staff is happy to make this adjustment.

Amend 7-11-2(b)(1)(c) and 7-11-1(c) to read:
(c) Renovations with a total cost exceeding fifty (50) percent of the appraised value of the building. The value of any expansions, enlargements, or reconstruction of such structures over a three year period shall be cumulated in calculating the fifty percent threshold.

7) Other Alternative Compliance Standards Should add a standard that the problem wasn't created by the developer. Should add the current standard that the alternative compliance should be "as good as or better than normal compliance".
Suggested change is incorporated into the revised Alternative Compliance section above.

8) Driveway Openings recommend adding stronger wording to make it clear that openings through the buffer yard for driveways should be minimized as to distance through the buffer yard. Had proposed specifying maximum angle of driveway crossing. Staff added drive aisles (parking lot) and driveways as prohibited. My concern is that Council's intent is very clear. Historically, Mr. Shuford has used the lack of clarity to approve driveways and parking aisles in the buffer yard which circled 3 sides of a development while calling this a driveway opening even though driveways and parking lots (per zoning district which includes spaces and aisles) were prohibited in the buffer yard.
Mr. Judd's alternative had recommended a detailed description of the angle of the driveway opening and BOA options for those driveways that did not meet this description. Staff felt this was an excessive amount of detail and preferred the flexibility of a general driveway opening that

could cross a buffer. We did attempt to address (at least) some of Mr. Judd's concerns through a prohibition of drive aisles and driveways in buffers. The detailed standard that Mr. Judd recommended can be incorporated, should Council desire this.

Mayor Bellamy - Thank you and good evening. Mayor Bellamy, Council members and members of the public. I would like to make this introduction be pretty brief so that we can reserve some time for some questions as we go. But as the Mayor has already indicated, this item before you is the consideration of an amendment to Article 11, and specifically it is subsection 7-11-2, which is devoted entirely to the City's required landscaping. I am pleased to be here before you tonight because presenting this draft represents a lot of hard work by a lot of different individuals in our community. The work began last summer with the assembling of a committee of a diverse group of professions, all volunteers, who met with staff regularly to research and examine the different landscape standards. In addition to the work that these volunteers did, there were a number of people in the community who also helped on their own reviewing various drafts and providing some input. We have also taken the opportunity to present these drafts to different organizations including CIBO and some other groups and again, to any other part who was interested. We worked pretty diligently to incorporate a variety of concerns and comments from these different parties into the draft you have before you tonight. To summarize, our landscape standards have remained virtually unchanged since the UDO was adopted. Evolving practices, technologies and goals have warranted the consideration of an amendment. Now the amendment that you have, basically to summarize, seeks to improve the clarify and applicability of the standards, this includes changes to our alternative compliance process which has been the subject of some attention over the last year or so. We also propose to remove complicated standards that we feel have offered little benefit and possibly even conflict with some other goals. We propose to enhance other standards that we think will be more effective and easier to apply. And to create some new standards that will improve the aesthetics and health of our urban landscape and which will also provide incentives to retain existing vegetation on site. Staff feels as though this amendment will allow for some more optimal and efficient use of land while allowing for more flexibility in site design. As such, we are recommending that you approve this draft tonight with some recommended changes that were included in the memo that was addressed to you earlier today. I'll only add that the work regarding our landscape standards doesn't end with the adoption of this amendment. Once this is approved, staff will complete the work that has been devoted to developing some construction details that will ultimately be included in our Standards & Specifications Manual. Currently we have no such details and so work has already been initiated and we will complete that. Also I believe it was noted in your staff report that the illustrations that are in your staff report are pretty crude, rough illustration. We are working on all revising all of those illustrations to be in a more consistent form throughout the ordinance. That will include all illustrations in the ordinance, not just in subsection 7-11-2. (Used illustration example) But just to give you an example, one of the illustrations you had basically represented this scenario and this is a more refined version. This is what we expect to produce for you as we move through that process. (Using 3-D illustration example) Additionally, the illustrations are what would be included in the document, but we are also looking at creating a 3-D short of virtual development scenario - where you have commercial against residential. This will be a 3-D version that will be accessible through the City's website. It would allow anybody who was wondering what exactly we are talking about with these landscape islands, what does a buffer look like, how does it get applied. And allow you to zoom in on specific views representing those different standards. This is just a snapshot of one of those views. Another thing that staff will initiate once we are beyond the amendment process is we would like to work with the Landscape Committee, the Tree Commission and the City Arborist to develop some seminars to educate landscape contractors and other interested parties in regards to the new pruning and maintenance standards. And we would like to do this before enforcement of those fines that are imposed in the table are actually initiated. Lastly, the Asheville Tree Commission has been working with staff in updating the City's recommended species lists. That is a process that has been underway. I think they've almost got consensus on what needs to be included in the list and what doesn't. So we expect that to be revised very

shortly. That concludes my summary and you may now proceed with opening the public hearing for public comment.

Mayor Bellamy - All right. Thank you. I'll open the public hearing at 7:48 p.m. Do any members of the community wish to address Council on this matter?

Mr. Joe Minicozzi - I'm President of the Coalition of Asheville Neighborhoods.

Mayor Bellamy - Mr. Minicozzi, are you requesting 3 minutes or 10?

Mr. Minicozzi - I'll try to do it in 3. We have actually been in conversation with Shannon today. We want to see this go forward and we want to see the changes that were recommended to you. We just have some comment as far as the alternative compliance standards that were written in the document. I don't have what is before you tonight. I only have what went before the Planning Board. Basically it leaves a lot of room for interpretation in the alternative compliance standards. There is still some discretion that can be made. It's not fully clear with objective standards as far as where the leeway is. I'll draw your attention to, this is one here. It just says vertical separation is completely covered with vegetation. My question to you is "what kind"? Is it just grass? If the standard stated that you have to have trees and shrubs and all this other stuff, but you can exchange that with the berm or a mound that is just covered with grass, does that meet the standard. There are some things that we need to work out with Shannon. I don't know what the best way to do that, or the best way to communicate this and still get the policy moving forward and not slow things down. These are questions that we have on the alternative compliance. And finally with that. The process of trying to use, or utilize the Tree Commission and whether or not that meets the full standards of a quasi-judicial hearing. Here you are changing numeric requirements and is the due process being followed in that And that's a question we have. I don't know whether it was resolved this afternoon between Shannon and James, but I did want to have that as part of the record and part of the conversation. Thank you.

Mayor Bellamy - Thank you. And just so you know, Shannon did do another amendment to the information that was presented to Council that specifically addressed point by point the matters that James Judd and representatives of CAN put forward. For instance, the example that you just put up, staff's response was "Regarding the second comment, berms are often covered with other plant material besides "grass" and can include ornamental shrubs, hedges, trees, groundcovers, or any combination of theses materials. Staff would prefer for the standard to remain as proposed to encourage more ornamental alternatives than a simple "grassed" berm. And so I think that typically they are trying to get to some of the issues you have presented.

Mr. Minicozzi - It should say that. It should say exactly what you mentioned, so that there is no discretion or unpredictability. I, as a developer, may say it's got grass, so it's vegetation. And the intention of the policy may be to have shrubs, trees, ornamental flowers, whatever. But if that's the intention, it should be there in the document.

Mayor Bellamy - It should say specifically what the preference would be. Got it for clarity. That is good. That will be up to us to negotiate that into the motion that is made. Because staff did answer each of the questions specifically with something that is easily able to be clarified. Does that make sense Council?

Councilwoman Cape - If you don't mind Mayor, it did get a little confusing with me. Could we ask Shannon to clarify? I see their point completely with this one. If you just say vegetation, you could have ... and that wouldn't suffice much for landscaping buffering. So how, if we are trying to say we are putting landscaping buffering in to protect - these aren't just visual - it is landscaping for - what is the intent of the landscaping in this place?

Ms. Tuch - You have to consider the context in all these situations. In this particular case, the standard applies to the alternative buffering from the street, which is basically shrubs,

usually combined with street trees in between, say a parking area and pedestrian sidewalk. Typically. So, this is an area that already has trees and shrubs. So, what this allows is the creation of a berm, in lieu of the shrubs. And what we're saying is we want that covered in vegetation. It could be grass. It could be perennials. It could be a combination of shrubs and perennials. It could be a combination of trees. I believe our intent was to preclude the ability for somebody to do grass, when it's combined with trees, because that would be an effective buffer. So, it's an easy amendment to make to simply put in the description that the Mayor read earlier, at Council's discretion.

Mayor Bellamy - Okay. How about if we take additional public comment and maybe there are other issues we need to address and the Council can put in there. Any other members of the community wishing to address Council on the landscaping requirements? Councilman Davis.

Councilman Davis - May I address one more point that Joe brought up?

Mayor Bellamy - I promise you that if you let me see if there is anyone else, then we can go right into this. Any other members of the community wishing to speak? I will close the public hearing at 7:50 p.m. Councilman Davis, go right ahead.

Councilman Davis - I thought it was a great question about the quasi-judicial nature of the Tree Commission's findings. I don't think at any time during this process that the Tree Commission had ever thought that they would be the quasi-judicial body that would hear this. They would make a recommendation to the Zoning Administrator and the applicant could, of course, appeal his or her decision. But the Tree Commission would not be that hearing body.

Mayor Bellamy - Okay. That is a good piece of information, but I think that if it's not stated in our ordinance, it could be misconstrued. So, how about we put that little language as part of our ordinance that the Tree Commission isn't quasi-judicial, but their information or recommendations are just that.

Mr. Minicozzi - The comment was that if we have numeric requirements of the Code, like I have to wear a black blazer, one black blazer, and to adjust that number that becomes a quasi-judicial hearing. Now we are exposing the law in changing numbers. And in the alternative compliance, the whole section of the alternative compliance does that, so it becomes a quasi-judicial hearing and the Tree Board - I don't know if that has the capacity to become. In theory, once you start changing numbers, it goes into the Board of Adjustments. So at the very end, the last number is another form of alternative compliance without numeric requirements in it. So, is that a quasi-judicial process - yes or no? And, the Tree Commission doesn't have the authority to make those decisions.

Mayor Bellamy - Got it. Councilwoman Cape.

Councilwoman Cape - Can we ask Bob? Bob, what is the process? I mean he's saying that if we made adjustments, it becomes quasi-judicial. It seems like it should go towards the Board of Adjustment if that is the case.

City Attorney Oast - I think that as long as the ability of the staff to make determinations is confined within certain parameters, or the Tree Commission. I think that what we need to guard against is unbounded discretion. In the cases that we are looking at here, the discretion is very much bounded. First of all, the situation won't arise that much, that frequently. Secondly, staff has to make certain objective determinations in the course deciding whether alternative compliance is applied. And finally, the amount of alternative compliance that they can authorize is limited. The changes that we have made in response to Mr. Judd's comments would provide that the applicant who wants to get this alternative compliance has to notify the adjacent property owners of the Tree Commission's meeting. The Tree Commission in this case is merely advisory. The Commission makes recommendations to the Planning Director. The Director then

makes the decision and has to notify anyone who requests a copy of the decision. That decision can then be appealed to the Board of Adjustment. The case in North Carolina that covers this situation is County of Lancaster v. Mecklenburg and that is pretty much the process that was outlined in that case.

Mayor Bellamy - Sidebar. Maggie if you could make sure that when you do the minutes, you transcribe that verbatim. This conversation verbatim.

City Attorney Oast - I guess is what I want to say is I understand Mr. Judd's due process concerns. I think that we have addressed those in the manner that the law permits us to. And addressed a lot of his concerns about the adjacent property owners having notice and the ability to participate and know when a decision is made so they can appeal it.

Mayor Bellamy - Councilwoman Cape, did you have a list of questions?

Councilwoman Cape - That was where the issue comes up. If people do have opposition to it and at what point in the process can they say they have opposition to it. You're saying that we can designate description that staff has bounds to make decisions upon and that these have been designated. Now I would like, since this has been brought up to us, do you have and accept what is being said here?

Mr. Minicozzi - The hard part for me is that I don't have what is in your hands. What I have is the ordinance that went before the Planning Board. And when I read this item. (Mayor Bellamy gave Mr. Minicozzi the memo from Shannon Tuch dated April 10, 2007.)

Councilwoman Cape - I'd be happy to read it to you. If you don't mind Mayor Bellamy, they would say "All other alternative compliance requests not identified in this subsection may be reviewed by the Asheville Tree Commission who will act as an advisory board to the Planning Director. The applicant for such a request shall notify by mail all adjacent property owners at least 10 days in advance of the meeting of the Tree Commission where the request is to be considered. The notice shall state the time and place of the meeting."

Mr. Minicozzi - But when that body meets, when you meet on a conditional use permit, like you're about to have tonight, you have to have standards for giving that conditional use. You have items to meet and those are your rules to make that decision. That statement allows the board to make a discretionary decision without any rules. So the Tree Board meets and they pass judgment with the Planning Director. What framework do they have to make those decisions? Can they all of a sudden decide we're the Tree Commission and we don't like trees today - all the trees come down. Does that meet the objective zoning standards of the requirement?

City Attorney Oast - There are standards in paragraph (a).

Councilwoman Cape - Under (a) compliance standards exist. The only problem that I see in this, Mayor Bellamy, is the aspect of we are talking about street frontage landscaping? Is that right? You said that these were the berms, or are you talking about any alternative compliance in this?

Ms. Tuch - The draft that you have describes what the typical standards are. Towards the end of the draft, it describes alternatives that are codified. So, if you can't meet the basic standard, here are some special exceptions so if you can meet these objective standards, then you can be approved. All other cases would go to the Tree Commission.

Councilwoman Cape - My biggest concern is that a lot of times the people who are directly upset by this are not the people who live on either side of it. It's the people who drive by.

So we put up zoning signs in communities to say this is going to be zoned. Is there a possibility of having an alternative compliance sign that goes up as a notification?

Mayor Bellamy - One of the things that has to be blatantly clear in this revision is what is codified, and actually list what exactly our alternatives and who has the authority to determine when that can be triggered. When it can be triggered that they cannot technically meet the requirements that are set forth here and what triggers them to be able to go to the alterative. And that list of alternatives has to be crystal clear.

Ms. Tuch - And that is in the draft. We do have very specific guidelines by which certain standards can be applied. When, of course, we are talking about a lot of different scenarios. A lot of different kinds of landscaping requirements, whether it's from street trees, to buffering from the streets, to parking lot landscaping, to screens around dumpsters.

Mayor Bellamy - You know in our trusty-dusty UDO there is list of uses for RM-2, RM-6 districts and every conceivable use is listed in one part of the UDO. We used to have a list up here at our places, that for RM-6 everything that is conceivable could be developed in the RM-6 district was listed. Is that possible? If you have a berm, these are the alternatives. If you have a required shrub or trees, these are the alternatives. Not all over, but in the places that it's referred to, you could see appendix item j. That way it is crystal clear what is available for an alternative and who has the authority to allow that to happen.

Ms. Tuch - I think if I understand you correctly, that is what we are proposing in this draft. What we did is we pulled staff and we asked all the people who reviewed the landscape plans, what is the most common alternative compliance scenarios that you encounter, so that we can incorporate those into an actual standard, rather than have to review it as an alternative compliance. That's in this draft. It's all of those all unusual a-typical situations that we are trying to address in the section that Mr. Judd referred to. What we have attempted to do is bound what could possibly be reduced or waived or altered and that is what Mr. Oast is referring to. We put a maximum limit on that. So we feel as though we have addressed those concerns and a concern legally, by putting some parameters on that. And we also created the opportunity for the public to be notified so that if there were a concern, it could be appealed. And it could be appealed to a quasi-judicial body which would be the Board of Adjustment, not necessarily the Tree Commission.

Mayor Bellamy - Okay. I think that needs to be pin-point accurately spelled out in the ordinance. The steps by which an individual or a property owner can appeal for a change, or have the opportunity to state I can't meet this need and staff said this, so what is my next step. And someone that is an adjacent property owner who doesn't agree with the ruling or the alternative put in.

Ms. Tuch - It is put in there, but we can make it even a little more crystal clear.

Mayor Bellamy - Councilman Newman.

Councilman Newman - I think this looks good. Getting this additional information right before the meeting and we were getting some e-mails from folks from the Coalition of Asheville Neighborhoods earlier in the day. And we had a meeting starting at 3:00 p.m. right up to the beginning of this meeting. Are we being asked to approve this tonight? Yes, that is want is anticipated, correct?

Mayor Bellamy - Yes.

Councilman Newman - Would it be possible, for myself, I would appreciate having just a little more time to look at this information and process the information that staff has presented

with us tonight. Would it be possible for us to continue this for one week or two weeks to just process this information a little bit better before we take a final vote on it?

Mayor Bellamy - Let's go ahead and carry that out before I hear any other comments and questions from members of Council, because I don't want to do this again. Keeping in mind, we have opened and closed the hearing and have covered all information that has been presented. So that would just be an opportunity for Council to digest all that we have been given. So, the issue on the floor, if no other comments about the ordinance, is the vote. Do we want to delay that at least a week, two weeks is a bigger bear. Like my terminology? To the 17th. Am I okay with notification - there is not a public hearing, but there is a vote. Am I okay with the notification process?

Ms. Tuch - Mayor, I'm out of town on the 17th.

Mayor Bellamy - So we're going to stop all City business because you're out of town? Where is Alan Glines? Sorry about the comedy.

Councilman Mumpower - Mayor, is it absolutely necessary to postpone this item?

Mayor Bellamy - We're going to carry that out in just a second, but Bob. First of all, technically can we continue it for a week and meet any notification requirements?

City Attorney Oast - Yes.

Mayor Bellamy - Okay. Council I have one request. Is that in the form of a motion for a continuance?

Councilman Newman - You mean if we're going to come back and Shannon's not going to be here? There may be some questions that arise and there is no one that can answer the questions. Do you think we need you?

Ms. Tuch - I think that would be the best if it were me.

Mayor Bellamy - Then we will have to delay this until May 8. Only because the 24th we already have four UDO amendments that are comprehensive in nature.

Councilman Newman - Then I have a process question related to this. I hear the staff saying there are several different things that they are thinking about tweaking additionally, or do you think it's already there enough?

Ms. Tuch - I think we have been very successful in working with - Mr. Minicozzi I think is getting involved sort of a little bit late in the game. But the majority of my correspondence has been with Mr. Judd, most recently with Mr. Judd. And I think we have been very effectively addressing his comments. There may be a couple points where it may be simply, we're not going to recommend that, but it's something that can be incorporated and adopted, should Council direct that.

Mayor Bellamy - All right. Councilman Newman is there still a desire to continue?

Councilman Newman - The question is, if we did just go ahead and vote on it tonight and it were approved, it sounds like there still may be some tweaking done to it to look at some of this?

Ms. Tuch - Well, we have tweaked it. And that is the memo that is before you. Our hope was that you would be able to approve this with the revisions outlined in this memo. Now there are a couple of items on this memo, and I can go through those if you like, that Mr. Judd

preferred a different alternative than what staff was recommending. And that is something that Council can make a decision on.

Mayor Bellamy - And keeping in mind that if we approve this and you write it out in UDO format, we can still bring it back and tweak it on May 8 or later. Council still has that opportunity because it's a UDO amendment and we can change it. So, Councilman Newman, I want to make sure you're where you need to be so we can move forward.

Councilman Newman - For myself, I would prefer to take a couple more weeks. It's just hard to read information.

Mayor Bellamy - If you will make a motion, we can carry it out to May 8.

Councilman Newman - I make a motion that we continue the matter until May 8.

Mayor Bellamy - Is there a second? Motion dies for lack of a second. Councilwoman Cape was next.

Councilwoman Cape - I actually have been digging into this and so these amendments have been very helpful. So there is an area where you say, should Council desire, I do want to understand, I do think that when we put up a landscape, it's people on the other side, not our project, that need to be protected. I personally would rather see trees, than a fence. So, is it not standard that the landscaping, the beautiful landscaping side is on the people on the receiving end?

Ms. Tuch - Currently our standard is that you can reduce your buffer width by 50%. So, I'll just give you an example. If you have a 20 ft. wide buffer, you can reduce that to 10 feet with the installation of an opaque privacy fence. What is required as far as vegetation with that fence is one shrub planted every 8 feet on center on the exterior fence. You are looking at shrubs. So, the majority of those situations we've found were adapted infill, the shrubs didn't grow well. When people tried to, oftentimes there was existing vegetation on the adjacent property owner's property and to try to dig holes for trees or shrubs sometimes created more root disturbance than what the fence post would require. So what we've done is we have increased the amount of landscaping that would be required with that fence. First of all we've made restrictions on when you can use a fence. Currently there are no restrictions of when you can use a fence. It's just allowed by right. We are putting parameters on when a fence can be used as an alternative. And then with that, we have increased the amount of vegetation. So, understanding the common scenario that we encounter with running into problems with vegetation actually being able to grow in those sort of shaded environments, it's not always that way but typically it's pretty common, that we thought it best to just require the landscaping. We'd encourage people to put it on the opposite side of the fence if we could, but now that we are requiring trees in addition to a fence, the thought, by the committee at least, was that the trees would grow and branch over. There would be more visual interest than just a blank fence. We can change that. It's not a standard that would be difficult to change to require the landscaping on the other side. But, that will probably result in more alternative compliances going to the Tree Commission because we are going to encounter those scenarios where vegetation is not going to grow.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - On the section going back to the Tree Commission making a recommendation to the Planning Director making the final decision. It goes down to say "applicants or aggrieved parties may appeal a recommendation to the Asheville Board of Adjustment as outlined in Article VI of this chapter." I'm not finding that. I just want to know when is an aggrieved party going to know that a decision has been made and at what point in time are they able to appeal the decision. Because that is something that has come up and I want to make sure that we are addressing that and that it's crystal clear.

Ms Tuch - With one glaring exception - I shouldn't say that - there are a few cases where people will approach the department and say why isn't that subdivision like we saw earlier. Where is the buffer? Why isn't there a buffer? And then we have to explain there was no buffer required. We do run into that occasionally, but we are attempting to address that by requiring that the applicant notify adjacent property owners as they would be the most likely aggrieved party. So they would be notified. They would not know that there is an alternative compliance being requested and they would have the opportunity to come to the Tree Commission, hear the request and voice their concern. If they don't like the outcome of that recommendation, they can appeal that to the Board of Adjustment.

Mayor Bellamy - The key thing being that they will be notified if it's an alternative compliance request.

Councilman Freeborn - Okay. I'm just going to repeat what you said, Mayor, just to make sure I'm not dense. You're saying that if the decision is made that it is alternative compliance, then the adjacent property owners are going to be notified.

Ms. Tuch - No, they will be notified that the request is being considered. So they'll have the opportunity to come to the Tree Commission meeting, hear the request, contact the owner ahead of time. Just like you would with any other public hearing notification process that we have now. They would be able to learn what that request was. If they agreed with that request, then problem solved. If they don't agree with the recommendation, then they would have the opportunity to appeal that.

Councilman Freeborn - At what point in time are they going to know a decision is made? The Planning Director ultimately makes the decision. So the decision is made by the Planning Director and neighbors are not notified unless they.

City Attorney Oast - Unless they have requested a copy of the ruling. And it says that right in the provision.

Councilman Freeborn - How will they know that a ruling has been made?

City Attorney Oast - It says that " the Planning Director shall make the final decision on such requests, and shall provide a copy of that decision to any adjacent property owners who have requested one."

Councilman Freeborn - But at what point in time? What is the timeframe to which the Planning Director will make a decision like this?

Ms. Tuch - Truthfully and in reality, same day. Only in extremely extraordinary conditions would I envision that the Planning Director would disagree with the recommendation of the Tree Commission.

Councilman Freeborn - The reason why I am kind of belaboring this is because the average citizen doesn't know that. And the average citizen is going to go to the Tree Commission, hear what happens there, maybe it's approved, maybe it's not approved. They still don't know what is ultimately been decided and then they go home and wonder what's going to happen. It isn't until activity starts or a project is finished before they may realize that a decision had been made one way or the other. Then are they out? Is their ability to appeal that decision gone? Is it too late? We just need to make sure that the mechanism. If we are making these amendments to our UDO, we want to make sure that it's crystal clear to people and that we are not seeing the same problems coming before us time and time again.

Mayor Bellamy - Council. One thing is, it's just like tonight. This is on our agenda. The public was notified that we are having this meeting. And the public was notified of the changes that were made to some extent. And staff did another presentation to Council tonight But it's on the citizens to find out did they vote for it or did they not vote for it And I think what you are asking staff to do is carry it all the way through Staff has done a good job, supposedly on a new part of this, to notify the community or the adjacent property owners that there has been a request for an alternative compliance. Is that correct?

Ms. Tuch - That is correct.

Mayor Bellamy - So, it seems to me that somebody who really cares would pick up the phone and say what was the end result of the request.

Ms. Tuch - And I'll add that you might want to think about the Planning & Zoning Commission. They are an advisory body. They make a recommendation to the City Council. Same situation. The public wouldn't necessarily, if for some reason staff didn't agree with the recommendation of the Planning & Zoning Commission, the public wouldn't necessarily know that unless they requested that information or when the extra mile to investigate it in the staff report that went before Council. So, when you deal with advisory bodies, that is the burden that the citizen has to bear.

Vice-Mayor Jones - I wonder if there is some minor adjustment if we can do this. I have a similar concern.

City Attorney Oast - I do want to point out is that you're getting here that you don't currently have is notification that the request is going to be considered and the ability to obtain a copy of that decision.

Councilman Freeborn - I like all that. I think that's great. I'm just wanting to make sure, at what point in time does the clock run out for the aggrieved party, because that is the question I have asked and have not received an answer.

City Attorney Oast - It would be 30 days after they get a copy of the decision.

Vice-Mayor Jones - First of all, we're talking about alternative compliances. It's not like there is going to be 1,000. So, if we are going to have that list of folks who are adjacent property owners that we're going to send a notice of the meeting, what is the harm of firing off to the same list the decision, with the specifics about if you would like to appeal, here is the timeframe. Because I also - I don't know if we got your answer about what is the recommendation outlined in Chapter VI of this chapter.

Ms. Tuch - That is one detail that we can spell out and make crystal clear in this amendment is to describe that per Article VI that an aggrieved party has 30 days from the receipt of that decision to appeal this to the Asheville Board of Adjustment. That is an option we can do to make it much clearer.

Vice-Mayor Jones - That seems like a very simple thing. If we are already going to be notifying folks, then just.

Ms. Tuch - One thing that is different is we are asking. Because we are trying to balance customer service with a more public process. So we are asking that the applicant be the one to notify adjacent property owners. And that is a little different than what we currently do for other public hearings. As far as who is responsible to notify those individuals and how and when.

Councilman Freeborn - I think we should just take ownership and notify the adjacent property owners. If a request comes in for alternative compliance. If it is something that happens rarely then it shouldn't be that big of burden on us as an organization.

Ms. Tuch - It's a bigger burden than you may think. We receive a lot of alternative compliance requests. Now we are attempting to reduce the potential for those numbers of requests by codifying some of this information and basically creating some disincentives to pursue an alternative compliance. But, I think you are still going to see quite a number of requests.

Councilman Freeborn - Okay, in that case, let's try to approach it in a different way. What about if we just notify on the requests that are granted. If we say a request has been made, it's up to the applicant to notify their neighbors. We don't know if they've notified their neighbors or not - we're taking their word at it, I'm assuming.

Ms. Tuch - There are ways for us to find out. We could request, as part of their submittal, a copy of the certification or we could require that they do confirm delivery. There are ways that we can ensure that they did notify.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - I still go back to the idea that the way we could cheaply notify people is put an alternative compliance AC sign on a stake in the landscape area and anybody driving by who has problems with it goes to the project development website and says what is the alternative compliance being asked for. That way anybody who drives by, I mean, we do it for rezonings all the time. We don't notify every single person in the town that we are doing a rezoning. We have a big Z out there.

Ms. Tuch - You would see significantly more signs than you are currently seeing.

Councilwoman Cape - And then we would be in trouble with signs.

Ms. Tuch - Well, we would have signs everywhere and there is a fair amount of staff time that's taken, mileage, vehicles. A fair amount of coordination is taken to do that. As I mentioned, what we are attempting to do is balance customer service and efficiency with a more public process.

Mayor Bellamy - Council, Councilman Newman offered the opportunity to look at this thing a little more closely and have staff look at this and you call with any conditions or concerns that you may have. Because we've gone around the mulberry bush a little while on this particular issue and so I don't think there is a resolution to this. So, I would ask if someone on the board to reconsider that opportunity that we've been provided to be able to look at this a little bit closer to address any concerns that may be out there. And if not, it would be nice to have a motion to go ahead and approve it understanding that we will look at it again in the future.

Councilwoman Cape - I would like to make a motion that we approve this as presented with the changes given to us this evening, with a couple of little changes myself. So, my motion is to approve the landscaping ordinance with the changes staff gave us this afternoon. On the issue of non-screened fencing, where possible for plant protection, it will be planted on the abutting property side. Now if that could be added in there just as a caveat. And then on the screening of dumpsters, be on the exterior of the dumpster fencing. And seeking the best practice in notification of the community about alternative compliance.

Mayor Bellamy - I think that's wonderful. Is there a second to that motion with the three caveats that were included? Councilman Freeborn.

Councilman Freeborn - I'll second it for the sake of conversation.

Mayor Bellamy - I'd rather you not if you're not going to support it.

Councilman Freeborn - I may support it or may not. I think this is better than what we have now. I just want to know are we going to - is staff going to come back to us at any point in time with this?

Mayor Bellamy - No, not until Council would like to see it revisited.

Councilman Freeborn - Okay, then no, I'm not going to second this.

Mayor Bellamy - All right. Is there a second?

Vice-Mayor Jones - Your modifications were with non.

Councilwoman Cape - My modifications were just where possible, when there are fencing, instead of this little buffer, that where possible for plant protection, that it's facing the abutting properties. So that rather just a finished fence, they have landscaping on the abutting property sides, where possible for healthy plantings. Because if we just put that in there, it leans people in that direction, I think. And then it makes sense that we would want people to screen the outside of the dumpsters rather than the inside of the dumpsters, so we might as well say.

Ms. Tuch - That was part of our recommendation.

Councilwoman Cape - Yes, but you asked us to comment on that. So I'm commenting. You said, if Council likes. So, I'm adding it. And then best practice for public notification.

Mayor Bellamy - All right. Councilman Davis.

Councilman Davis - I can get there with the exception of the buffering on the outside of the fence. Because there is a problem with that in that the neighbor very likely will have problems in the future because it's inaccessible for someone to trim the hedges and maintaining it without going onto property they don't own. I just have difficulty with doing that. The rest of the proposal is good.

Councilwoman Cape - Well it should be on their property?

Councilman Davis - How would you be able to with the fence. How could you access it to trim it properly?

Councilwoman Cape - You walk around on the outside of the fence on your property to get to it?

Ms. Tuch - We're talking about a 5-foot strip. I'm sorry, that was another concern raised by the subcommittee, was that it is on the practical side, it's unlikely that someone is going to go prune a limb off a tree and not trespass across someone else's property.

Mayor Bellamy - Councilman Davis, are you there?

Councilman Davis - I'm there with the exception of that.

Mayor Bellamy - Any compromise?

Councilwoman Cape - I would be willing to compromise. I want people to be happy with the landscaping and it's a little disconcerting to have a fence as your new neighbor.

Mayor Bellamy - All right. The motion dies for lack of a second. Is there another motion?

Vice-Mayor Jones - I might second that if I ask Shannon one more question here. When you said there are a lot of other alternative compliance. I mean we're talking about subsection of other alternatives. So there's a whole list of alternatives we have all identified. Here are the big things people ask, here are the most common ones. In that last thing, other. We would see a lot of requests around that? The paragraph we are talking about is after, alternative this, alternative that, alternative this other.

Ms. Tuch - Right. It is our sincere intent and hope that this will reduce the number of alternative compliance requests. But currently I would say almost 50% of all of our site plans request some sort of alternative compliance. We are talking about.

Vice-Mayor Jones - Of those that are applying, how many are in this last other, other?

Ms. Tuch - I mean I can't predict, but I would say probably, of those, a good 20-30%.

Councilman Freeborn - Could you give us like actual numbers?

Ms. Tuch - This will be a total ballpark, but if our average, I will look to other staff. If our average number of site plans in one month might be, let's see, we probably get 8 large, probably 3 a week in small, so we are looking at another, so maybe between 30 and 40 applications a month. About 20 of those, I guess, would include some sort of alternative compliance. And of that 20, my guess would be anywhere from 5-10 in a month would not fall in one of those categories. It could be less than that, because I do think that some of these standards may create a disincentive for someone to ... alternative compliance. They may choose a different development option. They may choose a different project, a different building type, so that it could comply. So it might be less than that. Our hope is to be between 3 and 5.

Mayor Bellamy - To throw another little monkey wrench into the discussion. One of the issues that I have a concern about is the landscaping between new subdivisions and existing subdivisions. One of the things that we're seeing is more infill development and the changes, like we just did tonight, say it's higher density, is it addressed in here that we're going to do some additional buffering requirements for additional - it may be the same uses, but a higher density, but they are residential in nature.

Ms. Tuch - Not exactly. Well, yes and no I should say. What we are proposing is to buffer in between similar zoning designations. So if you are a low density single-family and you're adjacent to a high density multi-family, and you're high density multi-family going in, you may have to buffer against that low density single-family, even if you are a subdivision. But, traditionally we don't require single family lots to buffer against single family lots. Because single family is one and two family dwellings and they are exempt from the landscape standards. Always have been. Now the one exception to that is the conditional use permit projects and those conditional zoning projects that come before Council, because those are open to conditions.

Mayor Bellamy - Where do I change that requirement? In our subdivision ordinance or our landscaping ordinance or both?

Ms. Tuch - Probably both. And those are both things we can accommodate.

Mayor Bellamy - Okay. Council I would like to see this thing delayed, first of all. But since we can't get support to have that happen, I would like to see us work out a way where we are able to put in additional landscaping requirements for single family developments that don't come before Council. Because that is an issue. Take for instance, Kenilworth. They had

presented a subdivision that doesn't have to come before Council. It does not have landscaping requirements to the extent that had it come before Council would have provided additional landscaping for the community.

Ms. Tuch - The Kenilworth project is actually a lower density than the majority of the homes around it.

Mayor Bellamy - Right, but they had cut a lot of trees in order to do that development.

Ms. Tuch - They did. Now one thing to keep in mind, we also do have our steep slope, which would help protect tree preservation on steep slopes. We also are coming before Council at the end of this month is a subdivision amendment which makes single-family subdivisions over 50 lots a Level III, which would be a conditional use permit. So the Kenilworth project coming before you next year would be a conditional use permit and would, in theory, be open to conditions.

Mayor Bellamy - But the one we have now, the one we are faced with now, doesn't have the landscaping requirements and did remove a lot of trees, doesn't have the additional buffering requirements around the subdivision, thus is not a warm and welcome subdivision development in that neighborhood. And so, what I'm trying to say to us as a Council is we really need to address those concerns about what happens when you remove, you do remove a lot of trees, but you don't have to replace a lot of trees back in a subdivision. That is a concern and we do need to address it. And so, Shannon that would be something - I'm not asking you to work out right now, but we need to go ahead and get a recommendation and come back to Council with that.

Ms. Tuch - Sure.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - I'm willing to support a motion to postpone it to May 8 to address those concerns.

Mayor Bellamy - There is no motion on the floor so would you like to make a motion?

Councilman Freeborn - I make a motion to postpone the vote on this amendment to the UDO to May 8.

Mayor Bellamy - Is there a second?

Councilman Newman - Second.

Mayor Bellamy - Any further questions or comments? Councilman Mumpower.

Councilman Mumpower - I believe the deliberations on this ordinance highlight the complexity of what we are trying to do. It's a miracle that Asheville has become as beautiful as it is without the control of this Council and others. And I'm going to come out and say it, I think this represents some of the indulgence by this Council in creating complexities that will add costs and when you add costs you limit how many people can afford to live in Asheville. And that's about creating an elite community. You can call it anything you want to, but to me this is indulgence. And I certainly hope we will make an effort to do what we promised to do, which is to simplify the UDO and not create further controls on how it will suit our personal agendas.

Vice-Mayor Jones - Are you saying the whole ordinance as proposed is an indulgence? Or our deliberations are an indulgence?

Councilman Mumpower - Both, but the ordinance as a collective whole is an indulgence from my perspective.

Mayor Bellamy - Councilman Davis.

Councilman Davis - I know a lot of people worked very hard in getting this ordinance to the point it is and we're running across a small hump here and I don't think it's indulgence, I think it's a good exercise in getting to a better place with something we have a lot of difficulties with. I happen to have a great deal of faith in the Tree Commission that they are going to, in their deliberations, err on the side of the plants. I know those folks very well. And it would be inconceivable to me sitting here to think that they would do something else than should be done. And I have great faith that they can handle this job. I'd like to see us go ahead and move forward with it.

The motion made by Councilman Freeborn and seconded by Councilman Newman to continue this matter until May 8, 2007, carried on a 4-3 vote with Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "yes" and Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Mayor Bellamy - The meeting on May 8 will only cover the new information provided, which will be limited to the items that deal with subdivision issues, the hump that we were over, and that's about it. Ms. Tuch if you can take a note of that and hit the highlights and move it forward, I would appreciate it.

Councilman Freeborn - Is a notification in that as well?

Mayor Bellamy - Whatever those humps, that was a problem, so yes.

E. PUBLIC HEARING TO RECEIVE COMMENTS ON THE CITY'S DRAFT ACTION PLAN WHICH SETS OUT THE PROPOSED USE OF $3,854,970 IN FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENTS PARTNERSHIP ACT FUNDS IN THE YEAR BEGINNING JULY 1, 2007

Mayor Bellamy - Mr. Oast will read a statement into the public record for the community to hear about Mayor Bellamy's conflict of interest. Vice-Mayor Jones will carry out the motion.

City Attorney Oast - Will there be a motion to recuse you after I read the statement?

Mayor Bellamy - After you read the statement, I will ask for a recusal.

City Attorney Oast - Thank you Mayor. Under North Carolina law, all members of City Council, including the Mayor, are precluded from voting on matters in which they have a financial interest or that involves their own official conduct. They are also prohibited from entering into contracts with the City or otherwise having a financial interest in such contracts. Further, recent amendments to the zoning enabling laws have expanded and clarified the issue of council member conflicts of interest with respect to land use decisions. Under State law, a Council member may not only not participate in the vote on matters in which they have a financial interest, they may not attempt to influence the vote or the administration of the contract. Where an employee of an agency that receives funds from the U. S. Department of Housing and Urban Development (HUD) becomes a member of the governing board of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. When such opinions are requested, exceptions are made as appropriate. Mayor Terry Bellamy is an employee of Mountain Housing Opportunities, an organization that receives funds from HUD, through the City

of Asheville. Although she is not directly involved in any HUD-funded activities, her election to Council in 1999 and as Mayor in 2005 triggers the application of the regulation requiring us to seek the exception with respect to Council actions involving the City's receipt or disposition of HUD funds. Our review – including analysis of the regulation, conversations with HUD officials, Ms. Bellamy and other officials at MHO – has indicated that Ms. Bellamy, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as Mayor and a member of Council, State law would preclude her from voting on any matters that directly affected MHO. While State law affects the ability of a member of Council to vote on particular items, the exception required by HUD affects the City's ability to receive and administer HUD funds, and HUD officials have advised that the exception should be requested on a case-by-case basis. In this case, the action for which the exception will be requested is the draft action plan regarding the proposed use of CDBG and HOME funds for the 2007-08 fiscal year (public hearing item E. on the April 10, 2007, agenda). This is brought to your attention now because public disclosure is one of the prerequisites of requesting the exception from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence to HUD to inquire about and, if necessary, to secure the exception as soon as possible.

Vice-Mayor Jones - Is there a motion to recuse Mayor Bellamy?

Councilman Mumpower moved to recuse Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Freeborn and carried unanimously.

(At this time Mayor Bellamy turned the gavel over to Vice-Mayor Jones and left the meeting.)

From Staff Report: This is a public hearing to gather citizen input on the Consolidated Action Plan for FY 2007-08, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

The City expects to have available $2,184,696 in CDBG funds and $1,685,274 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2007. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 39 projects. Allocations are consistent with the Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME funds and some CDBG funds will assist 464 housing units Consortium-wide. CDBG funds will also benefit more than 6000 low-income City residents through homeless services, housing counseling, business assistance, neighborhood facility improvements, and other needed services. Our partner agencies will contribute over $36,000,000 of other funding to these programs, leveraging $9.40 for every $1 of HOME and CDBG funds.

A summary of the draft Action Plan and notice of this public hearing was published on March 25, 2007. A 30-day comment period is required. At the end of this period, staff will ask Council to take action to approve the plan on April 24, 2007. The plan is due to be submitted to HUD by May 12, 2007.

Vice-Mayor Jones - Ms. Caplan, at this time will you come forward and give the staff report regarding this public hearing. I would like to remind Council that all we are doing tonight is receiving public comment and that we will take public action on April 24. Vice-Mayor Jones opened the public hearing at 8:44 p.m.

Community Development Director Charlotte Caplan - That is correct. I'm very pleased to present the draft action plan for the use of CDBG and HOME funding in the coming fiscal year starting July 1, 2007. I'll give you just a very short overview. The whole plan is available on the

City's website and you have a summary of all the funding allocations attached to your staff report. Funding recommendations for the CDBG portion were made by the Housing & Community Development Committee and for HOME funding by the Asheville Regional Housing Consortium. Very briefly, we are allocating just over $2 Million in CDBG funds. I would point out that $274,000 of that is contingent on a land sale and will not be released until that land sale takes place. But 23 programs will benefit with a wide variety of purposes. All benefiting low income residents of the City of Asheville. HOME allocations total $1.7 Million. Sixteen programs are recommended for funding. These are for affordable housing only and they cover not only Asheville but the whole of Buncombe, Henderson and Madison Counties. Transylvania County did not put in any applications this year. I would like to point out that contributions from partner agencies that will be carrying out these programs amount of $36 Million. That is a leverage ratio of over 9 to 1. Projected outcomes over the next year or two years, we expect to see construction or repair or downtown payment assistance or other assistance on 464 affordable housing units. We expect to see 105 small businesses assisted. We expect to see public services that will benefit about 4,800 low income residents. And, two improvement projects to be carried out in the West Riverside Weed & Seed area. Many of the allocations are similar to last years. There is merit in consistency in funding from year to year. But, we're definitely seeing some new trends taking place. In housing, I believe we are seeing a move away from single family housing development. Land and construction costs have risen very rapidly over the last two to three years and it's becoming increasingly difficult to build housing at prices that people in our target population, that is 80% of area medium income, can afford, without really very large amounts of subsidy. So, we are seeing an increased emphasis on multi-family construction, both for rental and home ownership. And on down payment assistance to be able to help buyers buy existing housing. We are also seeing new initiatives for implementing the 10 year plan to end homelessness. Within the plan, a new grant to Homeward Bound, that is the new name for Hospitality House, for rent assistance and supportive services to help chronically homeless people come off the streets and into permanent housing, with supportive services. And finally, there is an emphasis on revitalizing West Riverside Weed & Seed area. Last year, I saw some funding in the middle of the year for improvements at Pisgah View Apartments and this year we are addressing much needed renovations at the Burton Street Community Center and traffic calming on Burton Street. There are a number of people here from the West Riverside Weed & Seed area who have very patiently waited up to this point. We think all together this is a very exciting and productive year for the Housing & Community Development programs that the City supports. I'll be very happy to answer any questions after the public comment.

Vice-Mayor Jones - Thank you Ms. Caplan. I'd like to open it for public comment. If someone from the public would like to come forward? And if you would, please state your name for the record?

Mr. Ernie Eden - I'm a commercial real estate broker and have been for some years. And also have been involved very much in affordable housing, particularly cooperative housing. And I come here this evening to talk about two specific items. One of them is, I noticed in looking through your plan that there is no mention of cooperative housing and that's understandable because it is a very unusual form of home ownership. It's sort of half way between individual ownership and rental. There are about 1.5 Million families living in cooperatives around the county in all income levels and in the paper I have presented there are a number of details for why they are a good idea. The hour is late and I want to reduce my time here in front of you. I've been involved in management and creation of cooperatives. I am in a trade association of the National Association of Housing Cooperatives for some years in Washington and they are the best way of housing people according to HUD, according to the residents, and according to all the studies that have been done. So I encourage you to take a look at this at your leisure and pay attention to it. The other item is that by expanding the geographic areas that you have designated for areas to pay attention to in terms of your housing programs, you could be getting into the community a whole lot more funds from the outside than is currently available. On the last page of this paper I have outlined two programs - the Federal Home Loan Bank of Atlanta and also the N.C. State Qualified Allocation Plan, which deals with housing. Both of those give

the applicants points when they do something in an area that the City or County has designated to be an area of impact. And you don't necessarily have to put any money into it, but you may be able to get money from the outside by expanding your areas. I have spoken with Ms. Caplan about this. If there are any questions, I would be happy to answer them, or if you want to be in touch with me later, that's fine. Thank you.

Vice-Mayor Jones - Thank you.

Councilwoman Cape - Vice-Mayor, may I respond to this briefly? Just to say these were not projects that we were doing ourselves. We would love to see some cooperative projects come forward for us to consider to help support. So these are not our list, these are what projects came to us and we made our choices from.

Mr. Eden - Okay. I understand that. I guess I'm really just doing this more in terms of the future in terms of laying the ground-work. There is a lot of language typically that speak of either single-family or rental condominiums and cooperatives are sort of blend and the rules don't always fit. So that is my point primarily.

Vice-Mayor Jones - Thank you very much. We appreciate that. Anyone else?

Ms. Gloria Johnson - Mayor Bellamy and Asheville City Council, my name is Gloria Johnson, President of the Burton Street community and resident of west Asheville and currently reside at 87 Burton Street. I'm speaking on behalf of the citizens on the Burton Street community we are concerned with the current conditions of the Burton Street Community Center. Taking into consideration those funds for upkeep and repair may be limited it appears that our particular community center has been overlooked at it pertains to disbursement of funds for facility and maintenance. We are aware that other community centers throughout the Asheville area have, are, or are in the process of receiving resources for facility renovation and general maintenance. Consider how important this center is for the youth and the senior citizens. In our neighborhood it is disheartening to see this facility in such a state of disrepair. Even today I went to the community center. There is some yard work going on. This is good, but we need more than just a band-aid fix. Just a look good for awhile. Our center needs more permanent improvement. Some examples of needed improvements are as: floors - repairs or replacement; windows - replace lock or entire window unit; restrooms - both men and women; general activity areas - weight, play rooms need new recruitment and supplies; outdated heating and cooling system; basement area used for city-wide storage; electrical outlet needed for computers for after-school program; kitchen appliances and serving areas needed. We are here to make you aware of these needs. When you consider how the block grant monies will be distributed and used, we have made tremendous strides in cleaning up our community. However, your continued support on these matters are imperative. The citizens of the Burton Street community need to know from you that they are not forgotten. Your serious consideration of these concerns, and your effort and ... there will be a major boost for everyone in our community. As a community sportsman, I would like to compliment Mayor Bellamy, along with our Police Chief Hogan, Officer Mike Godwin, Alan Dunlap, whom I believe has retired, Lt. Rae Ferguson, Officer Wilkie, Sergeant Faye Harper, Officer Connie Roberson, Officer J.T. Riker and Captain Splain for not only helping to clean up our drug problems, but also become a part of our community. They help pick up trash from the streets and sidewalks. They help to repair some of our elderly citizens' homes on their days off. We would like to invite all City Councilmen to visit our community. We are proud of the Burton Street community and the great turnaround that has taken place in our community. On behalf of our entire community, we thank you for your time.

Vice-Mayor Jones - Thank you Ms. Johnson.

Councilman Newman - Can I make one comment? Ms. Johnson, I agree with everything you've just said. Folks are not aware that the recommendation is for $155,000 in funding for the renovations to the Burton Street center. That is part of our recommendations at this point.

Obviously we are not going to vote on this tonight, but the Committee is recommending supporting that project.

Ms. Johnson - Thank you.

Ms Teresa McPherson - Good evening City Council. First I would like to thank you for this opportunity you have given us to express the love and compassion we have for our community I am Teresa McPherson and have been a proud resident of the Burton Street community for two years. Most of the residents in our community have been here for many years and have tirelessly struggled to make it a better place for the generations to come. I have first hand knowledge of what a wonderful community we live in. In July 2006, I became deathly ill and this community rallied together in prayer and support. They raised in excess of $1,600 to help me with my bills during my illness. It is rare in this day and time that you will find people in a community who will come to the aid of another. I would truly not want to live anywhere else but in this community Not only have they come to my aid, but many others. There are some things that we cannot do alone. This is why we ask for your help and support in allocating CDBG funds to help revitalize our community center. It is an old facility with a rich history to be shared and cherished It is a facility where our residents gather for meetings and festivities to keep us as a family It is a facility for our children to play and grow in the spirit that their parents and grandparents did so. But we will not be able to hold onto this history if we are not able to get these funds for our center There are so many needed repairs that we cannot do alone. Because we struggle to keep our own households going, a heating and air conditioning system is needed, the walls and floors are buckling and the bathrooms and the kitchen are in much needed attention. We want a facility where our children can gather in a safe place and be proud of where they come from. Our children deserve better. The residents here pay taxes just like anywhere else. If we don't start repairs on the center now, it will be too late. Please help us to save this part of our history. Thank you.

Ms Sharon Martin - Good evening. My name is Sharon Martin. I'm a resident of the Burton Street community It's been interesting going through the area and listening to the conversations that had been had tonight. Beginning with the item that you discussed off the Consent Agenda about the bathrooms downtown. And Mr. Newman you brought up that it's $155,000 that's been asked for for the center and two bathrooms cost $113,000 downtown. So, in saying that, I'm just asking you to be prepared to spend a lot more money than $155,000 to bring the center up to where it needs to be. And I understand it wouldn't come out of CDBG funds and I understand how that whole process works. Just want you to know that the center needs a lot more than $155,000 We really count on the City to allocate the funds to bring it up to par. And it is truly, right now, we have air conditioners hanging out the window about to fall onto the sidewalk. So it does need a lot of attention. And then the other thing that came up was the District Attorney coming and talking about crime. And we have an amazing community and I don't know really how to explain how amazing our community is. But there are members of our community who work tirelessly picking up garbage to keep our community clean, inviting the youth in our community onto their property and paying them to do work so that they have activities to engage in and money to put into their pockets so that they won't feel like they have to turn to nefarious activities to earn wages or to deal with their boredom. And we have members of this very same community who have amazing ideas to implement and the center could be the heart of that. So, we just ask that you know that we are going to come back to you and ask for more and we believe that we deserve more. The community has done a lot of work to turn it around. The police have done a lot of work with the community to turn it around. But I don't want our community to be overlooked so I'm glad the attention is there. I appreciate your time tonight. Thank you.

Mr. Dwayne Barton - My name is Dwayne Barton and I had a list of the kids wrote up this afternoon, but seems like everybody covered it. I'll just say that when the renovations do come for the center that the young boys, that they be involved in that. Maybe we can create some kind of friendships to help train the young people in the community to help rebuild the center. And let

this be a starting point to maybe a program we can do throughout the City. And turn Burton Street into like a training facility for those. A place where young people, specifically, can come and find work and be introduced to different programs and activities. And put money in their pocket and keep them busy over the summer and during the school year. As far as education with the schools, for help for some kids there needs to be reinforcement in the communities because a lot of times kids living in homes where the parents might not have the time to be that reinforcement, but we need actual programs in the community that can help push the kids along. A program that ties in with what they learn in school and they come home from school and tie it into an on-hands type training that can follow-up with some educational goals. I think that is what is needed more than anything. That's all I have to say.

Councilwoman Cape - Vice-Mayor, I have to say something about Mr. Barton. Because he didn't just ask us to do something that he doesn't do. He does that in his community. He pays young men, young boys, to come and work in his sculpture garden. And they get to work there if they have good report cards, is that not right Dwayne? This is someone who is walking his walk and someone who I have great respect for when we ask that our children are cared for. This is a man who is doing this work and I think he needed to be pointed out to our community as an example of what it means to be a good community member. So, Mr. Burton, I thank you immensely for your service to your kids. And, I do want to point out that the Parks & Rec Advisory Board the other day - there has been a discussion about an overall parks and recreation master plan process. And so part of that is the recognition that all of our recreational facilities are in some state of needing an overview. We have a new Parks Director, Mr. Roderick Simmons, and part of him getting an opportunity to understand what our systems are, and what the needs are, is in this. It will be an overview of all our Parks and Recreation Department and we will be looking at all the needs. This particular amount of money was allocated because it was outlined as something that was kind of stop it from falling down right now. Like fix the major things that need to be fixed right now.

Vice-Mayor Jones - I thought it was a very generous and unprecedented allocation. So I think a lot can happen for $155,000. Is there anyone else from the public that would like to say something?

Ms. Sandy Davidson - Member of the Burton Street community from birth. The one thing that we are thankful for the money and hope that you will approve it. But one thing I want to say and this is to Mr. Mumpower as well, is that Burton Street once you knew had a very bad name and I'm sure some people in this audience right now still think of it as a drug community. But we worked very hard to clean that up. We still have some areas there, but we have worked very hard and are very proud of our community. And this is just another lump to make us feel a little more proud of our community.

Vice-Mayor Jones - Thank you for your work in your community. Other members of the public wanting to speak? Seeing none, I will remind you that there is no action to be taken, so I will close the public hearing at 9:06 p.m. Just so you know, we will be taking the vote on April 24.

(At this time, Mayor Bellamy re-entered the meeting and Vice-Mayor Jones returned the gavel to Mayor Bellamy.)

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR RESIDENTIAL DEVELOPMENT TO CONSIST OF 132 SINGLE AND MULTI-FAMILY DWELLINGS

ORDINANCE NO. 3461 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR RESIDENTIAL DEVELOPMENT TO CONSIST OF 132 SINGLE AND MULTI-FAMILY DWELLINGS

City Attorney Oast - This is a continuation of a public hearing which you began last month. If anyone wishes to speak who was not sworn in last time, you need to come up and be sworn in. If you were sworn in last time, you don't need to be sworn in again. Mayor, this is for the presentation of new information and you would be within your rights to advise anyone who is not addressing new information to cut their remarks short. I am advised that the applicant intends to present some information that may require a little bit more time than 10 minutes and I would ask that you give them that time, but also caution them to stay on point and only present new information.

Mayor Bellamy - Anyone else who is here, but was not sworn or affirmed, please come forward to have that process done tonight?

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast - Mayor, before Mr. Pennington gets started on his part of the presentation, I'm not going to repeat my usual cautions to you, but just ask that you remember them in making your decision. And finally, we did receive a protest petition with respect to this action, but because this is not a rezoning, a not map amendment, it is my opinion that the protest petition does not apply to this situation.

Mayor Bellamy - All right. There is a ruling that the protest petition does not apply and so we don't need a super majority of approval for this to move forward. Mr. Pennington.

Information in front of Council - Letter from Mr. Ryan Blau dated March 28, 2007 - "Dear Mr. Pennington, following is a summary of the modifications that have been made to the Thoms Estate Master Plan following the City Council hearing:

1. The multifamily condominiums (22 units) have been eliminated.
2. Duplex units on the upper hillside have been replaced with single family home sites.
3. Single-family attached units have been added in the southwest meadow (previously multifamily and single-family detached). A slightly different road configuration was designed to accommodate this change.
4. Four public pedestrian access points are proposed. Sidewalks and trails through the site will be open to the public.
5. Roads will remain private and vehicular traffic may be controlled after daylight hours.
6. A community park is no longer proposed due to apparent lack of interest for such a park. Instead a greenway easement will be secured along Beaverdam Creek.
7. The developer will be selling small lots with building envelopes rather than constructing every home. Building envelopes will remain in approximately the same locations as shown in the previous plan.
8. Entry off Elk Mountain Scenic Hwy has moves south slightly to align with the existing main entry to the estate."

Information in front of Council - Memo from Nathan Pennington and Scott Shuford dated April 10, 2007 - "This conditional use permit request for a 132 unit single/multi-family residential development with development standard bonuses. The original conditional use permit request for a 162 unit development was heard by City Council on February 13, 2007. A motion to approve the request initially failed, but a subsequent motion to reconsider the conditional use permit carried and the item was tabled for an indefinite period of time due to a number of concerns that

were raised by citizens and Council members. The main issues that were discussed at length included:

- The need to adequately quantify stormwater control methods
- Accommodating fire/pedestrian access throughout a gated community
- Tsali Trail access point, traffic generation and infrastructure
- Overall density, multi-family structures, parking and building elevations along Elk Mountain Scenic Highway.
- More clarification and exploration by staff in relation to a possible public Park, preservation of the Killian House and greenway connection along Beaverdam Road.

"Since the public hearing on February 13th, the applicant met with neighborhood members and made a number of revisions to the development plan. Some of the main changes include but are not limited to the following: reducing the overall net density by eliminating the multi-family structures along Elk Mountain Scenic Highway, deleting the Tsali Trail access point and allowing for public pedestrian access throughout the site. The site is proposed to remain gated for public vehicular access except public safety vehicles or in emergency situations. Correspondence from the development team providing a detailed list of the site plan revisions is attached for your consideration.

"City staff including representatives from the Parks and Recreation and Planning departments, and a member of the Historic Resources Commission (HRC) met to discuss the possibilities for a public park and/or greenway connection and the preservation of the "Killian House." Positive feedback ensued from these discussions because of the strategic location of the portion of property along Beaverdam Road in relation to the proposed path of the future greenway connection in the area. The developer has shown a willingness to provide a greenway easement for this purpose. However, there would be costs associated with the city maintaining the area for the purpose of any passive/recreational use. Staff asks that Council consider requesting the developer finance the maintenance fees for the Killian House and associated land for a period not to exceed 5 years until such a time that the Parks and Recreation department is able to assume the maintenance of this area."

Urban Planner Nate Pennington - Thank you Mayor, members of the Council and members of the public. To re-familiarize yourself with this project. This is a conditional use permit for 132 units for single and multi-family residential development standard bonus located off Elk Mountain Scenic Highway, Beaverdam Road, Wild Cherry and Tsali Trail (Attachment to City Exhibit 3 - Location Map). It was originally heard by Council on February 13 of this year and continued until tonight. There were a number of issues raised at the initial meeting. I'll address some of those briefly: quantify stormwater control methods, accommodate pedestrian access, remove the Tsali Trail access point, and overall density was a concern as well as the multi-family structures along Elk Mountain Scenic Highway. City Council also asked staff to do some further exploration into the park area. Revisions to the plan before you tonight are outlined in the summary memo which I have included in your packet (Memo dated 4-10-07). Essentially the developer looked to reduce the net density and eliminate the multi-family structures along Elk Mountain Scenic Highway. The Tsali Trail access point has been deleted and there are 4 access points that are allowed for pedestrians to access the site. I have indicated those with the little stick-figures in green (City Exhibit 4). The property boundary is highlighted in red. The sidewalks that are required by staff and through the TRC process are outlined in blue. Those include a point from Beaverdam Road up to the entrance on Wild Cherry. A sidewalk along all Beaverdam Road along the subject property. Tsali Trail from Tsali Trail from the Creekside development all the way up to Elk Mountain Scenic Highway. And from Elk Mountain Scenic Highway to the subject property. Since the time you've last heard it, City staff also met with the Parks and Recreation Department as well as a member from the Historic Resources Commission to discuss the park area and it was decided it is located along a strategic area that the City is looking at to complete a greenway connection. The developer is willing to provide for a greenway connection and provide for the construction and the easement that would be required to secure this area.

That provides a brief overview of the project and the changes made by the developer. Let me know if you have any questions.

Mayor Bellamy - All right. Thank you very much. I will open up the public hearing at 9:13 p.m. and the first person we will hear from is a representative from the developer.

City Attorney Oast - Mayor, while Mr. Justus is making his way up here, I would ask that Mr. Pennington referred during his presentation to a summary memorandum that Council has been provided with and this map. I'd ask that those matters be included in the record, unless there is any objection.

Mayor Bellamy - All right. Thank you very much. Mr. Justus.

Mr. Craig Justus - Good evening Madam Mayor and members of the City Council. I'm Craig Justus. I'm here to represent the property owner and developer and resident. If you will recall, we were here on February 13, which was my birthday, and hopefully I'm waiting to get my gift tonight. After we received your comments and direction, we went back to the drawing board and considered our options, one of which is you know, was the easier process of going through a typical subdivision process that wouldn't require us to come before City Council. We quickly abandoned that because that is not our vision. We don't want a cookie-cutter development for this piece of property. It is a rare and unique piece of property. Instead we wanted to cluster the homes, preserve 36 acres of open space and present a neighborhood that would be attractive to the new residents. After we met on the 13th as part of our direction, we met with residents. First we met with Nate on February 16 to talk about the changes you had asked for or directed us to look at. We met with residents on March 1. We went back to Nate and Scott Shuford and talked to them about the resident's concerns. We went back to Nate and Scott on April 2 to present changes to the plan and again on April 2 we met with residents. So, we met twice with the residents and a number of times with staff after the February 13 meeting to come up with the design changes that we are prepared to present to you tonight, which we believe are material. And, we have incorporated a lot of comments in these changes and so if I can, at this point turn to Ryan and Drake who are the Design Workshop and Planning team. Thank you.

Mr. Ryan Blau - Good evening Mayor and Council. My name is Ryan Blau and my college Drake Fowler will represent a team of Design Workshop that has been working on the land planning side of the project for a little over a year now. And I wanted to do just a quick overview of some of the changes that we have incorporated (Applicant Exhibit 3). Nate did a pretty good summary, but we did have an overall density reduction of about a little over 18% (30 units) including the removal of the multi-family condominium product. We also reduced some of the density to the higher portion of the site, up in the northern section where it is a little bit higher in elevation. We also have accommodated pedestrian traffic through the site and will allow pedestrian traffic through the site. We have removed vehicular access to Tsali Trail and we still maintain roughly the same amount of green space as we had previously in the entire plan which is about a little over 36 acres. I wanted to step back real quickly and because we didn't get to talk at the last meeting, talk a little about the process and the framework we developed to create the plan that you have before you. We have done an extensive environmental analysis on the site. We start typically with a slope map and we identify those areas that we feel are not suitable for development. Those are the slopes in red representing slopes above 30%. Everything below is less than that, obviously, and we try to keep development to slopes that are under 30%. So you will see that reflected in the plan. We've also done an analysis on the drainage, so we understand where the existing drainages are, where the direction of the flow are, or where the run-off is heading. And so we utilize that in our stormwater management plan. Our engineers will speak a little more to that later. We also, in addition to those, took into account the sensitive and unique features of the site. We've done extensive site reconnaissance and have been on site many hours identifying the areas that we want to be able to protect and preserve. And all of these other considerations kind of overlay and create a development framework that we use to lay out the development. This assures us that we are protecting sensitive places and the places

were raised by citizens and Council members. The main issues that were discussed at length included:

- The need to adequately quantify stormwater control methods
- Accommodating fire/pedestrian access throughout a gated community
- Tsali Trail access point, traffic generation and infrastructure
- Overall density, multi-family structures, parking and building elevations along Elk Mountain Scenic Highway.
- More clarification and exploration by staff in relation to a possible public Park, preservation of the Killian House and greenway connection along Beaverdam Road.

"Since the public hearing on February 13th, the applicant met with neighborhood members and made a number of revisions to the development plan. Some of the main changes include but are not limited to the following: reducing the overall net density by eliminating the multi-family structures along Elk Mountain Scenic Highway, deleting the Tsali Trail access point and allowing for public pedestrian access throughout the site. The site is proposed to remain gated for public vehicular access except public safety vehicles or in emergency situations. Correspondence from the development team providing a detailed list of the site plan revisions is attached for your consideration.

"City staff including representatives from the Parks and Recreation and Planning departments, and a member of the Historic Resources Commission (HRC) met to discuss the possibilities for a public park and/or greenway connection and the preservation of the "Killian House." Positive feedback ensued from these discussions because of the strategic location of the portion of property along Beaverdam Road in relation to the proposed path of the future greenway connection in the area. The developer has shown a willingness to provide a greenway easement for this purpose. However, there would be costs associated with the city maintaining the area for the purpose of any passive/recreational use. Staff asks that Council consider requesting the developer finance the maintenance fees for the Killian House and associated land for a period not to exceed 5 years until such a time that the Parks and Recreation department is able to assume the maintenance of this area."

Urban Planner Nate Pennington - Thank you Mayor, members of the Council and members of the public. To re-familiarize yourself with this project. This is a conditional use permit for 132 units for single and multi-family residential development standard bonus located off Elk Mountain Scenic Highway, Beaverdam Road, Wild Cherry and Tsali Trail (Attachment to City Exhibit 3 - Location Map). It was originally heard by Council on February 13 of this year and continued until tonight. There were a number of issues raised at the initial meeting. I'll address some of those briefly: quantify stormwater control methods, accommodate pedestrian access, remove the Tsali Trail access point, and overall density was a concern as well as the multi-family structures along Elk Mountain Scenic Highway. City Council also asked staff to do some further exploration into the park area. Revisions to the plan before you tonight are outlined in the summary memo which I have included in your packet (Memo dated 4-10-07). Essentially the developer looked to reduce the net density and eliminate the multi-family structures along Elk Mountain Scenic Highway. The Tsali Trail access point has been deleted and there are 4 access points that are allowed for pedestrians to access the site. I have indicated those with the little stick-figures in green (City Exhibit 4). The property boundary is highlighted in red. The sidewalks that are required by staff and through the TRC process are outlined in blue. Those include a point from Beaverdam Road up to the entrance on Wild Cherry. A sidewalk along all Beaverdam Road along the subject property. Tsali Trail from Tsali Trail from the Creekside development all the way up to Elk Mountain Scenic Highway. And from Elk Mountain Scenic Highway to the subject property. Since the time you've last heard it, City staff also met with the Parks and Recreation Department as well as a member from the Historic Resources Commission to discuss the park area and it was decided it is located along a strategic area that the City is looking at to complete a greenway connection. The developer is willing to provide for a greenway connection and provide for the construction and the easement that would be required to secure this area.

That provides a brief overview of the project and the changes made by the developer. Let me know if you have any questions.

Mayor Bellamy - All right. Thank you very much. I will open up the public hearing at 9:13 p.m. and the first person we will hear from is a representative from the developer.

City Attorney Oast - Mayor, while Mr. Justus is making his way up here, I would ask that Mr. Pennington referred during his presentation to a summary memorandum that Council has been provided with and this map. I'd ask that those matters be included in the record, unless there is any objection.

Mayor Bellamy - All right. Thank you very much. Mr. Justus.

Mr. Craig Justus - Good evening Madam Mayor and members of the City Council. I'm Craig Justus. I'm here to represent the property owner and developer and resident. If you will recall, we were here on February 13, which was my birthday, and hopefully I'm waiting to get my gift tonight. After we received your comments and direction, we went back to the drawing board and considered our options, one of which is you know, was the easier process of going through a typical subdivision process that wouldn't require us to come before City Council. We quickly abandoned that because that is not our vision. We don't want a cookie-cutter development for this piece of property. It is a rare and unique piece of property. Instead we wanted to cluster the homes, preserve 36 acres of open space and present a neighborhood that would be attractive to the new residents. After we met on the 13th as part of our direction, we met with residents. First we met with Nate on February 16 to talk about the changes you had asked for or directed us to look at. We met with residents on March 1. We went back to Nate and Scott Shuford and talked to them about the resident's concerns. We went back to Nate and Scott on April 2 to present changes to the plan and again on April 2 we met with residents. So, we met twice with the residents and a number of times with staff after the February 13 meeting to come up with the design changes that we are prepared to present to you tonight, which we believe are material. And, we have incorporated a lot of comments in these changes and so if I can, at this point turn to Ryan and Drake who are the Design Workshop and Planning team. Thank you.

Mr. Ryan Blau - Good evening Mayor and Council. My name is Ryan Blau and my college Drake Fowler will represent a team of Design Workshop that has been working on the land planning side of the project for a little over a year now. And I wanted to do just a quick overview of some of the changes that we have incorporated (Applicant Exhibit 3). Nate did a pretty good summary, but we did have an overall density reduction of about a little over 18% (30 units) including the removal of the multi-family condominium product. We also reduced some of the density to the higher portion of the site, up in the northern section where it is a little bit higher in elevation. We also have accommodated pedestrian traffic through the site and will allow pedestrian traffic through the site. We have removed vehicular access to Tsali Trail and we still maintain roughly the same amount of green space as we had previously in the entire plan which is about a little over 36 acres. I wanted to step back real quickly and because we didn't get to talk at the last meeting, talk a little about the process and the framework we developed to create the plan that you have before you. We have done an extensive environmental analysis on the site. We start typically with a slope map and we identify those areas that we feel are not suitable for development. Those are the slopes in red representing slopes above 30%. Everything below is less than that, obviously, and we try to keep development to slopes that are under 30%. So you will see that reflected in the plan. We've also done an analysis on the drainage, so we understand where the existing drainages are, where the direction of the flow are, or where the run-off is heading. And so we utilize that in our stormwater management plan. Our engineers will speak a little more to that later. We also, in addition to those, took into account the sensitive and unique features of the site. We've done extensive site reconnaissance and have been on site many hours identifying the areas that we want to be able to protect and preserve. And all of these other considerations kind of overlay and create a development framework that we use to lay out the development. This assures us that we are protecting sensitive places and the places

that are unique and special to this site. In addition, it's just the environmental framework. We also look at the historical and community framework. Those are also under consideration. We looked at the site history and would like to use some of those site buildings, re-use them as part of the community so the site history kind of shows through on our plan. Regarding walk-ability, we considered different places where we could have community nodes, where the community can come together and have those chance meetings that happen in between neighbors. And this comes together into an amenity plan that we developed so that we can not only identify where those great green spaces are and open spaces, an amenity opportunity is that we can connect those with trails so that the community has access to those. And I'll turn some time over to my college who would like to talk about some details.

Mr. Drake Fowler - Good evening, my name is Drake Fowler. I appreciate you allowing me to speak on Thoms. As you know, at the last City Council, one of the issues was the community access and so you can see here, pulling those pieces out you can see the access points and how the community can access the site's sidewalks (Applicant Exhibit 3). Next I wanted to share with you, throughout the site we have created cluster hamlets. Even though they are apparently for aesthetic use, they also play an important role in our design in terms of a couple different ways. They are built in traffic calming measures. These are areas where the vehicle becomes secondary to the pedestrian. Secondly, they allow us to share driveways. Using that technique, we can reduce the pervious surface that driveways create by about 40%. And lastly they encourage interaction between neighbors, which I think we can all agree is a good thing. Next, we wanted to show you some of our conceptual designs for the entry. As you can see here is the greeting house and to the right of that, you can see that we have a pedestrian portal. Really the idea behind this is putting … measure into the vehicular entry into the site as the pedestrian entry into the site. And the concept of this design is putting the restricted access behind that, so that this design becomes more of the face of the community. And the restricted access would be only closed at night. Finally, you can see through some of our process and our brief description of the modifications that we've made, we feel that this is a complex plan and it has a multiple overlaying of systems on it. But, we feel that we went through a solid planning process in developing this and feel that through the revisions set forth to us from City Council and City staff and the community have come up with a good addition to Asheville's neighborhoods. Next, I'm going to introduce Michael Goforth, which he's going to go over stormwater and technical issues.

Mr. Michael Goforth - Good evening, Mayor and City Council members. My name is Michael Goforth and I work for Envision Associates here in Asheville and I've been hired by the developer to do the stormwater, grading and erosion control and public utility components of this project. As far as public utilities are concerned, the City of Asheville was granted a letter of commitment for the water service. They find that there is enough pressure and supply available in this area. Our basic unit will be connecting Wild Cherry Road to Elk Mountain Scenic Highway. There is a connection there, but this will help further up Beaverdam Valley should any complications arise on Beaverdam Road. It's kind of like you can pull water from two directions there. We are going to put in greater than 12,000 feet of new water line, utilizing a loop system to increase reliability. MSD of Buncombe County has granted a sewer allocation request to this as well. And again, we are going to put in approximately 9,300 feet of new sewer line. The two main areas that we have for concern for stormwater management are stormwater quantity and stormwater quality. And I will go through both of how we will handle those. For stormwater quantity, we are going to use 3 integrated stormwater management ponds across the site. It's important to stress that our post-development flow rates will be less than our pre-development flow rates and with that comes a reduction in the downstream channel velocities for the downstream neighbors along Tsali Trail corridor and along Beaverdam. I have met, along with the developer, many of the local residents in that area to address many of their concerns on site and have talked with them as far as their concern for stormwater on an occasion. For stormwater quality, we are going to approach this by a couple different means. The first aspect is we are going to be using community rain gardens which will help to filter out sediment. Those will be done on a localized basis throughout the development. The second part is a permanent pool of

storage in stormwater management ponds. This helps to slow down the water. It allows time for the sediment to deposit out of the water and produce a cleaner stormwater. The third phase is a slow draw down time of the one-year storm event. The one-year storm event is over 90% of the storms we have here in western North Carolina. In doing this, we will slow down the water tremendously through just the process of drawing that storm down on a slower rate. It will help out the downstream neighbors. Now I'm going to turn it over to James Vasso.

Mr. James Vasso - Good evening Mayor and members of City Council. My name is James Vasso with Mattern and Craig, 12 Broad Street. I'm a traffic engineer with Mattern and Craig. And Matter and Craig prepared a traffic study for this project, on behalf of Global Development Resources on December 14, 2006. Very briefly to touch on some of the aspects of that study being some discussion has occurred since then. That study that was originally prepared in December concluded that the development would not cause an undue to the traveling public along the surrounding roadway network and no mitigation improvements were identified. I'd just like to point out that the original study was prepared by a professional in the traffic engineering profession with over 30 years of experience. And that person was Ken Putnam who is now the current City Traffic Engineer. The study was reviewed and approved by the City Traffic Engineer at that time, Anthony Butzek. The study was also reviewed and deemed accurate by an independent traffic consultant, Mr. Don Spence, of Kugle and his transportation group. He was hired by some of the residents who were primarily concerned about the third access point on Tsali Trail. Finally this study had been reviewed and accepted by the traffic consultant that you currently have serving in the capacity of traffic engineer for this project, Ms. Gay Sprague of Sprague and Sprague. So, I just want to iterate that including myself, that's five professionals, five people in the traffic engineering profession, that have been involved in this study and have basically come to the same conclusion that it is an accurate and valid study. That original study indicated at the intersection of Merrimon Avenue and Beaverdam Road, which is one of the critical intersections in this study area, that the Level of Service for that intersection during the morning commute hour would be a Level of Service "C" under background conditions and build-out conditions. And it would be a Level of Service "D" in the afternoon peak hour during background conditions and build-out conditions. In simple terms, background conditions are what the traffic is going to be like in the year 2010 without this project The build-out conditions are what the traffic is expected to be at this intersection with this project added. And, the project traffic does not degrade that intersection from one level of service to the next. Now, we've all been through school and we're all patterned to think that "C" or "D" is bad. And in the traffic engineering profession, that's not necessarily the case. "A" is the best. "F" is the worst. Just like you learned in school, but it's widely accepted in the traffic engineering profession that you strive to design for a Level of Service "C" or "D", particularly in an urban environment. The reason is the Level of Service "E" describes the maximum flow that is attainable through an intersection before things start to break down. When you cross over from "E" to "F", that's when things no longer work. That's when you try to push too much traffic through the intersection or onto the facility and break down the ...cues start to develop and you have residual delay. Designing for a Level of Service "C" or "D" allows that facility or that intersection to have some additional capacity still left. And in an urban environment, obtaining a "C" or a "D" is widely accepted in the traffic engineering profession as what you try to attain. Since our last meeting, this development has been reduced in size from 162 units down to 132 units, which is over an 18% reduction. What that means as far as the projected traffic, over a 24-hour period that relates to a 13% reduction in traffic from what was originally presented. For the morning compute, the a.m. peak hour is also a 13% reduction in the expected amount of traffic generated. For the afternoon compute, it's an 11% reduction. So the result in traffic impact under this new plan of 132 units will be less of an impact than what was originally reported in the study that was prepared in December. Also there has been support for a single entrance on Beaverdam Road by several residents versus the two that are currently proposed on Elk Mountain Scenic Highway and Wild Cherry. The developer asked that I re-evaluate this scenario and provide an opinion. And I have. I have visited the site and have basically come to the same conclusion that several of the other professionals have come to before me and that is I would recommend against a single access point. And the reason being, having the one access point on Beaverdam Road would concentrate all of the site traffic to

one point versus disbursing it over the two points that we currently have at established intersections on Beaverdam Road. Also having a second access point is beneficial for emergency vehicles. Keep in mind that the previous City Traffic Engineer wanted a third access point for these very reasons and that has been taken off of the table. With that, I will wrap it up and be glad to answer any questions that you may have. Thank you.

Mr. Justus - That is all the professionals and the engineers that we would like to present tonight. Obviously all of the information that they have presented we would like to be considered evidence. Just to summarize, we came away from the meeting on the 13th with concerns that were expressed, one being the multi-family condo development and what it did in terms of compatibility. We eliminated that. I have photographs of the single attached structures that we are proposing which are similar to the areas in Walnut Cove (Applicant Exhibit 4). So we eliminated the multi-family concern. The other thing was the pedestrian access. And Councilwoman Cape said what options can we look at and I was looking at the minutes from the meeting that we attended and the staff recommendation in terms of options and it was in your staff report was "keep sidewalks open for public access." We have done that. Although you might not have been able to see it on the pedestrian access plan, there are four points of access into the property for the community to utilize our sidewalks period. You asked, actually staff asked for consideration to allow the gates to be open from sun-up to sun-down and at any time requested by emergency management officials. We have agreed to do that. Speaking of gates, by the way, if you noticed with the entryway design, the gates you will not see. They are internal to the project. So we are not putting them out there to say don't come into this community. Internal to the project. They are open during the daytime and we have this gate house, this nice attractive feature where you don't see the gates. We're also putting in sidewalks, as you know, along the exterior of the property as indicated. So, we have come up with a pedestrian and access management plan that we understand is a fair compromise from staff In terms of the stormwater. That was a concern. Mayor Bellamy indicated last time that we had not covered that. We are doing better than what is out there today. That is what we are holding ourselves to, which I will hazard to say better than what your ordinances require us to do. Much better than what your ordinances would require us to do. But that is what we are willing to do. Finally, traffic was a concern. And I will just say, what else can we do? This project is zoned RS-4. We are well under the density that RS-4 would allow as a right. You have five professionals, three of which are either working for the City now or have worked for the City, all of which have said this project will not be a problem for traffic. I don't know what else we can do. What we did was we reduced our density. And I understand there were fairly strong comments about the property and traffic. I don't know what else we can do, but to have five professionals say that we are not a problem as it relates to traffic. At the end of the day, we did not want to present a traditional subdivision plan for the people that would live in the community. We felt that was not a good thing. That was not the vision we were trying to get. We were trying to cluster homes to preserve 36 acres of open space and green space and do the right thing. That required us to come before you and ask for permission to cluster homes. We are willing to do this and we think the dialogue has worked to an even better plan than we had before, even though we thought the other plan was just fine. This is a better plan taking into account the considerations and the directions that this Council gave to us. We believe we have met all 7 standards for the issuance of a conditional use permit. We are asking you to do that tonight and go ahead and give me by birthday present. Thank you.

Mayor Bellamy - All right. Any other members of the community wishing to speak tonight? Yes sir.

Mr. Brad Brock - Good evening Madam Mayor, Council members, staff. Thank you for the opportunity to share my opinion on this matter once again. My name is Brad Brock. I am a local residential real estate broker and resident of Wild Cherry Road. On Tuesday, February 13 we all sat in these chambers and we went through a marathon session of very articulate discussion over this development. Mr. Smith and his associates left that Council meeting having heard the following things. The condos were a stumbling block to approval, however, it was not

their existence, but the placement that was the main issue it seemed. There was an idea to flip-flop the parking lot and the condo building. The Tsali Trail entrance was considered redundant and should be removed. Council was unsure if a donated park and transit stop would be a benefit or a liability to the City. And gates were a problem with the majority of Council and have caused you to consider the gated community on a larger scope. The developer has come back with the following plan. The removal of 22 attached condos and a few more homes, reducing the number of units and the removal of the Tsali Trail entrance. Increasing the square footage of the remaining homes affectedly increasing the impervious surface footprint. Pedestrian access on Wild Cherry and Elk Mountain Scenic Highway and gates. Along with a request that the neighborhood support them in exchange for the aforementioned concessions. I would stand in support of an ordinance allowing gated communities as a conditional use. There could be valid reasons - the prevention of high volume traffic cut-through being one. But I do not see a good reason for approving a gated community could be so that the developer could make more money and sell his product for a higher price point. And to hear developers using the crime deterrent as a talking point is a reason for inclusion of gates in a plan makes me wonder. If we have such a virulent crime problem in this city that we have to wall off our residents, we need to stop all other City business, other than law enforcement, eliminate all this rampant crime and then get back to the business of guiding the growth of our community. Yes, Asheville will continue to grow and develop. Yes, more and more people will continue to discover us. Realize that we are still from a national prospective an under valued real estate market. And yes, there will be more density and more traffic on our streets and highways. But we control this process though you, our elected officials, we, the residents of Asheville make the rules. Our City's growth should be citizen-directed, not developer-directed. Unfortunately many of the developments in our area are created by out of city and out of state developers. They have no long term interest in our community other than from a portfolio perspective. They are here to make money, plain and simple. There is no need for us to follow the cookie-cutter plan of any city which happens to go to a popularity and development frenzy. Gated communities are symptomatic of that lack of foresight.

Mr. Skip Pearlman - Mayor Bellamy and member of the City Council, my name is Skip Pearlman. I live at 28 Elk Mountain Scenic Highway. This is going to be my vice-president in charge of technology this evening and I might pull a chair up for her to handle the slides for me (Neighborhood Exhibits 3 and 4). And before we get started, I have one little housekeeping that I will give to Ms. Lipe. This is Pearlman Exhibit 1 and Pearlman Exhibit 2.

Mayor Bellamy - Mr. Pearlman, are you speaking as an individual or a representative of a group?

Mr. Pearlman - Mayor Bellamy, thank you for reminding me of my oversight. I'm looking for 10 minutes.

Mayor Bellamy - I just want to be sure that the individuals whose hands are promptly raised that you are giving up your time. I just want to make sure, okay. Thank you.

Mr. Pearlman - To begin with I would like to address Exhibit 1 which is a letter Robert Dungan, a local attorney, had addressed to the City Attorney Mr. Oast. And I believe, if I'm not mistaken faxed you a copy Mayor Bellamy. Just refer to the last paragraph, I think that's pertinent enough without going through a huge song and dance about this. "I ask that you take these arguments into consideration and advise the Asheville City Council that the Thoms Estate Property conditional use permit cannot legally be granted within a general use district. In the alternative, I ask that you advise the City Council that the requested conditional use permit has been challenged by a qualified protest petition and therefore can only pass if approved by a super-majority vote." Well, we obviously have a difference of opinion and where that leads us in the future, I have no idea, so I will proceed with the balance of my presentation. We believe that a protest petition is in order and that it is a valid proposal before you. But that is for you to decide. So we'll start with my exhibit page 1, and I'm not going to have you endure a word for

word resuscitation of this presentation, so away we go. The following is the purpose of the conditional use process as called for in Section 7-16-2 (a). The bottom line is that all conditional use at minimum meet the conditions set forth in this chapter. In order for Council to approve this project, the project must meet all of the seven conditions as set forth in Section 7-16-2 (c). Condition 1 will pass that, that seems to be in order. Condition 2. That the proposed use of development of the land is reasonably compatible with what surrounds it. I don't think it's reasonable to accept that the proposed rank of duplexes on Elk Mountain Scenic Highway is consistent with the massing and pattern of single-family SF4 development that is shown across the street across the side of Elk Mountain Scenic Highway. And basically what I'm referring to are these duplexes (using a map in Neighborhood Exhibit 4). Twenty of them on Elk Mountain Scenic Highway and they have as shown a 5,000 sq. ft. footprint. And I don't think that's consistent at all with what is across the street. Now the next slide will show these 20 buildings and I'm sorry it doesn't show up but there is a red outline projected all over these buildings which show the size that can be put in there. And the reason that is there is the developer has called for in his plan - he reserves the right for a 6-foot minimum distance between houses. So I put this in to show you that with a 6-foot minimum distance between houses, this guy can even expand the proposed footprint that he has put down there. Let's go onto Condition 3. That the proposed use of development of the land will not substantially injure the value of adjoining or abutting property. Now we've all heard that the project will be of high quality. And if so, then a guarantee of high quality needs to be a part of the conditions of approval. At a minimum, a package of design guidelines should be submitted to prove this finding. Without submission of architectural standards, the proposal fails to meet this condition. Condition 4. That the proposed use of development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area of the neighborhood in which it is located. I contend that the proposed site is inconsistent with the pattern of development on Elk Mountain Scenic Highway. If you can read that in the yellow. But you can see on that plan that the plan drawings have buildings that represent development, however, the plan actually allows for buildings to be six-feet apart from each other. The setback standards for the side setback in SF4, that's across the street, is 10-feet from the property line or 20 feet from building to building. Because of the lack of consistency within the context of what is across the street, the proposed development fails to meet this condition for approval. Condition 5. That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City. One thing I note here, there is no mention of housing affordability in the developer's plan. Going down to Land Use Goal 111, the City should permit and encourage transit supportive density along and adjacent to major corridors and at logical transit nodes. The majority of the density is on Elk Mountain Scenic Highway or deep up into the site. Close to half of the density is about a 1/2 mile from the nearest transit facility which is located down at the old Killian House on Beaverdam Road. In my opinion, it will probably be the most under utilized bus stop in the City of Asheville. (Land Use Goal IV) The City's open space standards should require the connection of open space areas where feasible and logical. Global Development has done the right thing to preserve the steepest and highest elevations and have submitted the plan in the form of clustered development consistent with smart growth objectives, however, I want to point out to you what they have submitted. The open spaces should be connected as a system of open spaces and should flow as an unobstructed floor plan for wildlife. GDR has presented a wildlife corridor, yet there are six houses within Phases III and IV where they meet, obstructing the path of wildlife and diverting them to adjoining property. What I'm speaking of is right here (Neighborhood Exhibit 4). See this little triangle right here. That property does not belong to GDR. It's an adjoining property under other ownership. So here go the critters marching up this open space and bam, they hit these six houses - sure they can go through the adjoining property and the backyards of these other houses and then go onto Reynolds Mountain. However, there is no guarantee there is an open corridor for these critters to move back and forth, north and south. This illustrates it even more vividly. I don't think that is a contiguous open green space plan in my opinion. (Land Use Goal X) The City should revise its subdivision regulations to require pedestrian and where feasible, vehicular connections within the subdivision and between the subdivision and adjacent property. We're talking about gates and streets here. That is a hot potato. It's a lightening rod issue and

I'm not here to comment on that one way or the other. Fortunately I have your collective wisdom to adjudicate that issue. Now, objectives of sustainability. The footprints for many of these houses range in size from 3,017 sq. ft. to 3,500 sq. ft. with the duplex units along Elk Mountain Scenic Highway having a footprint of 5,000 sq. ft. Now by my rough calculations and I'm not a great mathematician or an engineer, I figure the old plan had approximately 317,000 sq. ft. under roof. The new plan has approximately 383,000 sq. ft. under roof. That's an increase of 21% and with the 6-foot dividing line between houses, it could even be larger. Had the applicant proposed smaller structures, they could have come closer to meeting this objective and consumed less land.

Mayor Bellamy - We have the rest submitted in writing and we will look it over while we are here.

Mr. Pearlman - Yes you do. And thank you very much for your consideration. I appreciate your hard work and everything that you do for the City of Asheville, regardless of the outcome. Thank you so much.

Mayor Bellamy - Any other members of the community wishing to speak tonight?

Ms. Susie Berl - Madam Mayor and members of City Council, good evening. My name is Susie Berl. I live in the Creekside community immediately adjacent to the Thoms Estate. I'll speak for 3 minutes. This evening I wish to speak on three items - open space protection, sidewalks, and stormwater runoff. Open space protection. I commend the developer for setting aside over 36 acres as open space. These areas will certainly help provide some nice views for future residents. I also further appreciate the developer's having retained this open area even while he is dramatically increased the density of the built area. Nonetheless, to retain open space as open space requires legal restrictions. These areas need to have conservation easements assigned to them with the City retaining the development rights. Only then can we be assured that the property's density won't change in the future. Second, sidewalks. Council members should have received from the Clerk a packet of information with the neighbor's desires and signatures for sidewalks on the east side of Elk Mountain Scenic Highway. Please note Selene Thom's attorney's interest in the use of brick or porous material and his interest in using monies paid in lieu of sidewalks on Wild Cherry to be used. To allow for a continuous sidewalk from Beaverdam all the way up to Robinhood Road. Staff is checking into this possibility. Please direct them to do so for the safety of the neighbors and the livability of the neighborhood. Third area, stormwater runoff. As citizens have noted in earlier public meetings, we are concerned about stormwater runoff from the site. This matter has been addressed this evening by the developer who has pledged care during construction. And I believe that they will try to hold to that pledge. I am concerned, however, about what will happen after the developer has completed the project and has left the site. I would ask City Council to require that GDR place restrictions in the deed when he turns the property over to the homeowner association. The association will need to maintain the rain gardens and catch basins so that they do not fill with sediment and cause downstream flooding. Thank you very much.

Mr. Sam Wheeler - Mayor, Councilmen. Thank you again for this opportunity to be here again tonight. Once again I'm here to support this project. I supported it in the past and I've supported it from the very beginning. My name is Sam Wheeler and I'll speak for 3 minutes. I live at 38 Tsali Trail and my property has for many years bordered Selene Thoms property and we have for some time now looked forward to this project. We think it is going to be a tremendous enhancement to the community and to that area in north Asheville. This is a pristine piece of property that many have spoken about. I hope most of you, if not all of you have been out to see this property. It is a rare opportunity in north Asheville and I commend the developer for the work they have put into this to make it the least dense yet an economically doable project that can be done up there. It could be done a lot more, a lot more housing, a lot bigger footprints, and the only reason why they are here before you is, as expressed, is because they chose to do something less and different and it requires a special condition, as you are all aware. So, I am

and my family is very excited about this project. We all know, and if we are honest and the community is honest, at the end of the day, if there is even one new house put on those 100-plus acres of property, there would be several people here to object to that. So it's never going to meet, no matter how hard the developer tries and how much the community and the developer talk, it's never going to meet all of their demands. Any new development is a bad new development in a lot of people's eyes. In fact that it spills out in front of somebody's front yard or on somebody's road that they use every day, it's going to be a bad thing if there is one car or ten cars. So the developer is never going to appease everybody and get it all right. There is a happy medium and I think this developer has gone to great lengths to meet the community's demands and do what is in the best interest of that piece of property as well as what is in the best interest of Asheville. And as probably one of the closest neighbors and one of the people who will most greatly impacted, whose children are going to grow up next to that piece of property, I trust that you will do the right thing. Support this because it's not going to get much better than this. Thank you.

Mr. Sean O'Connell - Mayor and Council, thank you for letting us speak on this again. As you know I've been a part of this process for quite a few months. I'm Sean O'Connell. I live at 17 Edgedale. I think there has been a lot of positive improvement. I will tell you that as you look at these plans and as you educate yourself, lower density is great, but one of the things that a lot of us did like about it was the open space. And so it just looked really crowded for a lot less homes and the size of the buildings on this new plan are exponentially bigger than the original buildings. So there is a 20% increase in total footprint square footage. The idea that we are preserving this great green space is a big concern. I would like to recommend a few conditions that I don't think were part of the new plan. One is that it would be a huge asset to all the downstream neighbors to mandate the homeowners association does maintenance on the rainwater ponds. Once they fill up with sediment, which they always do, they are no longer effective. And literally our backyards will have a small little stream goes through. I don't think it will be a big cost to the homeowners association. It's not something that has to happen every year, but it can be and should be mandated. I don't know all the details of the steep slope ordinance that will probably be in front of you soon. But I do know that is a huge concern for everybody and if it would be possible to have a condition to make sure that the steepest slopes in Phase 4 that they meet the conditions of the steep slope ordinance if and when it passes. It would be fantastic. There has always been conversation about Tsali Trail. And one of the things that I've heard from many folks is also the construction vehicles. If you deem it to be important to eliminate construction vehicles on that small little Tsali Trail, it would be great. Because right now there is the ability for trucks to come and go on Tsali so just having that in writing would offer a lot of protection. And then finally, mandating that the green space that is on this plan stays that way. I don't know a lot about this process, but I would like to make sure that we all protect the part of the plan that we all like. Thank you for your time.

Ms. Susan Seeler - My name is Susan Seeler. I live at 17 Wisteria Drive, which is a street that parallels Elk Mountain Scenic Highway. And although we've heard many assurances here about our traffic being reasonable, it appears to me and others in the neighborhood that there are some areas of concern that have not been looked at and that I would like to point out here this evening. In looking at the revised plan that has been presented for the Thoms Estate property, it appears now that a very high percentage - 80-90% of the development may use the Elk Mountain Scenic Highway for access and egress to the development. The concerns that were expressed back at the February 13 meeting were primarily about the Beaverdam Road traffic. We are not concerned about the relocation of the highest density of development on the Elk Mountain side of the property which according to - if you take the engineering estimates of traffic, will put in the vicinity of 1,200 additional vehicles per day onto Elk Mountain Scenic Highway. This traffic in turn will need to turn onto Beaverdam Road, an intersection which is already dangerous, especially if turning left. We request that a left-hand turn lane be installed at this intersection. Areas of additional concern to us that were not addressed in the previous traffic study are the following. The impact of traffic flow from Beaverdam Road onto Kimberly Avenue. The impact on access to and from Beaverdam Road from Dover Drive, St. Eugene's Catholic

Church's school as well as the YMCA. The impact of the traffic on the Beaverdam/Merrimon intersection has already been addressed and we continue to have concern about that. And am especially concerned now with the proposed high increase of traffic on Elk Mountain Scenic Highway is the intersection of Inglewood Road and Elk Mountain Scenic Highway. This intersection is very narrow and dangerous. Inglewood Road is one of two roads for access of 800 members to the Asheville Country Club. This is a heavily traveled road for access by club members. So the neighbors would like an additional traffic study to be done, including impact at the above mentioned sites and we would like to be assured of corrective traffic measures prior to approval of any more development in the Beaverdam Valley. Thank you very much.

Ms. Elaine Light - Good evening Mayor and Council members. Thank you for letting me speak about this issue. There is no question that we live in very uncertain times. We all of politics - things are crazy. My name is Elaine Light. Developers of gated communities exploit the generalized fear and anxiety by marketing their projects as safer and friendlier than traditional urban or even suburban neighborhoods. Their ads and brochures are sprinkled with words like village, community, nestled, cozy to suggest the friendliness and security and manageable scale there are supposedly missing from the outside world. No matter who builds them, gated and walled communities are intended as private havens. It is this separateness that draws the criticism. Planning consultant Daniel ... states "gating is an outgrowth of not wanting anything in our backyard that is different from us." Setha Low, author of the book "Behind the Gates, Life, Security and the Pursuit of Happiness in Fortress America" argues that the primary things people move to gated communities for is enhanced security and community (the oxymoron gated communities) never materialize and crime rates within gated communities tend to be similar to the areas around them." Ironically Ms. Low has shown gated neighborhoods are in fact no safer than other suburbs and many who move there are disheartened by this solidarity and restrictive rules of the community. While the desire to protect home and family is understandable, walls and gates inevitably lead to more segregation, more fragmentation and more isolation and the outcome is not a desirable one. Many experts say that the fear of crime only partially accounts for the proliferation of walled and gated communities. Equally important is the desire to protect and enhance housing values, which is certainly the self-serving motivation for the gated aspect of many proposed developments we have seen recently in the Asheville and Buncombe County community. And this one is no exception. I question the wisdom of imposing a gated community within a long established and very safe neighborhood. Please consider the overall impact of gated communities when you are deciding on this project. Thank you.

Ms. Nancy Ackerman Cole - Mayor and Council members and all you wonderful public servants, I wasn't planning on speaking tonight, but I'm glad I got the nudge to come and get sworn in in case. I'm Nancy Ackerman Cole and I live in the neighborhood, but not on Elk Mountain - I'm on Robinhood Road at 221 Robinhood Road. I was nudged to speak by something that Craig Justus said in his opening remarks and his presentation was certainly stellar and stunning. I'm a fortunate member of the Asheville Rotary Club. I've been a Rotarian for 20 years. We have in Rotary a four-way test and two of the tests are is it the truth and is it fair for all concerned. I just want you to know that some of the neighbors did meet with Global Development in March, but there was no second meeting as was stated by Craig Justus. And communicating and negotiating with that group has not been an easy or a fun thing to do. I want to live in a neighborhood like Burton Street. Where you not as impressed as I was with the character of that neighborhood description? I don't think our neighborhood wants hamlets and we don't want gates. We want a community and we have relatively come together and gotten to know each other through this process for which I am grateful. So, I heard Pat Whalen's report tonight and if we are going to have 80,000 people come by 2020, you all have some huge responsibility in planning. And to eliminate or reduce crime, we don't want to be whimsical in how we address development. We don't want to be whimsical in buying 80,000 dogs to go with these 80,000 people that are coming to reduce crime. I mean you want to be really thoughtful about how you approach crime issues and development issues. And so I would ask you to consider some of the things said by the neighbors tonight and even the presentation by the developer said

that we have a better product than we did a month ago. I would suggest that we could have yet a better product. There are a lot of ways to make money and a better plan would be nice. Thanks.

Mr. Justus - Madam Mayor, just in rebuttal. I'm a good Baptist so I have my cheat-sheet here from the meetings we had. I didn't catch the nice lady's name, but she was not at the two meetings with the residents that we had one on March 1 and April 2. Just to rebut some of the comments made. This whole gate issue to some degree is a red herring. They see it as something we want and they see it as potentially something that will kill the project and so they are against it. Suddenly gates become the issue. I recall from the last meeting, Councilwoman Cape, and I actually have the minutes said it wasn't a question about neighbors wanting to drive through the new community, only that they wanted to walk in this new community and be neighbors. And so, further on down the staff said that here are some options and I have listed those options and we have agreed to all of those options, in terms of opening up the sidewalks for pedestrian access 24 hours a day. Internal to the project, there are no gates at the entrance. Internal to the project there is controlled access. And it's at night time. So during the day time people can drive on the streets all they want. It's only at night. And I just ask the question, what would be the purpose of there anyway at night. They can still walk there at night, but what would be the purpose of driving there at night, unless there is an emergency and that condition we've already agreed with Wayne Hamilton and staff to keep the roads open. So I would just ask that question. Why? What's the big deal, especially in light of the fact that when we started the process there was no policy on gates. We spent the money in reliance on that and we made a tremendous effort to compromise based on staff direction and what we understood from Council, what your direction was. Multi-family, the condo was too big so we got rid of that and now we're at single-family. And suddenly the footprints are too big. They are asking to micromanage the size of single-family dwellings. That is a slippery slope I would think to micromanage the size of single-family structures. I think Mr. Pearlman called them duplexes. They are not duplexes. They are single-family attached structures. There is not a shared party wall. They are actually attached at the roof for utility purposes, but they are not duplexes. They are single-family structures. These meetings we had, Mr. Pearlman was there, bus transit did not come up as an issue. We are certainly willing to talk more about bus transit, but we put it at a logical place next to the greenway that we are donating to the community. As it relates to protecting critters. That's never come up in any discussion I will say about the protection of critters. We did the best we could by preserving 36 acres of open space and showing you a critter design access plan for those critters, but apparently it's not good enough. Finally, the two last things. The neighbors want protection. It's through this process and the permit you would grant that creates the protection. So the plan we presented to you tonight is the plan. So that means we could not substantially alter the plan, or materially alter the plan, without coming back before you. They talked about deed restrictions and homeowners associations and conservation easements. The permit that you would issue, hopefully tonight, with the plan in mind is the protection that they would need to have. Not anything more than that. And finally, let's get back to traffic again. Once again, I didn't mention the fact that total we have met with staff and residents about 22 times. And not included in that are e-mails with staff talking about traffic issues. And it's your staff that directed us what to look at as it relates to traffic. And ultimately, as I said before, five professionals said that our development would not cause any problem and we do not need to mitigate the traffic from our development. And I would just submit to you that the neighbors had plenty of time for all these months to hire an engineer, a traffic engineer, and they don't present a professional talking about traffic. Five professionals agree with us. At the end of the day we meet your standards and we hope you will grant this project so we can move forward and be a positive asset to the community. Thank you very much.

Ms. Julie Niwinski - I'm Julie Niwinski. I live at 52 Wild Cherry Road. I just want to say quickly that the second meeting was for 15 minutes with 2 members of the community. It was not a meeting with the whole group of community members that we had met with originally. So we don't consider that a second meeting, just as a factual thing. I'd also like to point out that maybe five traffic engineers say that the traffic is okay on Beaverdam Road, but there are thousands of residents who drive it every day, several times, who disagree with that strongly. I don't know how

you quantify that. I just wanted to say that quickly. And, we were commended last time for not being personal, but we believe that the man who spoke so eloquently about raising his children in our community has his house on the market and I disagree with that. Thank you.

Mayor Bellamy - Any other members of the community wishing to address Council on this matter? All right. I will close the public hearing at 10:12 p.m. Council, any questions, comments or a motion? Councilman Newman.

Councilman Newman - I have a question of something someone brought up about the requirement that the future homeowners association maintain the rain garden and other stormwater facilities. That's clearly that responsibility. How do we make sure that does happen?

Mr. Pennington - Let me backtrack just a little bit and perhaps Bob Oast might comment on this too. I need to clarify something. This falls under the State Statute for the Planning Community Act, so everything that was brought up with the red lines that are on the site plan. Again, we are looking at someone actually owning a structure and the dirt underneath it. I believe the red lines represent the maintenance area that would be maintained by the homeowners association. There have been a couple similar planned communities - one was done out on Biltmore Lake off ... Stone Circle and all the infrastructure is in now and currently the homes are under construction there. Very similar to that design. That could certainly be a condition that we could attach to this. Similar to the Weirbridge project where we added on that condition that they maintain the stormwater controls.

Councilman Newman - Is the technology around that and practices around that understood well enough that we can put in there - we will require you to maintain these stormwater facilities. But is there enough detail in the description that we can really go in there and make sure that we do hold them to a real effective level of management of those facilities.

Mr. Pennington - I believe so. We can let the City Stormwater Engineer who is here as well as their professional to speak to the best management practice of using rain gardens.

Councilman Newman - I don't need all the details of that, but I am certainly supportive of that of making sure we add the best language we can into that to make sure that that happens. What about the question of maybe having more sidewalks on Elk Mountain Scenic Highway. The current scenario as I understand it correctly, is that the developer is going to do some payment in lieu?

Mr. Pennington - Correct.

Councilman Newman - And the folks are saying we would really like to have more sidewalks on Elk Mountain Scenic Highway. Is there a way we can get more invested there rather than just having the payment in lieu fund?

Mr. Pennington - Let me say this and then I'll defer to the Engineering Department again. Our normal practice is to require sidewalks along frontages of the proposed subject property. In this case you've got Wild Cherry for instance, where it sort of jagged (City Exhibit 4). So that is where we would have accepted the fee in lieu of. The agreement with Selena Thoms, I don't see her attorney here to speak about what was decided amongst them. We can certainly discuss that but Engineering's generally the department who reviews sidewalks.

Councilman Newman - If anyone else here has thoughts on that, I would appreciate hearing. The only other question I have is, I guess this may be a Bob Oast question. One other question that maybe you can weigh in. Is it feasible or would you recommend supporting the idea of saying that they can't have construction traffic on Tsali Road?

Mr. Pennington - I don't know why they would have construction equipment on Tsali Road. It seems that the logical access points would be off Elk Mountain and Wild Cherry. There really wouldn't be any logical access on Tsali Trail since the ingress and egress has been eliminated now from the plan.

Councilman Newman - Would that be a concern for you if that was a condition?

Mr. Justus - No, that would not be.

Councilman Newman - Great. I guess my last question is a Bob question. And that is the question of, obviously the question about the gated access and things like that. The question has been looked at and we had a subsequent discussion with Council about the issue as a stand-alone policy matter separate from this project and made some decisions around that. But this project was proposed prior to those discussions, so my question is. Obviously this is a conditional use project so we can put conditions on it, so I guess my question is, but in light of the fact that our staff is telling us that we did not have an ordinance previously saying that you cannot - prohibiting gated communities, would denying the project based on it having a gate be a permissible reason to not support it? Does that question make sense? I guess maybe a more straight forward way of asking the question is, could you remind me whether we can decide whether or not this project has gates or not and to what degree in terms of pedestrian, vehicle, etc. Is that a decision we're empowered to make?

City Attorney Oast - I think that you can make that decision. As to whether it is ultimately be defensible in court is a question I can't answer right now. We would certainly be in a stronger position if we had a policy that clearly articulated what you could and could not do with gates. If you can somehow articulate a connection between gates or some limited use of gates in any one of the seven conditions listed for a conditional use permit, that would certainly put us in a stronger position. And while I'm thinking about this, let me go ahead and say something about the stormwater situation. And Mr. Pierce can add to this if I miss anything. But I think this is a facility which would result in the recordation of a maintenance and inspection agreement. It's kind of like what we had with the project out on Hendersonville Road where it would become the responsibility of the people who own property in this area to maintain the stormwater facilities. If they did not, the City would be empowered to go on the property and maintain them and do any necessary repairs at their expense.

Councilman Newman - Craig, do you have any thoughts about this question if it would be possible to get more sidewalks on Elk Mountain Scenic Highway?

Mr. Justus - I'm sorry, I didn't recall anyone bringing that up tonight?

Councilman Newman - Some people have contacted Council and said if you are going to do a payment in lieu, would it just be possible to spend that money adding. You are going to have to do the sidewalk along your frontage on Elk Mountain, would it be possible to go on down to Beaverdam Road or more up to Robinhood Road, rather than simply spending that money into the payment in lieu fund - actually spending it on building some sidewalks above and beyond what you would have to normally do on Elk Mountain Scenic Highway.

Mr. Justus - The problem Councilman Newman about that is we don't have right-of-way. GDR is the project. The project outline, or our boundaries are, we are providing sidewalk except along Wild Cherry where they said it basically is impractical to do it. Therefore, we're paying for that difference. If you are talking about obtaining the right-of-way up Elk Mountain Scenic Highway and then down Elk Mountain Scenic Highway. I'm not aware of that ever being imposed upon a private developer to go out there and acquire right-of-way. If you're talking about paying money into a fund so that the City could eventually go out and maybe condemn or acquire right-of-way, I guess we could talk about that. But if you're saying condition the project for us to put in sidewalks on property we don't own, that's.

Councilman Newman - I don't think that is the suggestion. I think that the idea is not that you would have to spend any more money. No one would be asking you to spend any more money than you are legally required to do. But if you were going to just put money into the fund, whether those funds. It sounds like there may be some neighbors who would be interested in donating their easements along Elk Mountain Scenic Highway and just going ahead and having the sidewalks built at the same time. Sounds like that is kind of a new conversation to you then.

Mr. Justus - We have been aware of the request that we contribute in some way to the sidewalks for considerable distance along Elk Mountain Scenic Highway. And what we have said all along is we don't have right-of-way in order to participate in that discussion. If there was something concrete in terms of numbers, we can look at fine. So it comes down to right-of-way and what numbers, Councilman Newman, are we talking about? Clearly we are abiding by what the City ordinance requires of us with sidewalks and in terms of what your standards are. We comply with that. If you are asking us to do something more, I guess we would need to have more detail. But we don't own that property that you are talking about and that is the problem. But we are willing, certainly, to talk about it. We don't want you to get hung up on it, but we don't have any detail about it.

Mayor Bellamy - Council, any other questions? Councilwoman Cape.

Councilwoman Cape - Can I ask staff a few questions please? Just because I need to understand what our options are. What is the process that the applicant would go through if we refuse this conditional use process tonight? To develop this land, what is the process they would go to? Do we have an application in place for the other subdivision already?

Mr. Pennington - No.

Councilwoman Cape - We are in the process of reviewing our subdivision laws but those won't be done for a couple of weeks. I'm just understanding the process the applicant would go through to address the steep slope issues that are coming up, the subdivision issues that are coming up, the stormwater regulations. I like many aspects of this in terms of clustering and open space, but I don't like the threat that it's a better project without understanding what the other project is. It's hard to really make a positive choice when you don't know what your choices are. And the difficulty I'm having is the vagueness of what our choices are. In other words, our steep slopes say we can't develop. There is a lot of land above 2,200 sq. ft. here that we can't develop on anyway. The slope issue. How many properties could they actually do anyway? Those are questions we are being told they reduced it by 30 houses, but it's difficult to understand what our options are. So explain the process.

Mr. Pennington - Okay, I can explain that for you. The application before you is the only application they have submitted for. There is no dual application nor do we really ever recommend any dual application. We try to really review the application at hand. Secondly, part of their design was to stay out of the areas that are above the 2,220 and 15% grade threshold. So they stay out of the steep slope areas as is written now, not as written or is proposed.

Councilwoman Cape - So they've stayed out of the above 15%?

Mr. Pennington - For the most part. They still have to meet their grading and they have to meet their density. But let me give you a couple numbers so I can help you understand more. The total subject parcel with the park area, and just so you know that park area is 4.26 acres, is 82.7 acres. That results in a net density of 1.6 ... units per acre. Without this park area, 4.26 acres, gives them 78.4 acres. That results in a net density of 168 dwelling units per acre. Ninety-two single-family residential and 40 single-family attached, which have the look and the feel of essentially a single-family residence. If you think of RS-2 and you think of RS-4, RS-2 zoning,

which this property has both, it has a little bit of RS-4 and mostly RS-4. But if you think of it in terms of density, that's well below what is traditionally allowed in the traditional subdivision.

Councilwoman Cape - Okay. And just a clarification. You have said that they, for the most part, except for maybe Phase 4, is all below 15% grade?

Mr. Pennington - Yes. I'm hoping that the developer will catch me if I'm wrong (City Exhibit 4). There is a phasing .... But essentially Phase I towards the bottom here. Phases 2 and 3. Phase 4. Phase 4 is when you really start getting into the areas that are above 2,220 feet. That is when we really start restricting them in regards to grading and residential density.

Councilwoman Cape - Has that already been applied to that plan? That restriction.

Mr. Pennington - Yes. We've done those calculations separately so you have your calculation for those areas that areas that are above and those areas that are below this thresh line.

Councilwoman Cape - You know it's been stated loud and clear from this Council that they are against gates of any kind. The options before us are to turn this down and hope we get our gated subdivision in, or work with this one piece now before they put an application in. If that's the main thing we are contending with. I do have some concerns about the increase in size. You're selling building envelopes. I guess this becomes a question for the developer. So you're selling building envelopes that say that you've having high quality product, but there is no definition of what this high quality product is. It's just a building envelope space. That's kind of an interesting concept that I have not seen on a conditional use before with Council. You know, to me what we are seeing here is not that much better than what we saw two weeks ago. So that is just where I'm at.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Mr. Oast, are there any modifications that you wish to offer us on your observations on the protest petition validity?

City Attorney Oast - No, I did review Mr. Dungan's letter. It's the shortest way to put that. I just disagree with him. This is not a map amendment, it is a conditional use permit.

Councilman Mumpower - We rely on our guidance. I would make a number of pointed comments because I certainly feel that way right now. It is a persistent disappointment to note how many Asheville neighbors feel comfortable in trying to insert arbitrary control over property that they do not own. I am extremely disappointed with that I see tonight. And I see it at other Council meetings. There is a ... difference in what is offensive and what is harmful. There is a big difference in what we want and what we earn from our own labors. This is not our property. And I tell you, I think we ensure our liberties and freedoms at no greater level than we ensure our neighbors. And that's just the opposite occurring here. We talk all the time about how developers come to this community and try to loot the City. I just see just the opposite occurring tonight. I think the neighbors are trying to loot the developer to their own special interests. And I find that abhorrent. This is about development by committee. Development approval by committee rather than the application of fair practice and consistently applied ordinances. And you cannot develop the City on these bases. In terms of the fence, I think that if you have a fence in your yard, then you believe in gated communities. You just believe it on a smaller scale to suit your own personal needs. I think a lot of like that security and we like it for obvious reasons. I don't particularly want to live in a gated community, I don't think I ever will, but this is not about what I want. I don't think it should be about what anybody wants, it should be about our governing ordinances. That said, we had no governing ordinances in place when these folks began this process that said we do not accept gated communities. We are applying a policy decision after the fact on these folks and that is not fair. I don't care who we're doing it to. It

would be fair to a single neighborhood and it's not fair to a big developer. I think they've made a real strong effort, frankly stronger than I think they should have, to accommodate the indulgences of a lot of folks. They're taking that gate and putting it out of the way and they are talking about at night. Again, whether one likes it or not, it's an effort to try to accommodate folks. I think that accommodation has to work both ways. We live in a busy growing City and everybody has to make an effort to try to help one another. I hear none of that attitude tonight. I hear a whole lot of people having their own special interest about what they want. I believe that these folks have met the seven conditions at a more than satisfactory method and am prepared to make a motion to that affect, at the appropriate time. Thank you.

Mayor Bellamy - If you would like, you can go ahead and carry it right now.

Councilman Mumpower - I move, with the caveat, Mr. Pennington maybe you can help me. Any special conditions that have come up in discussions that I might want to add that are not on our current staff report?

Mr. Pennington - Sure. One is that we talked about the maintenance of the stormwater rain gardens and other best management practices. That they be maintained in perpetuity by the association.

Councilman Mumpower - Is that the appropriate language to use to ensure that? Is that the standard that we've applied to other folks? Is there a better way to do that? Or is that adequate?

City Attorney Oast - I think that is something the ordinance takes care of and that there is no need to say that. Mr. Pierce is a lot more familiar with this than I am.

Councilman Mumpower - Okay. So is there another one?

Mr. Pennington - If you wanted to talk about to make sure that the gates would allow unimpeded access to emergency vehicles and pedestrians, you might say something like, all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress of pedestrians and emergency vehicles throughout the subject property.

Councilman Mumpower - Do you see any problems with that language Mr. Oast?

City Attorney Oast - (shook his head no.)

Councilman Mumpower - I want my motion to include that language also. Any other caveats that you would encourage us to.

Mr. Pennington - No, sir.

Councilman Mumpower - Okay. Thank you very much for your help. I make the motion (which motion is: to approve the conditional use permit adopting the proposed master plan, with the requested modifications to number of dwelling units per building, setbacks, sidewalk and road design, for the Thoms Estate subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This

Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout, and (9) all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress of pedestrians and emergency vehicles throughout the subject property.

Mayor Bellamy - All right. Is there a second?

Councilman Newman - I'll second it.

Mayor Bellamy - The motion has been made and properly seconded. Any further questions or comments?

Councilman Newman - I have one other question about the public access to the City streets. So there is going to be full pedestrian access allowed on the streets. And there is also going to be vehicular access allowed during the daytime, right? Are there details around exactly what daytime is, or hours, or what that means?

Mayor Bellamy - Councilman Newman, is that a question for the developer to answer?

Councilman Newman - Whoever has given thought to the subject. I think if it is not detail enough, then we should define that in some way or at least establish a process of defining what that is.

Mr. Justus - I would just ask you to include that in the condition. Staff recommendation on the compromise was sun-up to sun-down. If you want to defer that to staff in working out the hours of that operation, that would be fine too. But that was the compromise staff laid out February 13.

City Attorney Oast - If we said at least sun-up to sun-down, I think that would take care of it.

Councilman Mumpower - I would be supportive of that amendment to the motion tonight.

Councilman Newman - I guess the only other - going back to this question about the sidewalks. Is the staff aware of some of the ideas of potentially doing, of using some of the payment in lieu of the money, or otherwise trying to get more - I think there is support for the idea of getting more sidewalks on Elk Mountain Highway. Either using the payment in lieu money or does staff have any thoughts on that? Or, are you aware of contemplating doing that potentially. Do we have to use our payment in lieu of money in this area? Is that something that we can potentially accomplish as part of what happens here?

City Attorney Oast - For payment in lieu of sidewalks, we do have to use the money that we gather that in the area of town where the project is. It may be possible to structure the order such that the money paid in this case is used on Elk Mountain Scenic Highway, if the property can be acquired.

City Stormwater Services Manager Chad Pierce - I would like to make a small clarification. The section that they are paying the fee in lieu of on is for the juts, where the red boundary kind of juts and makes contact with Wild Cherry. So it's very fragmented and that is kind of why that decision was made. It doesn't make a lot of sense to build 50 foot here and 50 foot here. So, those are the only spaces they are paying the fee in lieu of, that they would be required to build sidewalk. All the other sections where they have property frontage on public streets, they are building the sidewalk.

Councilman Newman - So it's a pretty small payment in lieu?

Mr. Pierce - (shook his head yes.)

Councilman Newman - Okay. One other question while I have you here, if you're the person to comment. There was a suggestion made about the left-hand turn lane on Elk Mountain onto Beaverdam. Has that been looked at? Do you think that the traffic volumes warrant that, or consideration of that?

Mr. Pierce - I will have to defer to the traffic consultant Gay Sprague for that.

Ms. Gay Sprague - Would you repeat that question for me please?

Councilman Newman - A question was raised about if there is going to be additional traffic on Elk Mountain Scenic Highway, is it to the level that warrants a left hand turn lane, I believe I have that right, onto Beaverdam Road.

Ms Sprague - I haven't done that exact. I'm Gay Sprague with Sprague and Sprague and have been hired by the City to review the traffic impact study. That analysis was not included in the traffic impact study and I have not done a separate analysis. What they did do was look at the delay of that left-turn and it was at an acceptable level of service. The idea, I did a quick little calculation, and forgive me it was by hand, but the kinds of shifts in traffic that were discussed a few minutes ago would increase the project traffic by about 16% on Elk Mountain. Because these are all small numbers even if you shifted some of the percentage, they are still pretty small numbers.

Councilman Newman - Okay. The one **other condition I would like to suggest would be the no construction vehicles on Tsali Road.** Would that be an acceptable amendment?

Councilman Mumpower - Do I see nodding heads back there? Is that doable and reasonable? Yes, sir. I will accept that friendly amendment.

Councilman Newman - I don't have any other questions. I would just say that these are tough judgment calls about this. It is a lot of new traffic on Beaverdam Road. The problem with, you know, it's not so much this project is putting a lot of new traffic on Beaverdam Road by itself, you know, in the big scheme of things. But, when we have these mountain valleys and every new development has to funnel down one road, that is the concern, the cumulative impact of projects like this going in. But I think that with the zoning we have here, I think this is a pretty good project in terms of meeting the objectives of the zoning that is there, preserving a lot of open space - a meaningful amount of open space is part of the project. I personally voted to support the policy of not having gated communities last week. But I think that there is a degree of fairness that these people brought this project forward before that policy was in place. So I don't know that it's fair for us to retroactively impose that on projects that are already in the pipe-line. I think that having pedestrian access to all of the streets, as well as vehicular access during all the day-time hours is a pretty good compromise on that point. So, in the future if this project came forward, if it started next week, I would say, no for public access. But in terms of requiring that now, I don't think that is the right thing for us to do. So, those are my thoughts on it.

Mayor Bellamy - Okay Council, we have a motion and have gone on at least 17 minutes. Can we go ahead and wrap up what we have to say quickly?

Councilwoman Cape - I would ask for one friendly amendment to this, if I may. And that would be that the Phase 4 of the steepest slope development would meet our new steep slope ordinances. Since this will be the final phase of the development process.

Councilman Mumpower - I'm not willing to again back-track on a policy issue. I don't think it is fair to the developer or anybody coming forward who is going to fear the same kind of behavior from us.

Mayor Bellamy - All right? Any further questions or comments?

(Final Amended Motion: Councilman Mumpower moved to approve the conditional use permit adopting the proposed master plan, with the requested modifications to number of dwelling units per building, setbacks, sidewalk and road design, for the Thoms Estate subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress by pedestrians and emergency vehicles at all times, and must remain open to all other vehicular traffic during daylight hours (sunrise to sunset); and (10) no construction vehicles on Tsali Trail. This motion was seconded by Councilman Newman.)

The motion carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Newman and Councilman Mumpower voting "yes" and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting "no."

Mayor Bellamy - Bob, do we have to vote on this again?

City Attorney Oast - Because this was voted on back in February and remember you voted on it and reconsidered it. That means the ... motion has been voted on so there is no need to go through it again.

Mayor Bellamy - It's done. It passes.

Ordinance Book 23 - page 312

B. RESOLUTION NO. 07-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 11 BOSTON WAY

Mayor Bellamy - Sam Power, if you could do items "B" and "C" together and only go over the new information.

From Staff Report: This is the consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 11 Boston Way.

A bid has been received from Kessler Asheville LLC in the amount of $11,665 for the purchase of air space at 11 Boston Way.

The property at 11 Boston Way is the former Exxon Station across from the Biltmore Estate entrance. The project which is called Bohemian Hotel at Biltmore Village proposes to construct a four (4) story, 89 key boutique hotel. The project received approval from the Historic Resources Commission on October 11, 2006, approval from the Technical Review Committee on

November 6, 2006, and approval of the building plans by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies.

The air space for the balconies over the sidewalk totals 890± S.F. beginning at approximately 18 feet above the sidewalk and projecting over the sidewalk 5.25 feet. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using an appraisal of the property at 11 Boston Way dated February 13, 2006, adjusted for time. The estimated value of the air space is $11,665.

The bid from Kessler Asheville LLC is to acquire the air space for the balconies for the sum of $11,665.

On March 27, 2007, Council asked staff to research the practices of other cities with regard to balconies projecting into rights of way. The following is the results of the inquiries to other cities along with staff's recommendation with regard thereto:

In the past several years as the downtown has become more and more popular as a destination for tourists, a place for off hours recreation, and location for both living and working, balconies have become a subject of interest to developers seeking to provide the amenities people desire. Although balconies are not a new invention the opportunity to expand the useable space in a structure through balconies projecting into the right of way has generated requests to purchase air space for the balconies. The response of staff thus far has been to facilitate such requests both from the plans review process as well as conveying requests to City Council for approval. In general staff believes that balconies are a positive addition to the urban environment. Not only do they add vitality to the streetscape, they provide a desirable amenity for marketing downtown as a place to live, work and visit. This may be an incentive to investors to invest in new construction as well as renovation of existing buildings to meet the market demand.

Past experience has shown that the placement and appearance of balconies is important to the general public. For instance large low hanging balconies may be undesirable to some, whereas such a balcony may be appreciated by others as shelter from the rain and shade from the sun. There are of course public safety concerns as well. It is important therefore that such issues be addressed in the plan review process. Staff believes that balconies should not only be safe and functional, but an attractive interface between the public and private spaces.

On March 27, 2007, City Council considered requests from two developers to purchase air space for balconies to project into right of way as follows:

Kessler Asheville LLC	11 Boston Way	890 square feet	$11,665
Urban Capital LLC	82 Patton Avenue	216.6 square feet	$3,350

Staff utilized a method of calculating the value of the air space based on previous appraisal experience intended to make the process more efficient while ensuring that the City would receive fair market value for the air space. Council expressed concerns about the value rendered by the method as well as the desire for information as to how other cities handle requests for balcony encroachments over right of way. It is the understanding of staff that the matter should be brought back for consideration after gathering data from other cities.

In summary, none of the responding cities actually sell air space for balconies. Two cities, Gatlinburg and Aspen do not allow balcony encroachments into the right of way. Aspen does allow an encroachment license for old improvements for a flat fee. Wilmington grants revocable encroachment agreements for a flat fee of $250, while Greenville, SC allows a 40 year encroachment agreement with 3 ten year renewals for a total of 70 years. Charleston's real estate manager indicates she is not aware of any balcony policy because she has not had the

issue come up. Roanoke, Chattanooga, Spartanburg and Columbia had not responded as of the date of this memorandum.

Although we have not uncovered much data with regard to balconies over rights of way, staff believes that selling the air space for balconies is preferable to encroachment agreements for several reasons:

1. A balcony is a permanent improvement and the sale of the air space is a permanent solution. It does not leave an issue to be resolved by someone else at a later date.

2. A sale generates revenue at fair market value in exchange for the air space; the data we received indicates that encroachment agreements do not.

3. A sale of the air space enlarges the taxable area of the improvements.

4. Along with the sale, the purchaser assumes responsibility and liability for the air space.

The subject projects have been through technical review and approved for building permits subject to acquisition of the balcony air space. Staff believes the subject requests meet the need for safety, functionality and esthetics. The information gathered from other Cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the sale of air space for the proposed balconies is appropriate and that the methodology used is reflective of fair market value. Staff recommends reconsideration of the resolution on April 10, 2007, however, staff is committed to providing documentation acceptable to Council for evaluating these requests and would invite further guidance as the need may be.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate characteristics of the building design intended to conform to the historic nature of Biltmore Village.

Cons: There is no negative impact.

Economic Development staff recommends adoption of the resolution which will initiate the sale of the air space through the upset bid process.

Economic Development Director Sam Powers - Thank you Mayor and members of Council. The Real Estate Manager is out of town tonight so I will be providing this update to City Council. On the 27th of March, City Council considered a request from two developers to purchase air space for balconies to project into right-of-ways as follows: 11 Boston Way - 890 sq. ft.; and 82 Patton Avenue - 216 sq. ft. Staff had utilized a method of calculating the value of the air space based on previous appraisal experience that was intended to make the process more efficient while still ensuring that the City would receive fair market value compensation for the air space. Council expressed a desire for more information as to how other cities handle the request for balcony encroachments over right-of-way. Staff contacted several cities and our responses indicate no consistent method. I think as you can see after looking at this chart, the cities that responded to us gave a number of different methods. Some communities that responded used encroachment agreements. Some communities did not allow encroachments. But our method, although it didn't uncover a lot of data in regard to balconies over right-of-way, we believe that the methodology that our staff came up with for selling air space is preferable to any encroachment agreements for several reasons. A balcony, since it is a permanent structure, the sell of the air

space is a permanent solution. The sale generates revenue at a fair market value in exchange for the air space. The data that we collected indicates that encroachment agreements do not do that. The sale of air space enlarges the taxable area of the improvements and along with the sale the purchaser assumes the responsibility and liability for the air space. The subject projects have been through the technical review and approved for building permits, subject to the acquisition of the balcony air space. Staff believes that the subject requests meet the need for safety, for functionality and aesthetics and that these amenities are desirable to creating more vibrant, urban places. The information gathered from other cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the methodology used is reflective of fair market value and the recommendation from staff is for approval of the resolutions.

Mayor Bellamy - Thank you Mr. Powers. Any members of the community wishing to address Council on the new items that have been presented tonight? Hearing none, Council is there a question, comment or a motion?

Councilman Mumpower - Mayor, I originally asked to have this pulled from the Consent Agenda because I had concerns. I think staff has been patient with us in trying to follow through on those concerns. I'm not sure we got all the answers that we hoped for, but on the basis of the staff report, can this be a joint motion Mr. Oast, or do they need to be separate?

City Attorney Oast - It's two resolutions and not on the Consent Agenda. I think you need to do them separately.

Councilman Mumpower - I make a motion to (approve the resolution authorizing the City Clerk to advertise an offer to purchase air space at 11 Boston Way).

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

Councilwoman Cape - Just one quickly, if I may Mayor. I am very supportive of this motion but I would like to hope that we are not creating a precedent that everybody that comes before us with a balcony request - that it will continue to be a per project. Because there are situations where we do not want to create a tunnel on City streets. I don't believe these two particular projects create that tunneling aspect. But I just want to let it be known that we will need to consider balconies and their affect on the public space every time they come forward.

City Attorney Oast - And I think under the law it would have to be that way.

Councilwoman Cape - I just wanted to send the message that depends where they are and whether they work or not.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 304

C. RESOLUTION NO. 07-83 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 82 PATTON AVENUE

From Staff Report: This is the consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 82 Patton Avenue.

A bid has been received from Urban Capital LLC in the amount of $3,350 for the purchase of air space at 82 Patton Avenue.

The property at 82 Patton Avenue is the former First Union Bank building. The project which is called Capital Center proposes to renovate the building into office condominiums. Along with interior redesign the building will receive a new facade which will include balconies extending out over the sidewalk in a bowed pattern to a maximum distance of 4' with a view of Pritchard Park. The project has received Level 1 approval from Planning & Development, unanimous approval from Downtown Design Review and the plans have been approved by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies. The air space for the balconies over the sidewalk totals 216.6 ± S.F. and begins at approximately 16 feet above the sidewalk. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 82 Patton Avenue. The estimated value of the air space is $3,350.

The bid from Urban Capital LLC is to acquire the air space for the balconies for the sum of $3,350.

On March 27, 2007, Council asked staff to research the practices of other cities with regard to balconies projecting into rights of way. The following is the results of the inquiries to other cities along with staff's recommendation with regard thereto:

In the past several years as the downtown has become more and more popular as a destination for tourists, a place for off hours recreation, and location for both living and working, balconies have become a subject of interest to developers seeking to provide the amenities people desire. Although balconies are not a new invention the opportunity to expand the useable space in a structure through balconies projecting into the right of way has generated requests to purchase air space for the balconies. The response of staff thus far has been to facilitate such requests both from the plans review process as well as conveying requests to City Council for approval. In general staff believes that balconies are a positive addition to the urban environment. Not only do they add vitality to the streetscape, they provide a desirable amenity for marketing downtown as a place to live, work and visit. This may be an incentive to investors to invest in new construction as well as renovation of existing buildings to meet the market demand.

Past experience has shown that the placement and appearance of balconies is important to the general public. For instance large low hanging balconies may be undesirable to some, whereas such a balcony may be appreciated by others as shelter from the rain and shade from the sun. There are of course public safety concerns as well. It is important therefore that such issues be addressed in the plan review process. Staff believes that balconies should not only be safe and functional, but an attractive interface between the public and private spaces.

On March 27, 2007, City Council considered requests from two developers to purchase air space for balconies to project into right of way as follows:

Kessler Asheville LLC	11 Boston Way	890 square feet	$11,665
Urban Capital LLC	82 Patton Avenue	216.6 square feet	$3,350

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In summary, none of the responding cities actually sell air space for balconies. Two cities, Gatlinburg and Aspen do not allow balcony encroachments into the right of way. Aspen does allow an encroachment license for old improvements for a flat fee. Wilmington grants revocable encroachment agreements for a flat fee of $250, while Greenville, SC allows a 40 year encroachment agreement with 3 ten year renewals for a total of 70 years. Charleston's real estate manager indicates she is not aware of any balcony policy because she has not had the issue come up. Roanoke, Chattanooga, Spartanburg and Columbia had not responded as of the date of this memorandum.

Although we have not uncovered much data with regard to balconies over rights of way, staff believes that selling the air space for balconies is preferable to encroachment agreements for several reasons:

1. A balcony is a permanent improvement and the sale of the air space is a permanent solution. It does not leave an issue to be resolved by someone else at a later date.

2. A sale generates revenue at fair market value in exchange for the air space; the data we received indicates that encroachment agreements do not.

3. A sale of the air space enlarges the taxable area of the improvements.

4. Along with the sale, the purchaser assumes responsibility and liability for the air space.

The subject projects have been through technical review and approved for building permits subject to acquisition of the balcony air space. Staff believes the subject requests meet the need for safety, functionality and esthetics. The information gathered from other Cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the sale of air space for the proposed balconies is appropriate and that the methodology used is reflective of fair market value. Staff recommends reconsideration of the resolution on April 10, 2007, however, staff is committed to providing documentation acceptable to Council for evaluating these requests and would invite further guidance as the need may be.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate the connectivity of public and private space for a more robust downtown environment.

Con: There is no negative impact.

Economic Development staff recommends adoption of the resolution which will initiate the sale of the air space through the upset bid process.

Councilman Mumpower - Again, based on the persuasiveness of the staff report, I make a motion to (approve the resolution authorizing the City Clerk to advertise an offer to purchase air space at 82 Patton Avenue).

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 305

D. ASHEVILLE POLICE DEPARTMENT DRUG ENFORCEMENT PLAN

From Staff Report: This is a comprehensive and detailed plan for increased drug enforcement, improved neighborhood safety, and a discussion of the possible elimination of all open air drug markets in Asheville includes both immediate and long term components.

The Police Department's continuing efforts directed at overall improvement in the quality of life for residents constantly seeks information regarding new trends, gathers information based on factual information and statistical analysis to determine best practices for a high functioning organization. Any and all relative information is used to develop strategic plans for programs and practices to provide the highest level of service which involves many community partners. All residents rightfully expect the same level of service for their tax dollars. Balancing the need to maintain equal service to all and to redirect efforts to areas where more significant problems exist is a fine balancing act. Incremental steps are designed for thoroughness and operation within the parameters of what is reasonable based on allocated resources.

Pros:

- Increased police presence in high crime areas, particularly where known illegal drug business is conducted
- Increased cooperative programs between community partners involved in an overall holistic approach to a better quality of life for those negatively affected
- Easier facilitation of programs involving health care, home security, child care , youth skills building, positive mentoring by appropriate role models leading to community ownership for safer communities
- More open and trusting relationships between police and residents
- Decrease in illegal drug business in Asheville neighborhoods
- Decrease in crime in general when residents take ownership, partnering with police

Cons:

- Budget Ramifications
- Redirection of attention from some neighborhoods to targeted areas

Staff recommends that City Council make selections from options presented based on conclusions that will provide the best outcome for Asheville neighborhoods with available resources.

Police Chief Bill Hogan - Good evening. Because of the late hour I will be as quick and brief as I possibly can with this. I was asked to expand the presentation I gave you on the 7-point plan. This is kind of what this will do, but it will be very quick and I won't bore you with the details. The things that the Manager asked me to do was to go back, because he wasn't here, and re-visit the wording on the discussion that occurred during the budget allocation for the two years where the money was set aside to what eventually came the Drug Suppression Unit, but it was just a general statement to direct me to assess the problem and project solutions. August 1, 2004, we created the Drug Suppression Unit by using 12 emergency response team officers, 1 vice officer and 1 lieutenant. And the following year, an additional 5 officers were allocated for that project.

Vice-Mayor Jones - How much did that add up to dollar-wise? The allocation of 5?

Chief Hogan - I would have to go back and research. I think the first year was $600,000. And then the second year would have been something like $250,000 or thereabouts. That was

additional cars which would have added to that. As far as looking to the future, I'm going to skip over this and come back to this because it speaks to the budget and you'll see it again. Let me talk about historically what we have here in terms of what we've done. We took the prior 29 months before we established the Drug Suppression Unit and between the 9 months that the Drug Suppression Unit has been in effect and what you see is felony arrests have increased by 36%, misdemeanor drug arrests have increased by 44%. What's missing from this because our data 29 months prior to what it did not capture that we can today, are criminal citations. So in reality, what I can't tell you is a comparison between criminal citations, simple possession oftentimes is written on a criminal citation, so that is not there. So that 44% increase in reality is probably higher. I just want to point out as well that this does not represent the arrests simply of the Drug Suppression Unit. The Drug Suppression Unit establishment has stimulated a lot of activity with patrol officers and others that have really stepped up to the plate and engaged themselves in making those kinds of arrests and really working on the drug problem. The other thing I want to mention to you is that during this analysis, on average we had 18 vacancies per year. We had a lot of turnover, baby-boomers moving on and things of that nature. The 7-point plan, I'm not going to spend a lot of time on. I went through this with you a month, month and a half ago. (From power point being used: The Seven Point Plan is (1) increase criminal interdiction traffic enforcement; (2) increase drug investigative special operations; (3) increase current DSU staffing by 25%; (4) increase partnership with U.S. Attorney's Office in federal drug case prosecution; (5) invest additional resources in crime prevention/neighborhood enhancement in public housing and high crime areas; (6) increase community policing and outreach initiatives; and (7) explore additional policy considerations.) So really I want to jump to explore additional policy considerations and build upon what the 7-point plan was talking about. I will tell you that all the things we talked about doing, we are in motion trying to enhance and work on all those activities. Let's look at the current service enhancement recommendations. (From power point being used: The current service enhancement recommendations include (1) crime prevention officer dedicated to public housing; (2) City Hall security officer; (3) two additional beats; (4) five detectives, two forensics techs; (5) 10% sworn personnel over hire; and (6) two telecommunicators, three telecommunications supervisors.) What you are looking at, quite frankly, is what the Police Department has recommended as potential budget enhancements to the police operation. You have already approved the Crime Prevention Officer dedicated to public housing. There was a lot of discussion about City Hall security - there have been conversations I've had with the City Manager to add that and enhance that. I know we've had a lot of meetings within City Hall, Public Works, and other City facilities to enhance our security. We propose two additional beats which I'm going to spend some more time on. The five detectives, I'm going to talk about that in greater detail. The 10% over hire and then the 2 telecommunicators. I'll go over each one of those with a little more detail so you understand why we are proposing what we are proposing. We are proposing an increased beat. We have currently 4 beats in our 3 districts and we are recommending additional beats in the south/central district and the west district. And there is a reason for that. One, you can see that C-1 beat is downtown has 19% of the workload of the entire City. A-4 beat, which represents 13% of the total calls and that encompasses Pisgah View and also the Haywood Road area, so that they have a lot of attention. But one of the reasons we are doing this is we started analyzing our response time for calls for service - priority 1 calls. And that is really got us looking at this. Currently in the central district we have an average response time of 8.5 minutes to go to a priority 1 call. In the west district it's 8.6 minutes. That's the average. There are some actual beats now that are averaging 9.5 to 10 minutes response time. We're talking about priority 1 calls, where someone says I need the police now. So we started analyzing this and incrementally looking at improving our response time as with the Fire Department or any other entity. We are challenged in this community, as you've probably heard, by the geography and the topography of this area. It does slow down our response time. This is not a gridded-off city with streets and avenues that give you a lot of flexibility. Sometimes we have to follow those roads as they wind around the mountains. And obviously this increase will allow us to continue to work on that 2-1 ratio and ensure that we concentrate our activities in high crime areas. I will also tell you that we have been looking at other departments and how they are analyzing this. And through our planning and research function, contacting other law enforcement agencies, we are finding we

are right on the money in trying to target about a 5% response time on emergency calls for service. That's why it is being recommended in the budget. The increase in the Criminal Investigation Division, I think I mentioned to you that we had one more detective in 1989 than we do today. Our workload obviously has increased dramatically. As we've had some discussions previously, there was some talk about participating in the FBI Task Force. One of those detectives would be geared for that. And one of those individual detectives would, we are training a detective now for that forensics - I mean the computer forensics detective that would do the job porn and those things. We are training one now, but that is a whole new area of responsibility. As you can see our case load is 286 calls per detective. That's an average of 5.4 hours per case. And we are also carrying 25 cold case homicides, missing persons, that are missing under suspicious circumstances. We compared ourselves to 11 agencies on the east coast - Del Ray Beach, Florida, up through Cary. Anyway, 11 different agencies. And what we found is that their detectives carry 149 cases and they spend on average about 10.4 hours per case. The bottom line is, the more time you have to work on a case - a simple case you will spend less time on. But if you have a homicide, you will spend a lot of time on - multiple detectives. The long and short of it is, the more time that you have to work on a case, the better quality case you can do, the more detailed investigation you can do. That is why it's being recommended as well. We're obviously, with the increase in calls for service, criminal activity and our drug activity, our forensics technicians who process crime scenes and handle evidence as far as collecting that and submitting it, are having greater demands placed on them. As you can see, we talked about the NarDrug Test. This is a new technology. We have sent two of our forensic technicians to that training and we are supposed to get the unit in later this month and we will start using that and see how it works. But we believe from what we all saw with this system, we are waiting for a court challenge on it, it's very effective and people are pleading guilty on these cases. And if someone does challenge it, they stand ready with the scientists, chemists and attorneys to represent the department that gets challenged on it.

Councilman Mumpower - Chief, that's very important.

Mayor Bellamy - Councilman Mumpower, let him go through the whole presentation and then we will come back.

Councilman Mumpower - Certainly Mayor.

Chief Hogan - The 10% over hire. This is another thing we talked about. Based on the fact that because of the turnover, that continuous turnover, it became very clear that we've had vacancies in patrol, we weren't really able to fill the 5 additional vacancies in the Drug Suppression Unit that were awarded in the budget of 2005-2006. We have done so as of today by the fact that we are using that over-time strategy that I talked about in the 7-points of getting there. But that's the only way we have been able to do that. What that would do for us and what you can see, some of the challenges we face, we are going to have resignations and we're going to have retirements, and we're going to have folks that fail to complete training, or get into the training process and don't realize police work wasn't what they thought they wanted. So that is going to generate some turnover. What's not even reflected in the permanent turnover is injuries and family medical leave. As we've hired younger and younger officers, we'll probably have more family medical leave as they take off for the birth of children and stuff, both male and female employees will do that. So this basically gives us the opportunity to maintain all the districts at full strength, if we over hire, also maintain the Drug Suppression Unit and our Detective Division. We have, right now, vacancies in the Detective Division, Patrol and would have had in the Drug Suppression Unit had we not taken this latest strategy. So that is another recommendation that is in the budget for your consideration. It's not cheap obviously. Here's another area that is often overlooked but we feel it's important to point out that we are recommending two additional telecommunicators and 3 telecommunication supervisors. We have a tremendous amount of traffic volume, radio traffic and phone calls coming into our facility and by looking at the workload that we are understaffed and we traditionally, have been understaffed as far as supervision. We have two supervisors and that's not nearly enough to supervise a 24-hour operation. We need

maturity there to make sure there is a supervisor on site at all times - that is where the 3 comes from. You can see the statistics that we have there. But the one thing I really do want to point out to you as we have done this research, at our peak activity time, we can have as many as 40 officers on the street transmitting on one radio frequency or one talk route. That is not safe. That means the officers can't get on the radio. We are at the point in time that the size of this City and the complexity and the calls for service, we need to have two talk groups. We have done national research again, we are seeing an 18 to 1 ratio. That means 18 units in the field to one telecommunicator or dispatcher monitoring those calls for service. And that is why we are making this recommendation as well as part of our budget. But here's the shocker for you. If you go down through those and look at the list, you see that those enhancements to the Police Department to enhance our response time to critical calls, by adding the two beats, enhancing the tech, 10% over hire is obviously very expense, but you are looking at $2,346,393. (From power point being used: The cost summary is as follows: (1) crime prevention officer - $46,735; (2) City Hall security officer - $46,735; (3) two additional beats - $619,350; (4) five detectives, two forensics techs - $538,199; (5) 10% over hire - $887,965; and (6) two telecommunicators/3 supervisors - $207,409. For a total of $2,346,393.) These are things we have talked about as a staff about where do we go from here. You can see what we have recommended in this budget, but these are things that we looked at and toyed with numbers for the future and what we could incrementally do in the coming years, quite frankly. (From power point being used: The incremental steps of ongoing workload analysis indicates: (1) incremental enhanced enforcement in public housing; (2) incrementally and enhanced policy presence in downtown; (3) incrementally and enhanced and improved traffic enforcement throughout the city (traffic issues are 30% of our workload); and (4) always maintain 10% sworn personnel over hire so no service gaps exist.) That is to focus our emphasis on public housing by creating a housing unit by putting additional personnel dedicated to that one service. As I indicated downtown, I know you receive complaints from time to time and we as a police department receive complaints from downtown - not enough police presence. That is another area we see that as time goes on we are going to look at it. And then obviously looking at traffic enforcement throughout the City. It does represent 30% of our entire workload. It is probably the greatest complaint we receive for calls for service from citizens complaining about speeding, stop signs, and wanting police officers out there to take enforcement. The obviously whatever we do about increasing our staff in the Police Department we would look at maintaining 10% over hire to manage that. The next slide is basically saying the same thing. It would be in a following, multiple years and looking at what we add to trying to address this issue and then adding a little more and incrementally adjusting and seeing what impact it has on the various neighborhoods or the downtown. (From power point being used: The long term performance improvement of ongoing workload analysis projects: (1) continued personnel enhancements for enforcement in public housing moving toward safety and improving quality of life; (2) continued personnel enhancements for downtown moving toward greater safety; and (3) always maintain 10% over hire so no service gaps exist.) Finally, this is talking about how we are going to talk about measuring some of our successes in what we are looking at. (From power point being used: The ongoing analysis for high performance of measures of marked improvement: (1) results long term will be less arrests; (2) success might be displacing drug dealing outside the city; (3) displacement is starting to occur; (4) peer review; and (5) comparison with high performing police agencies.) And again, we are looking that as we make improvements, we should see less arrests. If we have greater police presence out there, arrests should subside. If we are actually deterring the criminal activity. Success would also be described and displacing the drug dealers outside the City. We know that we are displacing some of them now. We know that they have moved in, quite frankly, some trailers in the County and it's a safer operation for them at this point in time. I'm not sure it will continue to be with Sheriff Duncan, but that's where some of them have gone and we know that for a fact. The peer review, I just had a conversation with John Emerson, the special supervisoring agent for North Carolina DEA, and he is working with me to bring some individuals in to look at what we do and how effective we are at that and try to bring some other additional best practices or ideas in comparison to what we are doing today. So we are open for any input. Then we are also comparing ourselves with high performing police agencies. We are looking at standards of comparison to include tangible and non-tangible variables. It's important for us to maintain what

you see there is Commission on Accreditation for Law Enforcement Agencies (CALEA) to make sure we live those standards. We are working on the customer satisfaction survey that will be going out. It is a CALEA requirement that we will be working on and obviously continue data analysis to see what kind of impact we have. And then finally, these are issues, in the course of what we've been working on have more of the social aspects and things you have expressed in interest in. I just want to tell you that the City departments are collaborating and are going to reach out to other entities in this community to work with us to come up with some solutions and ideas on how we can enhance child care, jobs and job enrichment programs, and looking at how we can improve and increase coordination of social service programs in high crime areas. You see The Healing Place and the Wet Shelters. That is how we take drug addicted or folks that are under the influence of alcohol off the street. We just don't turn them away at the door because they are under the influence. And there has been a lot of conversation with that. CIT training is well underway - we're going to sign an agreement with that. That is for law enforcement officers to be better trained, at least 25% of the field units to be trained, in engaging persons with mental health problems so that it came about of trying to prevent excessive force situations with law enforcement and people who are mentally disturbed or mentally upset at that point in time. Drug Court. That has the potential to increase. More activity. I know they are getting ready to have a graduation. I sit on the board with that. I think they can take more individuals than they currently have, so we are going to work to help that. And, as has been discussed numerous times, the need for state level addressing the judicial system as far as funding and additional initiatives. And that is my report. Thank you.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Thank you Mayor. Chief, thank you for treating our policy mandates seriously. We appreciate you're following up on this fact, sincerely. Can we do all that? We'll see. There is probably some fudge in there. We are talking about 10% over hire to the tune of $875,000. We may have to negotiate on that.

Chief Hogan - I understand completely. These were recommendations to you to try to tell you how we thought we could best improve our operation and ensure consistent personnel in the field. But I understand that is a lot of money to be talking about.

Councilman Mumpower - You gave us just what we asked for and now the accountability is ours to help you do what you are going to try to do. A couple side notes. I'd be interested in our ability to track and provide feedback on drug tips. A lot of folks feel like they have voiced concerns and they might not go into a dark hole, but they don't know.

Chief Hogan - Yes, sir, I know you've asked that question before and I checked with my personnel and they are getting back with complainants and letting them know. Sometimes when we get drug tips they don't happen, the feedback doesn't happen as quickly as most people would like. But generally if you don't get quick feedback that means we're working on it and there are some good results coming down the pike hopefully.

Councilman Mumpower - The other issue, you mentioned NarTest. Most folks don't know. What is the delay on SBI drug analysis now?

Chief Hogan - Well, I think you heard Ron Moore indicate that, we were backed up approximately 12-14 months in drug analysis and that meant the case couldn't move forward in court until we got a conformation that it was cocaine, or whatever the drug might be. They added more chemists and started catching up - getting it down to I think a 4-6 month range, with the promise, I think last August, and then in December they said we'd get down to 1-2 months. And, I think District Attorney Moore indicated that he heard that 1,500 additional cases have been transferred from other parts of the state up here to be analyzed in the western part of North Carolina. Which means that the one who takes the time to analyze those drug cases, but also travel to testify as necessary when those cases are heard.

Councilman Mumpower - NarTest is a short-cut around some of those?

Chief Hogan - NarTest will allow us, it is almost like an intoxilizer in measuring the blood alcohol in a system. It has been accepted by the courts. This, through a light and the size between the light and the prisms, you get a different light reading and an image based on the type of chemical make-up of the drug. It works very effectively on cocaine, crack cocaine, they are working on methamphetamine , that is the one that is up in the air right now, works on heroine, works on marijuana very effectively. And like I said, they are ready. We be a beta test site, they've already got some out there. The science from everything I have seen is solid and they are ready for their attorneys and chemists to testify to that. And anytime we have a case that is going to go to trial, free of charge, we can send that sample to them and they will analyze it again in the traditional way with the spectrograph that they do at the SBI and give us the same results and come and testify.

Councilman Mumpower - Fantastic. Great resource. You mentioned some performance measures, quality assurance measures. I would like to toss out an interest, as one member of Council, in exploring the possibilities for subjective measurements. For example, feedback from the Manager of each of our public housing developments and develop a forum of some sort. I've talked with Mr. Bell at the Housing Authority about this. Some objective forum for subjective evaluation of what their sense of drug activity is in their development. I think this is for you, not for me, but if there were some subjective ways to do that, I'd think sometimes those produce information that somebody more objectively has .... And one final question, on the DSU we initially started with 12, added 5 which have been tough to sustain that, getting ready to add how many more?

Chief Hogan - We're adding the 5. We were budgeted the 5, but we never got the vacancies down to fill those. So we are filling the 5. I believe the initial funding was intended for 6, but we went ahead and put the whole emergency response team in there which was 12. We put a vice officer in there and we put the lieutenant in there.

Councilman Mumpower - So that gives us 17. Is that enough to do the job?

Chief Hogan - I think that when we put these 5 in here we will see an incremental impact on what we are having. We've had the funding, we've just not had the bodies to put them in place. Quite frankly I'm pretty excited that as we work on the schedule on the coverage, we see a dramatic increase in coverage when we have the Drug Suppression Unit officers out here. I think we will see some real benefit from that.

Councilman Mumpower - Thank you for your enthusiasm. Thank you for your creativity. You can feel it. We appreciate it very much.

Mayor Bellamy - Chief, we have some other questions. Vice-Mayor.

Vice-Mayor Jones - Particularly in lieu of the presentation that we had earlier, it's pretty - this is not about you, this is about me pondering - discouraging thinking about the only way to deter crime is through more police officers. And just recently I had the opportunity to see a 360 view of our City and how spread out is it and how many neighborhoods there are. I mean it was beautiful, but it just made you understand that we can try to find $2.5 Million, but unless we are doing some pretty significant other things, investing in other ways, I just wonder about the return on our dollars. I'm not just about the deterrents being more police officers out there. Obviously for operations and closing cases and for things like that, you've made some great cases and we've got to figure out. But, my question to you is, could - and maybe in another presentation - do you have the knowledge or the resources to also perhaps suggest some investments in our community around environmental deterrents. And I'm not even sure what that is, but maybe it's this crime prevention officer and running something on our City channel. Like what people can do

to keep the crime from happening and also - you're also keeping people from deterring crimes. If you make it hard for them besides a policeman walking up and down the streets all the time. So, I think that has got to be a piece of this. Is the whole deterrents part. And if the there are policies that would help for us to advocate in addition to some of the judicial reforms, that we could be taking to our legislators, let's talk about those too. Because I just don't think this will even get us where we want to go if we could write the check tomorrow.

Chief Hogan - I think that when, again when District Attorney Moore was before you this evening and started talking about issues, he talked about education and school drop out. You've probably heard me say that 70% of all the folks that are in prison did not graduate from high school. So it's education. We are looking at social issues that I guess have been with us throughout I guess my career and I think throughout life. But I know that kids run a greater risk of running and talking that wrong path when they come from a home where the home is broken or dysfunctional, particularly dysfunctional. Because I've seen a lot of single parents raise good kids in tough circumstances. But if those kids don't stay in school and they get out of school, they don't have a lot of options. A lot of these job and child care things we are talking about, not that we as a City can solve all these, but I think hopefully collectively that we can work with other entities in this community. We can work with other social service agencies to focus on additional things. Because I think you are absolutely right. Police alone won't do it. There is a segment, in my years of experience in law enforcement in 4 different cities, there is always a segment that will become involved in criminal activity. But the vast majority of citizens are law-abiding citizens. They obey the law. They do the right thing. And we're here to deal with the ones that don't.

Mayor Bellamy - Chief, I have some solutions I want to bring up. One is when we are looking at the cost analysis that you put forward. Is it possible to get a breakdown of how that money will be spent, looking at the two additional beats and how that will be played out so that we can see the disbursing of the workload.

Chief Hogan - Sure.

Mayor Bellamy - One of the things that I'm hearing from some of the officers who are working really hard on the Drug Suppression Unit or who are trying to help with drugs is the amount of overtime and how that conversation plays out. And consistent schedules. Recently I spoke with one and the concern was while we're doing a good job of adding additional coverage, their living expenses are going up in that they have to have more baby-sitters to watch their children, their cost of living. So how do we balance their needs with our needs in making sure we are compensating them properly for them to be able to do or respond to the issues that they are dealing with successfully. I also want to get a breakdown specifically of the Drug Suppression Unit's arrest vs. the overall department. So we can kind of track the numbers. For me I want to start 12-1-05, but start tracking the true numbers of how we are doing, so we can monitor the progress that we see within the Unit as well as within the Department.

Chief Hogan - The Drug Suppression Unit monthly breaks down, they break down their arrests by patrol and by Drug Suppression Unit. They also break down arrests in the Housing Authority. So we can look at it three ways right now.

Mayor Bellamy - I'd appreciate that. Also, I want to look at, when you look at the dispatchment of the calls for services, that you talked about. Could we have more of a breakdown on what we currently have in place and for how long we've had this issue? And, what your solution would be for the dispatching of calls as well as the national average? If we could have that in a graph so we can kind of look at where we've been, where we are and where we need to go.

Chief Hogan - When you say the calls for service, are you talking about what is coming into the communications center?

Mayor Bellamy - What is coming into the communications center, the number of people that we have on staff during that time and that ratio.

Chief Hogan - I will tell you one of the things that has happened. For the first time since I've been here we have been able to staff the command staff fully. And quite frankly we have been able to give attention to the communications center that we have not been able to give it before. In terms of analyzing the workload and looking at our records management functions and some of those support functions. And that is where some of this information, as we started working on the budget, came forward. With direction, it was time to look at the Detective Division, look at that workload. It was time to look at the communications center. Those are critical functions that we need to make sure they are staffed properly. That is how that came about.

Mayor Bellamy - One thing that wasn't mentioned. How many sworn officers do we have serving our APD today?

Chief Hogan - We are authorized 190 sworn personnel, with this new crime prevention officer. And we probably, I know we've just had a retirement today and one person who came to see me who will be on disability retirement very soon, so I'm thinking about 5 or 6 vacancies right now.

Mayor Bellamy - Five or 6 and that is with the new class we just graduated?

Chief Hogan - Yes, mam.

Mayor Bellamy - And that's sworn. How many non-sworn support staff?

Chief Hogan - I believe we have 52 non-sworn.

Mayor Bellamy - In looking at what you gave us as far as the numbers for the traffic load - 40% of the case load was traffic, do we have a breakdown of increases or decreases in what we are receiving, as far as are we seeing more red light violations, or speeding? What is the analysis for that. If we can get that additional information.

Chief Hogan - Sometimes we do a crash analysis. Where we're taking like the top 10 crash locations and we'll analyze the cause. And that is kind of what directs the districts to work traffic enforcement in certain areas. Is it speed problem? Is it a red light problem? So if we have intersection crashes, we look at the angle at the crash and determine what is causing that. Is it folks running stop signs? We do have some of that if that is what you are talking about. As far as the number, I can give you a breakdown of the number of citations we issued for what different types violations. Is that what you are looking for?

Mayor Bellamy - Right. Also, I want to look at, with the fines that are collected, does all that go to the state or the school system? Where does that money go?

Chief Hogan - Different states do it different ways. In this state, court costs go to the court and the fines - all fines, go to the schools. And other communities I've been in, I know when was in Delaware, we had a municipal court - it's called Alderman's Court - we got the court costs, we hired a judge, we got the court costs and we got the fines.

Mayor Bellamy - Is there anyway we can look at something like that here?

Chief Hogan - That would have to be state approved and probably a tough sell, but it is something that we can look at. Absolutely. I works in other states, I know that.

Mayor Bellamy - Okay. Best practices. The bottom line for me is making sure we are measuring as much stuff as we can measure to look at where we are not doing as well to see

what we need to beef up as a Council to make sure you have the tools that you need. And one of the things we have been beat up about is the lack of coordination between the Housing Authority and the City of Asheville. So what I did was I got the Housing Authority to give me all the tools they are currently using to address drugs and crime and I would like for our staff to go over this and adopt as a Council these policies that they have in place. And I can give you some time to look at it, but so that we are coordinated in our efforts succinctly. And that when we talk about accountability, this Council will have approved the same things that the Housing Authority has in place. There are a couple that I'm not supportive of, but maybe we can work through some of those issues. I'm definitely looking at their ban list and making sure that we have an updated list for our officers to have access to on our computer some kind of way with the integrated system so that when people are arrested or detained on property and they've been banned by the Housing Authority, we have the right to get them for trespassing. So I want to make sure that we have a good agreement between the Housing Authority and the City in writing so that we can act as their agent when they are not around to say these people are trespassing. Another example would be the SPTED principle that the Housing Authority is using. I would like to know. I know we have a person on staff, I would like to see if we can beef up his training to ensure that we have the latest techniques and that we are utilizing that in the neighborhoods.

Chief Hogan - The crime prevention officer that you approved just recently, we are going to fill that position just as quickly as we can and that individual will be focused on the Asheville Housing neighborhoods and any other neighborhood that has a high drug issue. But the SPTED will be a big issue for that individual. Right now, Lt. Chris Young who is head of the Drug Suppression Unit, is spending a lot of time regularly with all the managers of the housing. We are having a lot of communication that I don't think we had before and I think it's taken us to another level. Obviously we will continue to work on that.

Mayor Bellamy - One of the bigger issues that the Housing Authority has in place and I think we support, they do have a curfew for all residents. For children they have to be in at one hour and for adults they have to be in at another hour of the night. And if we as a Council adopt that policy, you are saying that you are willing to enforce it. I think we can see a lot of the crime issues between Midnight and 7:00 a.m. drastically reduced. So I think it would be incumbent upon Council to support the initiatives of the Housing Authority through a vote to make sure that we are doing all that we can to support that agency.

Chief Hogan - And that is something that we work with legal on in terms of making sure that what the Housing does we can constitutionally do. And that might be ordinances, a curfew ordinance, that applies to us and I'll have the ability to enforce that.

Mayor Bellamy - That's right. I talked to Bob and I'll give him a little time to look at these issues, or Mr. Euler, to be able to come back to Council with some recommendations. A couple of other things. It's been talked about tonight about the tip hot line. Have we considered an idea of maybe having just a voice recorder where people can call in - there's no ID - where people can call in and they know that this is a safe line. That there's nobody to be able to trace who's calling. Just to give information. And on that line you won't get follow-up on but you can tell more honestly and forthrightly what is happening in your neighborhood without having to talk to a police officer and tell your name or disclose any information.

Chief Hogan - Our tip line is recorded. I don't believe we have anyway of doing phone number access or tracing or tracking that. I can check on that. Or, we could put it off site if that would give folks more comfort.

Mayor Bellamy - I just want to make sure that people feel as comfortable as possible to get as much information as possible about what is happening in their communities. Not just public housing, but in their communities where there are drug and crime activity.

Chief Hogan - I can say we are getting a lot of tips. More outside from public housing if I think I can recall. Sgt. Lawford, who is here on the detail tonight, handles that and they have a board now. They log them all in, the tracking and the reporting back to what has been done and the communicating with the original caller if they leave their name and number. If not, we still follow-up on the tip.

Mayor Bellamy - With the information you just presented tonight and we looked at the analysis or where you want to do more information data, can we coordinate the efforts between the analysis that we get to see if there is a spike in burglaries in a certain part of the neighborhood to make sure that the community policing efforts - that individual police officers are meeting with neighborhood residents to inform them of what is happening in their neighborhoods. So they could be doing community walks, community watches, so they can be aware of - maybe we saw 3 in the last month and this is what you should watch out for - make sure your cars are locked or your windows. So that it makes sense that we get the analysis, and that the residents are getting it so that they can be proactive for future endeavors. So making sure that our community policing efforts are lined up with the analysis of crime so people understand what is going on.

Chief Hogan - One of the things we have talked about and I'll throw it out for consideration is using our reverse 911 where we can notify, identify certain streets in neighborhoods, with a message of that kind of information and get it out more quickly and it's timely. Clearly in terms of crime prevention and clearly in terms of our community resource officers, we do crime analysis. We do alert the officers to trends and patterns and it would be my hope and expectation that they will carry that to a particular neighborhood if they see a pattern in that neighborhood. But all of that is good and we will wretch it up and I'll go back and look at that.

Mayor Bellamy - I would appreciate that. I've sent you copies of e-news letters ... that provide information to residents about what is happening. I went to Statesville recently to look at one of the programs for drug addicted sex offenders and how they are transitioning back into the community. And one of the things we saw there was the church was really strong in helping. What are our efforts in reaching out to the faith based community?

Chief Hogan - I've had a number of conversations and more should be coming, and more will be coming, particularly with the black ministerial association. And we have talked just about some of those issues on a host of things of how we can work together, quite frankly, and partner. Not only just in recruiting and hiring minorities, but talking about being the strength and help rally church members around the issues in a neighborhood.

Mayor Bellamy - I appreciate that. Council, thank you for allowing me to ask these questions, ... making sure I put my two-cents in on this issue particularly because I don't like to be called out. Any other issues? Councilwoman Cape.

Councilwoman Cape - Just real quickly. Chief, when you come back with some cost analysis, would one of them that you could give us be how your 10% hire would off-set overtime costs? Because we see this $887,000 but how much are we paying on overtime that that would off-set so we know what the real figure is.

Chief Hogan - Well, the over-time will definitely go up and taking the 5 out of patrols and putting them in DSU. We traditionally have certain overtime for special events. That will continue. What the over-hire will do will eliminate vacancies in the field that have to be filled through overtime.

Councilwoman Cape - That is what I'm talking about. How much are we going to save from that to make this number not look so bad.

Chief Hogan - I'll go back and analyze that. Part of it is, are you saving money or are you working short? It's probably a combination of both.

Councilwoman Cape - That's where I'm trying to see where that number really is. And second, may I question, are you talking about a city-wide curfew, Mayor?

Mayor Bellamy - No. The Housing Authority already has it in place, but we want to support it. It's not ours. It's the Housing Authority's and it's already on its books and it would be nice if the City of Asheville Police Department were empowered by the policy makers to be able to help them enforce their policies.

Councilwoman Cape - Right, because at this point we can't. I see. Just clarification. Thank you.

Mayor Bellamy - Everything that I gave you on the hand-out was Housing Authority's. What they already have in place or would like to see, as they also support an additional unit, specifically for Housing Authority. Councilman Freeborn.

Councilman Freeborn - Chief, I really appreciate this. Every time you come before us it's a great opportunity to learn. If you could, would you prioritize this list of budget requests and tell us which ones, you can do that tonight or at a later time, but give us a good idea as we are going into the budget season to understand what is your top priority on this list. And also, I can understand the need and desire to want to try and do a surge, but would we also do this in an incremental approach as well and what would be the positive or negative impacts to that.

Chief Hogan - I'll be glad to do that. I could probably do it off the top of my head right now, but I prefer to sit down and ponder it and share it with my command staff and talk about how we would prioritize this, because all these, depending on who you talk to are great needs. And they are all legitimate needs, but I would like to ponder it and I'll come back.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Councilman Newman was.

Mayor Bellamy - Councilman Mumpower, did you have something else?

Councilman Mumpower - Patience please, Mayor. There is not two rulebooks up here. There is one for all of us.

Mayor Bellamy - Excuse me? I'm not understanding. I have the ability to recognize the people who want to speak and I called on Councilman Mumpower.

Councilman Mumpower - With some degree of courtesy. Chief, would it be inappropriate to ask that you come back to us as we go forward, would it be a helpful thing to ask if you were to come forward on a bi-monthly basis and give the Council a brief report on your efforts? Would that be a helpful, constructive thing?

Chief Hogan - I would just want to have sufficient time to pass to know that we've had some time to put some things in place and be able to show you positive results. But from time to time, surely, if you want me to come back and share with you what we are doing on a quarterly basis or something like that.

Councilman Mumpower - Council, I would speak to bi-monthly to keep us real current. We're about to hopefully invest significant dollars and I think that is something we really want to pay attention to. And finally, Chief, I think you're speaking to us about an effort to hold people who break the law accountable, with an understanding that if we don't create greater

accountabilities, we don't create deterrents, and if we don't create deterrents we are training ... criminals into too many of our neighborhoods. And we waste a lot of our time chasing the same people over and over again and we lose a lot of good people. So I'm grateful for your effort to highlight that to create that accountability - we can do all of these other things, but it does take police manpower and I hope we can get behind you - not incrementally. I think that good word used earlier - let's create a surge and then hold you accountable for doing the good work that you are intending to do for us. So thank you and thank you Mayor.

Mayor Bellamy - Councilman Newman.

Councilman Newman - Chief, one question that I would have about your presentation would be one of the points that I think kind of is most hopeful about is the scenario that one of the performance measures of marked improvement over time would be that the results of long term - in the long term, less arrests. And because while we want to hold people accountable, first the people who are really committing dangerous situations in neighborhoods, I think that we also sort of share the sense of okay so we are going to spend a lot more of taxpayers money and the result is that a lot more people are going to jail. If we could spend a lot more of our resources and make neighborhoods safer and drive down the number of - and deter crime - obviously that is the win/win that we are looking for. I would be much more enthusiastic about writing larger investments here, if we can be effective in deterring crime and have less arrests because while we would be investing more dollars in officers on the street, if it means that we are driving down crime and having less - having to build fewer jails in the future that is a trade-off that is easy to make. So, just going forward, not tonight, I'd like to hear more analysis about how that dynamic really works. It seems like in the short-run if we invest in more officers we have all these results about we've arrested 40% more people than we did two years ago. And maybe that is a good short-term indicator. But when do we get that? Where is the point of making the neighborhoods safe and drive crime down?

Chief Hogan - I think the hope is that as you create more police presence in the neighborhoods and through crime analysis you target the presence when the presence needs to be there, that it becomes a deterrent to commit that crime in that neighborhood. I will tell you that folks who are intent on committing crimes are going to commit crime. What you do in a community, unfortunately, is make it difficult to do that and sometimes it's displaced for that or it just can't be done as frequently as it was done in the past. So, it is by incrementally trying to create a greater police presence where we need to be to be a deterrent. And that is a big challenge.

Councilman Newman - One follow-up question on this for tonight. Is there research around, there will always be some percentage of people who make these bad choices and get involved in this activity, but part of what intuitively seems like we are trying to do is provide enough presence in neighborhoods where maybe some people to that, but they don't do it in these neighborhoods, and they don't. Is there research that shows over time we can help prevent other people from so easily making those bad mistakes because there is just so much criminal activity in the neighborhood they live in that they end up getting. Is that how you drive down crime over time?

Chief Hogan - That's part of it. I will tell you, you saw a great example this evening with Burton Street. Burton Street some years bad had a tremendous crime problem. What that was a wonderful partnership between citizens who took an interest in their neighborhood, took ownership in their neighborhood, partnered with the City and the Police Department and others to really take back the neighborhood. And working in collaboratively, we have success there. We've got to try to replicate ownership in other neighborhoods. And that will be our challenge and having sufficient police presence to back up what they are trying to do. But that is a motivated neighborhood full of enthusiasm and they are a pleasure to work with because of that. They really are.

Mayor Bellamy - You know the success of that neighborhood had come because Sgt. Wilkie, for one, helped organize them with the community walks. But the residents, like you said, were empowered to go and talk to drug dealers and tell them to move on. As well as they continue to call the police, whether they came quickly or not, and they were consistent in their efforts. Another example is the West End/Clingman Avenue neighborhood, where you had a significant increase in prostitution. The more homes that were built and the more community residents who were involved in clean-ups and getting to know their neighbors and the more buy-in they got from each other, that made a huge difference. So it wasn't just police only, it was a comprehensive approach in looking at this issue. Chief, I just want to say thank you for being here tonight and being able to stand up to our questions and helping us get to a better place on this issue, because I know each member of Council wants to make sure that we get to a better place on this issue.

Chief Hogan - I think we all do. Thank you very much.

E. CONSIDERATION OF SCHOOL BOARD INTERVIEWS

Vice-Mayor Jones - I think we need to determine who we want to interview next week. I would just remind Council that we've got two vacancies so let's kind of be realistic in the number of folks that we want to interview. The Mayor has requested that we appoint the night of the interviews if everyone is amenable to that. That I think would help the School Board. Is that okay in terms of the timeline? And the final thing before I get suggestions for interviews, Mayor, is that Councilman Mumpower and I met, the Boards & Commissions Committee, and we suggest that we start the interviews at 5:00 p.m. and then have the Council meeting afterwards. So that way the applicants will know when to be here and we have a firm starting time. That is our suggestion.

Mayor Bellamy - That's fine. We have the budget part from 3:00 - 5:00 p.m., so we can start promptly at that time.

Vice-Mayor Jones - Good, super. Councilman Mumpower, I'll start with you for, who would you like to interview for School Board.

Councilman Mumpower - I don't have any recommendations, Vice-Mayor.

Vice-Mayor Jones - Councilwoman Cape.

Councilwoman Cape - I would like to suggest Jackie Hallum, Todd Weatherly and John Legerton.

Vice-Mayor Jones - Councilman Davis.

Councilman Davis - I would like to add to that Brian Sarzynski.

Mayor Bellamy - Add Precious Folston.

Councilman Freeborn - Mine have already been named.

Councilman Newman - I'm fine.

Vice-Mayor Jones - Okay, so that is 5 interviews that will start next Tuesday the 17th.

Mayor Bellamy - And we will make sure they start at 5:00 p.m. Thirty minutes each or we've got quite a bit of answers so would you call change that and is it 30 minutes each?

Vice-Mayor Jones - Thirty minutes each.

Mayor Bellamy - Okay, thank you very much.

Vice-Mayor Jones - Just in case we weren't clear for new Council people who haven't been through this. This is our chance to ask other questions and so what we have done in the past is we come with the prepared ones and we kind of keep going till we run out of time. So just know to come with some questions you are interested in.

Councilman Freeborn - Is it possible to have shorter interviews than 30 minutes? Do we ever finish early?

Vice-Mayor Jones - I think in fairness we need to decide that up-front. So do we want to do 20 minutes that's fine, but.

Mayor Bellamy - I think 20 minutes.

Vice-Mayor Jones - Okay, 20 minutes.

Mayor Bellamy - Twenty minutes each. And as you schedule those, will you put a break of 5 minutes in between each one. The reality is we need time to get people shifted around and the next person to come up.

VI. NEW BUSINESS:

A. ORDINANCE NO. 3462 - ORDINANCE AMENDING THE ANIMAL CONTROL ORDINANCE TO PERMIT THE CEREMONIAL RELEASE OF BIRDS

From Staff Report: This is the consideration of an amendment to the animal control ordinance to permit the ceremonial release of birds.

Over the last several years, there has been increased interest in the coordinated release of birds as part of certain outdoor events. The birds released are doves, pigeons, or some other species trained to return to its nesting place. The proposed ordinance would permit those releases only at an otherwise permitted outdoor event, where it can be demonstrated that the birds are kept in accordance with certain standards promulgated by recognized organizations, and where it will not imperil the public health.

The City's Animal Control Ordinance requires that pets or other domesticated animals be kept restrained or under the owner's control, except in certain specified circumstances. The proposed amendment would add to the list of exceptions.

Pros:

- Recognition of symbolic display that is used with increasing frequency.
- Requires that birds be kept in accordance with recognized standards.

Cons:

- Some birds may be injured or lost in connection with releases.
- Incremental administrative burden in permitting and approval.

If Council approves of this ordinance amendment, adoption of it is recommended.

City Attorney Oast - This is a proposed amendment to our animal control ordinance to permit, or at least to clarify Council's position with respect to something that is beginning to occur more and more frequently and in public events. And that is the ceremonial release of doves or trained pigeons or birds of that nature that are trained to return to their nesting place.

Mayor Bellamy - Okay. Any members of the community wishing to speak on this item? Hearing none, Council is there a motion?

Vice-Mayor Jones - I move approval.

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

Councilman Mumpower - Yes, I'll make a comment. I don't think we should be in the business of bird control. I'm embarrassed by the Council's consideration of an ordinance on the ceremonial release of birds. Thank you Mayor.

Vice-Mayor Jones - I don't want to belabor this, but do you understand what this is? ... raises doves and likes to release them and currently she is not allowed to do this right now. She's not allowed to run her business.

Councilman Mumpower - Because we have an ordinance that prohibits.

Councilwoman Cape - Because your animals can't be more than 8 feet from your body?

Councilman Freeborn - We're making it so she can operate business.

Mayor Bellamy - All right Council, one at a time. Councilwoman Cape.

Councilwoman Cape - These birds will be able to, they're homing birds, and they are released in a ceremony, they circle around and then they go home.

Councilman Mumpower - So why aren't we doing away with the ordinance that creates that control, rather than creating another level of.

Councilwoman Cape - Because we don't want people to let their dogs run around the street more than 8 feet away from them. We just had a flat pet thing - animal. But these are pigeons.

Councilman Mumpower - If I may Mr. Oast, ask staff a question. Would it not be possible to put a sentence into our existing ordinance accepting birds?

City Attorney Oast - That is essentially what we are doing.

City Attorney Oast - What the ordinance in general does is it requires animals to be under the control of the owner at all times when they are out in public. So, this would, and the way our staff has interpreted that means if you've got animals in a parade or some kind of public event, they have to be in your control. That has been interpreted to apply to homing pigeons, doves, and birds that are trained to return to their nesting place. This would, in effect, would accept those kinds of releases from the general prohibition of our ordinance.

Vice-Mayor Jones - And it's two sentences.

Councilman Mumpower - It's a paragraph. And again, I would suggest, you folks can go ahead and laugh all you want, but I think the embarrassment is of this Council to be investing our energies in this level of bureaucratic control.

Mayor Bellamy - That's why we're dealing with it. It was another council who did it and we are trying to clarify it so it can be addressed. With that, there is a motion on the floor. Any new information that needs to be discussed tonight on this issue?

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

A. MCCORMICK HEIGHTS PROPERTY UPDATE

Information in front of Council - Letter dated March 29, 2007, from City Manager Jackson to Mr. Ken Maxwell, Community Relations Manager with Progress Energy. "The purpose of this letter is to confirm earlier oral communications to you about the status of our offer to purchase McCormick Heights. After due diligence, we concluded in January that there were notable restrictions and encumbrances on the property. Extensive research and discussions with knowledgeable parties also led us to conclude the restrictions would impair our ability to successfully redevelop the property upon purchase. Under the circumstances of such restrictions, we expect you to proceed with other options for the property's disposition. While we respect your need to pursue what is in your best interests, our objectives remain to assist with relocation of tenants, the provision of affordable housing options, and private redevelopment and transformation of this neighborhood. Please feel free to contact us if you have any questions or wish to discuss this matter further."

Information in front of Council - Memo to Mayor Bellamy and City Council Members dated March 29, 2007, from Charlotte Caplan, Community Development Director. "This memo provides an update n the program approved to assist the 41 tenants at McCormick Heights find alternative housing. On January 23, 2007, the Affordable Housing Coalition (AHC) was awarded $120,000 in Community Development Block Grant funds to administer the program. The assistance being offered includes rental counseling and payment of eligible relocation expenses (moving costs, security deposits, first month's rent, utility deposits, etc.). The progress to date has been (1) 4 residents' meetings have been held; (2) notices explaining assistance have been distributed door to door; (3) 10 households have completed their moves to safe and affordable housing; (4) 7 households have found new housing and are scheduled to move soon (from a few days to a few weeks); (5) 8 households are working with AHC to find a new unit; (6) 3 households have made initial contract with AHC; and (7) 13 households have yet to make contact; efforts continue to get in touch with them. As managing agent for the property owner, the Housing Authority has issued seven eviction notices for non-payment of rent or other lease violations. Tenants have been made aware from the start of the program that anyone evicted from the property because of lease violations would not be eligible for relocation assistance through this program."

Mayor Bellamy - Council we had talked in closed session about not being able to purchase this piece of property due to the encumbrances that are currently on the property that would not go away for the City of Asheville until it was in foreclosure and there were substantial encumbrances that we didn't feel like we could overcome. Enclosed in our packet is a letter that the City Manager sent to Ken Maxwell, who is part of the managing entity. Progress Energy purchased tax credits for McCormick Heights so they own, I think 99% of the development.

City Attorney Oast - Usually it's a substantial percentage. I'm not exactly sure.

Mayor Bellamy - I think that is the case. And so I think that now we just need to publicly go ahead and vote to not purchase McCormick Heights for the record so that it will be clear to the community of our endeavors. And, as part of the motion I hope that Council will express an interest to work with the future owner of the development so that we can have affordable housing

some kind of way mixed into that, considering the fact that we are the largest property owner adjacent to McCormick Heights. And that it's under the leadership of Councilwoman Cape that has just increased with the potential buying of 30 acres. So we definitely are one of the larger property owners adjacent to McCormick Heights. So is there a motion to not purchase McCormick Heights tonight?

Councilwoman Cape - I want to do it in a positive way. I move that we release our obligation to the contract for the purchase of McCormick Heights based on the encumbrances and the due diligence that we did and that we encourage future property purchasers to consider the opportunities that exist because of the adjacent City-owned property.

Mayor Bellamy - All right. And before I call for additional questions or comments I'll open it up for public comments, if there is anyone who would like to speak on this matter?

Councilman Freeborn - I'll second that motion.

Mayor Bellamy - Hearing none, any further questions or comments on this issue? Councilman Newman.

Councilman Newman - Maybe as a friendly amendment for clarification. I think it goes without saying, but just express our sense that we are also going to be directing our City Manager and our staff to monitor the situation and seek dialogue with whoever does acquire the property to seek opportunities to potentially partner around redevelopment opportunities in that area that preserves affordable housing and those which are redevelopment goals in our plan.

Mayor Bellamy - And I think that having that announcement formally stated several times tonight, I think that's important.

Councilwoman Cape - I accept that friendly amendment.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - I would be amiss if I didn't say that it is an embarrassment we are having to back-track on this issue. From my view we got involved without doing proper preliminary research and in doing so we clouded this reality more than was necessary. We studied it for a period of time and we've also committed ourselves to moving folks from a development that it turns out we have no direct involvement in at all, to the tune of up to $120,000 and invested significant Council time and staff time and I hope moving forward that in our efforts to pursue development opportunities we will show greater caution and try not to offer complications to things that are already complicated enough.

Mayor Bellamy - With that said, I would like to say that I'm not sad that we got involved and the reality is that had the City not been involved, tenants would have been evicted at Christmas time, first of all, because they were going to be given a notice on December 1st to be out in 30 days. So obviously we had a due diligence period and during that period we were able to find out some of the technical issues that we did not know in advance, so that was why we had a due diligence period. And I also want to say to Council, thank you for your willingness to assist the individuals who were behind on their rent to finding a better, safer place to live in our community. And I look forward to us continuing to address some of the concerns that we have identified in McCormick Heights, and haven't identified in other communities, but we slowing addressing. And to say that the City shouldn't have been involved, the City still have $400,000 in the development in the way of HOME funds and so that is something we are going to have to look at to see how we can recoup those funds. So I don't see us not being a party to the development. So, Council, I thank you all for being willing to step in the fray, take the criticism, whether it's warranted or unwarranted, to be able to address concerns in our community. It was a learning process and I definitely learned a lot out of it. How people operate and how we can do

things better. So I look forward to the potential redevelopment. Any other things that want to be said for the record?

Councilman Freeborn - Mayor, I'd like to just show gratification to your leadership on this particular issue. I think anytime we are offered a chance to do something good in terms of - I'll even say - bail somebody out, and if it fits within our strategic goals, we need to follow through with it and do due diligence and that is exactly what we did. I want to thank you.

Mayor Bellamy - I don't want to say you're welcome yet, because the story is not finished. Believe me, there is more to be told to the story. It will come out later, but it's not finished. Anyone else?

Councilman Davis - The story isn't finished. I think we have had this going on back and forth about who shot John on this issue and the truth of the matter was it was not a good place for people to live. There is an opportunity here to create some of the things we are talking about - mixed income living, market rate, affordable housing. An opportunity for people to go to a better situation and I'm quite pleased we were able to bail those folks out. That's what those funds are for and I feel good sitting here having been a part of that.

The amended motion made by Councilwoman Cape and seconded by Councilman Freeborn (that we release our obligation to the contract for the purchase of McCormick Heights based on the encumbrances and the due diligence that we did and that we encourage future property purchasers to consider the opportunities that exist because of the adjacent City-owned property; and direct our City Manager and our staff to monitor the situation and seek dialogue with whoever does acquire the property to seek opportunities to potentially partner around redevelopment opportunities in that area that preserves affordable housing and those which are redevelopment goals in our plan) carried on a 6-1 vote, with Councilman Mumpower voting "no."

B. CLAIMS

Council information - The following claims were received by the City of Asheville during the period of March 16-March 29, 2007: Diana Sanders (Water), Enterprise (Information Services), Marcus Banks (Planning), Sandra Burton (Water), James Carr (Water), Avid Rent-A-Car (Police), Irene Wright (Water) and Pamela Simpson (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Joe Minicozzi - Madam Mayor and Council, thank you for allowing me this time to speak. I just wanted to bring forward a couple of things. These are all the code amendments that are going forward and we are trying to work this half-printed too, so it's about double the size of this in thickness. And we're trying our best to work with the staff to put our input in. We didn't want to see the situation that happened tonight, that there is a delay. We don't want to try to cause that. We are trying to get involved in these things and move them along as quickly as possible. A couple of things that I wanted to ask about tonight is getting clarification on the on-going issue of Greenlife and Staples issue. Just so that we can know what has happened with this letter with Chief Hogan. Is it policy, is it not policy? Has this been retracted? We've asked about 4 times now, whether or not this policy has been retracted?

Mayor Bellamy - And Council, that was not adopted by City Council, so we haven't retracted it because we have never adopted it. So it would be something that Mr. Jackson as the City Manager has oversight over. Because it wasn't adopted by this body. Bob, am I correct in stating that?

Mr. Minicozzi - It is a question of.

Mayor Bellamy - I just want to make sure that we hit your issues so that we can go ahead and.

Mr. Minicozzi - Obviously some of you may have gotten a telephone call today, but a lot of you didn't receive e-mails today. I received a call from Mr. Thompson and this is a ticket that he received for careless and reckless driving. He had 6 police officers issue him this ticket and when the police officer was issuing him the ticket the police officer said, well Mr. Thompson don't you want us to follow all the laws? And the pulled out the book and they went through the book and cited him with that citation. Which is fine. But 6 police officers. Mr. Thompson asked the police officers that if you are that interested in enforcing all the laws, why don't you go over and talk a look at all of the trucks on Maxwell Street. When I visited Mr. Thompson about 10 minutes after that, there were still trucks on Maxwell Street and in the 20 minutes that I was at Reid's house, there were 6 deliveries up Maxwell Street. And we're siting in this kind of ...-world right now waiting for Greenlife to bring something back and there doesn't seem to be any fire lit underneath them to encourage them to move forward. That is what I wonder. Could we just maybe do a quick blitz of enforcing the no-trucks on Maxwell Street to ensure that he is motivated to move forward. And that is all I ask for tonight - is it possible to start moving this. Is it possible to make direction to our City Manager to tell the police officers to enforce. Because when Reid asked about the trucks on Maxwell Street, the police officer said to him, and I quote "that's not my jurisdiction" even though Reid was given the ticket a block away. And you talk about customer service, you talk about how to deal with humans and you wonder why this guy blows a gasket. And it's just, this is, how do we interface with the reaction of our government that we pay for as citizens versus the quality of service that we get. And that's all that I ask for. Just some fairness in this and the business owners get treated the same way as the citizens do.

Vice-Mayor Jones - Can I ask one clarifying question? So the time that you were at Mr. Thompson's house, you said you saw 6 delivery trucks. Were they the big rigs and they came down?

Mr. Minicozzi - They were not the big rigs, they were the smaller box trucks and some vans. But, as you saw on the testimony that that is the lion share of the deliveries and they are going up and down that street all day. And the big trucks come in and they have a larger impact. And I was only there for 20 minutes.

Vice-Mayor Jones - So there were none of the big rigs. They were all the little trucks.

Mr. Minicozzi - Yes, just the smaller trucks.

Vice-Mayor Jones - Right now is that going to be solved with the compromise?

Councilman Newman - Well the big trucks and, I think there are 3 sizes of trucks, and the medium sized trucks would only be like ... delivery cars and not ... straight trucks will not be allowed once - that is if his design idea is approved by Planning & Zoning. It's sort of just an idea at this point. I mean it hasn't been formally approved or voted on by anybody. So that's contingent upon that process happening.

Mr. Minicozzi - In the meantime if there could be some communication that happens to the Police Department that if they get dialed in that they should enforce something. Because to have that kind of answer to a citizen that this isn't my jurisdiction that they just shrug it off when 6 police officers can give somebody a ticket for squealing their tires. Where is the fairness in that.

Mayor Bellamy - All right. I think there's probably another side to that story as far as why the police were there and that number. I know we've had some training officers - 2 in a car, and two cars, and maybe the third came by to see what was going on and that person didn't get out. I wasn't there so I can't speak to that. But your first issue you talked about, this Council did not set that policy that the Chief if choosing to enforce. So your question was, when will we rescind it.

We didn't create that policy. Now Mr Oast, legally, do we rescind something that we didn't do. Let's go ahead and deal with this so I can put this to bed

City Attorney Oast - Council adopts the ordinances and I think you would be stepping into Charter problems if you began to direct the Police Chief how to enforce the ordinances that you enact.

Mayor Bellamy - So the Chief is in his legal rights to send this out?

City Attorney Oast - I'm sure I've seen that letter before, but I'd need a chance to read it first.

Mayor Bellamy - All right. Let's give you some time to read it and make sure that we issue a press release to how to deal with this letter because it deals with enforcement. So we can have that done. So we don't have to deal with that. Let's just deal with it. I think that's important.

Assistant City Manager Richardson - Mayor Bellamy, I'll be happy to work with Chief Hogan as well as other relevant staff, and I will be prepared to provide the City Council with a summary report of our enforcement efforts over on Maxwell Street. And we will be happy to go back for a 60-90 day period, if you would like for us to - we have the capability to show you the number of calls that have come in and the response to those calls and any citations that have been given out. And we provided that information, but it has been some time ago. It has been a number of months ago.

Mayor Bellamy - That would be great and I think Council.

Assistant City Manager Richardson - In addition to that, I think there is quite a bit of information that I have collected from the Police Department regarding Mr. Minicozzi's statements. I'd be happy to talk with Council one on one after this meeting, or I will be happy to provide that information at this time regarding Mr. Thompson and the interactions he has had with the Asheville Police Department today.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - Mayor question. Mr. Richardson, so it would not be fair to say that we have stopped enforcement efforts on Maxwell Street.

Assistant City Manager Richardson - No, sir. That would not be a fair statement at all. I'll be happy to go back with Chief Hogan and to provide the data on the number of calls, the volume of calls, and the times that our officers have been able to respond and the citations that were made.

Councilman Mumpower - We are continuing to pay attention?

Assistant City Manager Richardson - Yes, sir. That is my understanding and Chief Hogan and I have had a discussion about that as late as this afternoon.

Councilman Mumpower - Thank you.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - Mr. Minicozzi, when you were there today, were the trucks parked on the sidewalk?

Mr. Minicozzi - One was. It was a UPS truck, but I think that in that situation, the UPS truck usually gets a little more discretion because it is an immediate delivery. It was still parked on the sidewalk. It was less. It was the volume and the fact that they use Maxwell Street. It wasn't that they came. You know you've made comments several times to please use your parking lot and access the docks from your parking lot. But in none of those 6 trucks, did I see that. And that was just a snapshot of my day at that little window. Now whether or not I just happened to hit a mother-load I don't know.

Councilwoman Cape - You saw them coming off of Broadway onto Maxwell? Was that the direction?

Mr. Minicozzi - Broadway onto Maxwell and Marcellus onto Maxwell.

Councilwoman Cape - Okay. So, can we get a sense of timing for this project. Is there a time. I mean, we have asked Greenlife to engage with us on this, so it seems like time is of the essence that we like move this process along. Has there been any conversation to that effect?

Assistant City Manager Richardson - I'm not aware of any request, site plan review or anything of that nature that our Planning Department has been involved in. I know that our Planning Department has followed up with the Greenlife store officials and I believe that Mr. Swann understands that City Council would like to see this site redevelopment move forward.

Councilwoman Cape - Mayor Bellamy, we've had this issue kind of before with Target or other places that kind of lagged, and it seemed like it was quite effective when you put a time stamp on it at one point. I would ask that maybe we consider that. I think the issue of the letter that has always been confusing for me is whether or not that letter exhibits a change in the policies that are on our books. And if they do, whether or not the Chief has the ability to do that. And that is what is confusing for me about this letter.

Mayor Bellamy - Bob is going to get back with us.

Councilwoman Cape - You were going to give us that information.

City Attorney Oast - I have been reading the letter. I don't think that that letter suggests that the police are not going to be enforcing the law as it's written.

Mr. Minicozzi - It says that the only - the trucks parked as far as possible but still block a sidewalk, if you read this right here - the only exception. So he's making an exception to the law. I will not cite a ticket on a large truck.

City Attorney Oast - I don't think that's an exception to the law. I've read the law and the law allows a reasonable use of the sidewalks by adjacent businesses. That's a reasonable use of the sidewalk by an adjacent business. I don't think it is a violation.

Mayor Bellamy - Okay. Let's put it in writing. And as a Council we will get that back and we can either adopt it or take that interpretation or give it further interpretation, but you give us the law and you can examine it so we can forever and amen - this is what it is and this is how it is and this is our process till it's done.

Councilwoman Cape - I think we will be hard-pressed to ask people to walk around a truck into the street as a reasonable use of our sidewalks. But, that's just a comment.

Mayor Bellamy - What we do for one, we do for the others. So that's the issue on Maxwell Street and that's the reasonable use of the sidewalks. Make sure we do it on Wall Street when it comes to the Laughing Seed. We have to make sure if that is what we are saying, we're

not just saying it there, so make sure we're saying the right thing. I'm ready to up or down it and do whatever we're going to do. It's done. Councilman Newman.

Councilman Newman - Could we also, I mean Jeff has been great in working with Bryan and I when trying to figure out the different options. Could we check in with Greenlife and ask them if they have a date when they plan to submit their plans to Planning & Zoning? Because part of the idea when we were looking at this was if they can't implement some design solutions that will go a large way for making that better - because the big trucks will no longer be on Maxwell ever. Then we were prepared to implement a traffic calming plan on Maxwell that would physically prohibit the trucks from being there. It's not what we want to do. We think there are better ways to solve this problem. But we need a timeframe for when they are going to submit their plans or we need to go back to Plan B. So if you could check up on that, then that would be great.

Assistant City Manager Richardson - Yes, sir. I'd be happy to.

Councilwoman Cape - Do we set the timeframe?

Councilman Freeborn - Well we are going to be making budget allocations here soon.

Mayor Bellamy - Okay, let's just start with the communication process first. Let's finish up a couple of things and we will adjourn from our closed session. We should be through fairly quickly.

Closed Session

At 12:03 a.m., Councilman Freeborn moved to go back into closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

At 12:30 a.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 12:30 a.m.

Keisha Lipe
CITY CLERK

Jeffrey M Bellamy
MAYOR

Tuesday – April 17, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

SCHOOL BOARD INTERVIEWS

City Council interviewed William Todd Weatherly, Jacquelyn Hallum, John Legerton, Brian Sarzynski and Precious Folston for two vacancies on the Asheville School Board.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 7-12, 2007, AS "ASHEVILLE-BUNCOMBE COUNTY SENIOR GAMES WEEK"

Councilman Freeborn read the proclamation proclaiming May 7-12, 2007, as "Asheville-Buncombe County Senior Games Week" in the City of Asheville. He presented the proclamation to Mr. David Herbert, Ms. Dee Black and Mr. Don Moritz, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING MAY, 2007, AS "MOTORCYCLE AWARENESS MONTH"

Councilman Mumpower read the proclamation proclaiming May, 2007, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Roger Williams, who briefed City Council on some activities taking place during the month.

C. PROCLAIMING MAY, 2007, AS "REFLUX SYMPATHETIC DYSTROPHY SYNDROME AWARENESS MONTH"

Councilwoman Cape read the proclamation proclaiming May, 2007, as "Reflux Sympathetic Dystrophy Syndrome Awareness Month" in the City of Asheville. She presented the proclamation to Dr. Mary Sedgewick, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

A. RESOLUTION NO. 07-84 - RESOLUTION AUTHORIZING ELAINE EDEN DRIVE AND TREVOR TRAIL IN THE BREVARD ROAD AREA TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing Elaine Eden Drive & Trevor Trail in the Brevard Road Area of Asheville to become a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Elaine Eden Drive & Trevor Trail are developer-constructed streets that have an average width of 22 feet and a length of 0.12 & 0.03 miles. Transportation and Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Elaine Eden Drive & Trevor Trail will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council approve a resolution authorizing Elaine Eden Drive & Trevor Trail in the Brevard Road Area of Asheville to become a publicly maintained street.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Newman and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. FAIR HOUSING COMMISSION ANNUAL REPORT

Mr. Isaac Coleman, Chairman of the Asheville-Buncombe Fair Housing Commission, said that former chair Mr. Jim McCulley recently died and he became Chairman. He recognized Jim's dedication and contributions to the Commission. Although he was confined to a wheelchair, he attended meetings and trainings and carried out his duties until his health failed and he was no longer able to carry out his duties.

During the period that he has been on the Commission, they have faced many challenges. Funding cuts from the Community Development Block Grant funds, Buncombe County, the U.S. Department of Housing and Urban Development and resulting staff shortages put a serious strain on our mission to address housing discrimination issues in Asheville and Buncombe County. One of the positions we lost was a person who was bi-lingual. This limited our ability to serve the Latino community.

In spite of these challenges, the Commission was able to investigate 743 complaints. One outstanding result of the Commission's work was to resolve all legitimate complaints without any court action. Court action tends to drag out the process of reaching a resolution causing the delay in housing the complainant and costing dollars for the litigation process.

This year, the Commission's goals are to reach those communities that we haven't been able to serve because of the language barrier through an aggressive outreach program. We

have to let people know that the Commission is here to address the issues that might arise around housing discrimination.

He recognized Bob Smith and the staff of the Asheville-Buncombe Community Relations Council for the tireless efforts of meeting the challenges of this work in spite of a funding and staff shortage and to thank the Council for the opportunity to serve.

In response to Mayor Bellamy, Mr. Coleman said that there are many different reasons for people filing discrimination complaints.

On behalf of City Council, Mayor Bellamy thanked Mr. Coleman for his report. She did say it was unfortunate, however, to have to deal with discrimination at this level.

B. GEOGRAPHIC INFORMATION SERVICES (GIS) PROGRAM PRESENTATION

Mr. Jonathan Feldman, Director of Information Technologies, said that the context of GIS is (1) geographic information services; (2) community/customer information systems; (3) financial information systems; and (4) human resources information systems.

MapAsheville is essentially GIS for the Web - (1) comprehensive GIS web-application services effort; (2) focus on both internal staff and public users; (3) 37% increase in public GIS web visitors - 9,500 new visitors; (4) 80% increase in usage rates among total GIS web visitors; and (5) approximately 20% decrease in GIS software maintenance costs over 2 years.

Using a graph, he showed the relevance to citizens and how it has dramatically increased.

One part of mapAsheville is the Developer Mapper: (1) visualization tool providing streamlined access to information concerning proposed and in progress large-scale developments; (2) increased service level for community stakeholders; (3) decreased time for staff to service request; and (4) coordinated effort between Planning, Economic Development and IT Services. The citizen response is (1) the basics - folks like to be asked to be involved, and the end product is more thoughtful, usable and used; (2) positive response from both neighborhood groups and business leaders; and (3) community leaders have publicly endorsed mapAsheville in print and on video.

Upcoming GIS public access applications include (1) priority places - (a) decision support and visualization tool for economic development; (b) contracted with vendor for development and implementation; and (c) estimated completion of early fall 2007; (2) steep slope analysis application - (a) collaborative partnership with Buncombe County and UNCA/RENCI; (b) analysis tool to determine applicability of steep slope ordinances to existing or proposed parcel; and (c) estimated completion of late summer 2007; and (3) crime mapper - (a) visualization tool providing generalized statistics in a requested area or neighborhood; and (b) estimated completion of winter 2007-08.

GIS Strategic Plan was authored and adopted by GIS Steering Committee (multi-department team chartered by City Manager's Office); and approved by City Quality Council. It is a unifying document for all City of Asheville GIS program initiatives and has aggressive objectives with defined performance measures for priority items.

The GIS Steering Committee's Strategic Plan include the following five goals (1) develop and sustain a City-wide GIS organizational structure that supports stakeholders; (2) focus on web-based GIS Services to meet organizational and community needs; (3) anticipate and plan for future program needs; (4) continue development of opportunities that foster education, training and partnership; and (5) provide excellent customer services.

Other internal GIS program projects include (1) mapAsheville - Sanitation inquiry application to manage 29,000 garbage cans ($1.5 Million in assets); (2) Bele Chere 2007 - online GIS mapping and public safety information management; and (3) auto accidents - Mapping and application services for mandated standardization reporting for Traffic Engineer and Asheville Police Department.

Service enhancements through technology in the Plan include: (1) an investment in automated services through information systems (GIS and others) can save dollars and time for citizens and staff; (2) look to other models of success (Stephen Goldsmith, Indianapolis) for guidance; and (3) "Do what we can with what we have" model, with room for additional investments, requested in Fiscal Year 2008 budget.

Regarding resources and backlog: (1) 6 to 8 month GIS project backlog - will continue as we include other information systems; (2) continue to accept long term projects and reprioritize per leadership requirements; (3) utilize partnerships to leverage resources; and (4) restructure department to better handle planned enhancements.

Mr. Feldman responded to Councilman Mumpower when he asked if there will be any budget items coming to Council in the near future.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS WESTMONT COMMONS PHASE II LOCATED AT 120 CHAMBERLAIN DRIVE FOR 72 APARTMENT UNITS

ORDINANCE NO. 3463 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS WESTMONT COMMONS PHASE II AT 120 CHAMBERLAIN DRIVE FOR 72 APARTMENT UNITS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:46 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property identified as Westmont Commons Phase II located at 120 Chamberlain Drive for 72 apartment units (Attachment to City Exhibit 3 - Aerial Map).

This review concerns a proposed 72 unit expansion of an existing apartment complex (Attachment to City Exhibit 3 - Site Plan). The apartment units are to be housed in three buildings

and clustered along Eliada Home Road. Pursuant to Section 7-5-9(a)(1)(a)(3) of the Unified Development Ordinance (UDO), any manufactured housing community, camper/trailer park or other residential development containing more than 50 individual units is reviewed as a Level III Site Plan Review.

The subject site is located at 120 Chamberlain Drive in the northwest portion of the city limits. The property consists on one lot zoned INST (Institutional) and HB (Highway Business) and is comprised of 17.5 acres according to the submitted site plan and Buncombe County tax records.

The majority of the development lies within the INST zoning district with only the entrance road (Chamberlain Drive) located in the HB zoning district. All new proposed development will occur within the INST zoning district. The property is bounded to the north and east by a group home, vacant land and Eliada Home Road zoned INST, to the west by fast food restaurants, the Farm Bureau and vacant land zoned HB and to the south by a shopping center and group home zoned HB and INST respectively.

The INST zoning district was created to reserve land for the development of major educational facilities, and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

Type "A" and "B" buffers have been installed and maintained around the perimeter of the property as part of the original development approval in 2002. Improvements to the existing buffer along Eliada Home Road are being proposed as a part of this development.

At their February 5, 2007, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. Subsequently, the Planning and Zoning Commission unanimously approved this project subject to the conditions recommended by staff at their March 7, 2007, meeting.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The majority of the subject property has an elevation greater than 2,200 feet above mean sea level and an average slope of 15 percent or greater. The initial development was not subject to hillside area grading standards because it was approved before the UDO hillside definition and standards were amended to include development in all zoning districts opposed to just residential zoning districts, transition overlay districts, and/or Planned Unit Development overlay districts in the city limits and ETJ. Further, the proposed development will occur in a relatively level area historically used for farm purposes. However, pursuant to Section 7-12-4(b)(2) of the UDO, subsequent phases of

a Level I, II, or III site plan projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of site to be graded. 126,000 square feet of the total site is to be retained as required open space including a future playground to be located in the vicinity of Building 400.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The proposed development of 72 apartment units would integrate with the existing apartment complex and transition well with the surrounding commercial and institutional elements including the shopping center and fast-food establishments. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
There are a variety of commercial, institutional and multi-family residential developments in the area that would be consistent with the proposed development. Furthermore, the entire site is surrounded by type "A" and "B" landscape buffers and open space effectively mitigating the mass of the residential structures through buffering and distance separations.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of high density, infill growth supports several goals and objectives as described in both the ***Asheville City Development Plan 2025*** and the ***Strategic Operating Plan*** (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The subject property has two existing points of access on New Leicester Highway via Chamberlain Dr. and Eliada Home Rd. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact analysis was prepared for the initial development of 180 units with the assumption that the property would be developed with 256 units. Based on the fact that the final development will be smaller than the original study, no additional traffic impact analysis is needed pursuant to the City Engineering Department. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed development will provide an additional 72 units to the housing rental market.
- Provides another opportunity to further the City's goal of high density infill development.

Cons:

- It is unclear if any of the units will be offered at affordable rents.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those recommended by City staff.

Mr. Steve Bell, applicant, said that they felt like there were some deficiencies in Phase I of three-bedroom apartments and different floor plans. He is excited about the opportunity to expand the property and assured Council it would be maintained at a high level.

After rebuttal, Mayor Bellamy closed the public hearing at 7:53 p.m.

Upon inquiry of Councilwoman Cape, the engineer of record explained the temporary construction entrance.

When Councilwoman Cape asked about the cost of the units, Mr. Bell said that the unit costs will exceed $80,000 per unit, but they will offer apartments in a range that will be primarily for working people. In addition, he thought they would have a high percentage of retirees.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3463 granting a conditional use permit adopting the proposed master plan for Westmont Commons Apartment Complex, subject to (1) conditions recommended by City staff; (2) Access to Eliada Home Road shall remain permanently open throughout all phases of construction; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (7) This project will undergo final review by the TRC prior to issuance of any required permits; noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Mumpower and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS VISTAS OF WESTFIELD LOCATED ON DOGWOOD WOOD, FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL USE FOR A 124-UNIT MULTI-FAMILY DEVELOPMENT, IN ADDITION TO A DIMENSIONAL STANDARD (SETBACK) MODIFICATION

ORDINANCE NO. 3464 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS VISTAS OF WESTFIELD LOCATED ON DOGWOOD WOOD, FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL USE FOR A 124-UNIT MULTI-FAMILY DEVELOPMENT, IN ADDITION TO A DIMENSIONAL STANDARD (SETBACK) MODIFICATION

Mayor Bellamy opened the public hearing at 7:57 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone the project identified as Vistas of Westfield located on Dogwood Road from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low

Density District/Conditional Use for a 124-unit multi-family development consisting of 2-unit, 4 unit and 8-unit buildings, in addition to a dimensional standard (setback) modification. This public hearing was advertised on April 6 and 13, 2007.

Mr. Esselstyn said that the applicant seeks the conditional zoning of 31.8 acres, currently zoned RS-4, to RM-6 CZ for a multifamily residential project with 124 units. The property is located on the east side of Dogwood Road in the Candler area, at the western extreme of the Asheville extraterritorial jurisdiction area (ETJ).

Multi-family residential with the proposed density would be a permitted use in the RM-6 district. The applicant is also seeking modification of two dimensional standards: the width of the front setback from 15 feet to 10 feet, and the width of the right-of-way from 50 feet to 45 feet. In requesting such modification, the applicant indicates parts of the design suggested to be exceptional development, as well as the reduction of disturbance that the modifications would allow.

The site is currently mostly undeveloped, with a mixture of pasture and wooded areas. In the recent past there has been a single residence on the lot. The property also contains a graveyard, the contents of which would be relocated according to NC statutes, with Buncombe County oversight.

The property contains moderate slopes, but none of the area would be subject to current hillside development regulations, due to altitude. A portion of the property (the southern end) is classified as special flood hazard area, however—both floodway and floodplain. This considerable area would be left as open space in the proposed plan.

The proposed design includes a mix of housing arrangements: five 8-unit structures, twenty 4-unit structures, and two 2-unit structures. All units would be for purchase, either as condominiums or as units in a planned development. The duplex and quadraplex units are designed to resemble large 1 – 1.5 story homes. Garage doors are located on the sides of these buildings and generally would not be easily visible from the street.

The proposed residential density would be four units per acre, no higher than what would be allowed under the current RS-4 zoning, but the RM-6 (conditional) zoning is requested to allow the multi-family dwellings.

The large vacant tract across Dogwood Road from this site's frontage has recently been reviewed and approved by Buncombe County for a large (approximately 260 units) multi-family development.

At its February 19, 2007, meeting, the Technical Review Committee (TRC) approved the project with the conditions listed.

At the March 7, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval for this project.

At both the TRC and the Planning & Zoning Commission meetings mentioned above, the applicant has expressed an interest in having one extra "directional" sign for the project in addition to what would normally be permitted. This is not a dimensional standard that can be modified as part of the conditional zoning (nor does staff feel that the extra sign is necessary).

Staff has received no communications from neighbors regarding this project. At the TRC meeting, one neighbor expressed his preferences about preservation of the extraordinary tree, the creek area, and about the design of the homes that would be visible from his home.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use is compatible with the surrounding natural features and topography. Grading and the use of retaining walls will be required, but the stream features and the remarkable tree will be protected.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The immediate area currently has a pastoral character, which the proposed development would not preserve, but this statement would be true of many developments that could be pursued even under the current zoning. Further, the proximity to the interstate, the manufactured homes to the east, industrial zoning to the southeast, and the large development planned to the west all indicate conditions with which the proposed development would be in harmony.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed project would create multifamily residential housing opportunities near an interstate at a location that has been identified by DOT as a site for a future interchange. The Asheville City Development Plan 2025 encourages increasing development near such "nodes."

   Further, the Comprehensive Plan's Smart Growth Land Use Policies state that "Compatible, higher density commercial and residential infill development should be encouraged." The proposed development presents a suitable option for transition between the lower density residential to the east and the approved multi-family development on the west side of Dogwood Road.

   The Asheville City Council's Goals and Vision document supports "sustainable, high density, infill growth." While the proposed project is not high-density when the open space is considered in the calculation, the applicant argues that the multi-family design allows the clustering of units in a design that reduces the impact relative to a typical single-family subdivision that would be built under the current RS4 zoning.

As proposed, the project does not include a workforce housing or affordable housing element, thus it does not further the affordable housing goal espoused in the above plans.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project's location on Dogwood Road near Smokey Park Highway provides access to transportation facilities and other services. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Density would be no higher than what would be allowed under (current) RS4 zoning.
- Design of much of the development would resemble a single-family subdivision with large homes.
- Dimensional modifications for front setbacks and right-of-way width have been requested; these would reduce land disturbance and height of retaining walls.

Cons:
- Applicant has not indicated any intention of providing units as workforce housing or affordable housing.

Staff recommends approval of this request, subject to the conditions in the TRC staff report and the standard conditions.

Mr. Chris Eller, engineer with Civil Design Concepts, spoke about the unique design of the property. He said they have not increased the density that would be allowed in the RS-4 underlying zoning; however, this would enable them to cluster the units in a fashion that they can create more common passive and active open space. He would like to have the following two items left open until further information is received. One, we would like one additional small directional sign for the project. And two, staff has recommended curb and gutter along Dogwood Road. We feel this is not a potential place for that and while we are not requesting deviation from the sidewalk requirement, we would request that if the N.C. Dept. of Transportation (NC DOT) will concur, that curb and gutter not be considered for this project. City staff would be open to that if NC DOT is agreeable to that.

Ms. Phyllis Martin, adjoining property owner, spoke in opposition to the project due to its density, and lack of security and safety for senior citizens in the area if the units are rentals.

Mayor Bellamy closed the public hearing at 8:07 p.m.

Mr. Eller and City Stormwater Services Manager Chad Pierce responded to the numerous questions from Council regarding development in the floodplain and the potential of downstream flooding, in addition to the cumulative effect of downstream flooding as projects are built. When Councilman Newman asked Mr. Pierce if he felt confident that this specific proposal meets relevant standards for floodplain, Mr. Pierce replied yes.

In response to Councilman Newman, City Attorney Oast said that if Council adopts this ordinance and incorporates the TRC comments, those standards that will have to be met before the project can be permitted.

Mayor Bellamy said that City Council will have a general report for stormwater, flood control, etc. before July 1 from the Flood Task Force.

In response to Councilwoman Cape, Mr. Pierce said that a re-mapping process will give us the cumulative view of downstream flooding and those preliminary maps are due about mid-July.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3464, to conditionally zone the project identified as Vistas of Westfield located on Dogwood Road from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Use for a 124-unit multi-family development consisting of 2-unit, 4 unit and 8-unit buildings, in addition to a dimensional standard (setback) modification, subject to the following conditions: (1) conditions recommended by City staff; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (6) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (7) two dimensional standard modifications: (a) the width of the front setback from 15 feet to 10 feet, and (b) the width of the right-of-way from 50 feet to 45 feet; noting that find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Freeborn and Councilman Newman voting "no."

ORDINANCE BOOK NO. 23 - PAGE 325

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 47 RUTHERFORD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO LIGHT INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ESTABLISH A CONFORMING OFFICE/WAREHOUSE USE WITH OUTDOOR STORAGE

Mayor Bellamy said that this public hearing was originally scheduled for March 13, 2007, but continued to this date at the petitioner's request. In addition, at that time, Councilwoman Cape requested additional information on when the property was zoned as part of the extension of the extraterritorial jurisdiction area.

Urban Planner Blake Esselstyn said that the applicant has requested a six-month continuance to ascertain whether the existing use would be out of compliance with future zoning anticipated to be complete within that timeframe. As Council is aware, the proposed zoning is being sought as a result of enforcement action; consequently, it is clear that the applicant is attempting in good faith to bring his property into code compliance. As a result, staff is recommending to Council that the continuance be granted as the future zoning for this property

may well result it coming into compliance as we broaden the uses to which such suburban property may be put.

Vice-Mayor Jones moved to continue this public hearing until October 16, 2007. This motion was seconded by Councilman Newman.

Ms. Lydia Scott, resident on Rutherford Road, urged Council to proceed with this public hearing as this is the second time community members have had to come to the Council meeting.

Upon inquiry of Councilman Newman, Mr. Esselstyn said that the principle additional use that made the property receive a notice of violation was the addition of outdoor storage (essentially a stack of telephone poles). In a situation like this, as long as the applicant is making good faith efforts to comply, we don't require that the use be removed. It is with that understanding that they were pursuing the conditional zoning that that use was allowed to continue. Rezoning to Light Industrial would essentially put the property in a district that would be a permitted use.

In response to Vice-Mayor Jones, Mr. Esselstyn said that Mr. Gerald Green (representative of the applicant) was at the Council meeting earlier, however, he had another obligation and apologized he was not able to stay for this action.

Councilman Newman withdrew his second.

Councilman Mumpower seconded the motion to continue to October 16, 2007, made by Vice-Mayor Jones.

In response to Councilman Newman, Mr. Esselstyn said that if the conditional zoning were approved now, there would be substantial improvements to the property, e.g., landscaping, total overhaul of the parking lot, additions to the building, etc. If the corridor were to be rezoned in six-months to a zoning district in which this would be a permitted use, all of that would have been unnecessary on the part of the applicant.

In response to Councilwoman Cape, Planning & Development Director Scott Shuford said that they are looking at all of our different corridors to determine whether they should be in an urban or suburban designation. This is one that, no doubt, will be in a suburban designation because of its location and surrounding uses.

After considerable discussion, Mr. Shuford said that Council's options are (1) continue the public hearing for six-months; (2) approve it for a 6-month period in which the applicant would have to upgrade the site to meet landscaping standards, etc.; (3) approve it in its entirety; (4) continue the public hearing for one week and give the applicant an opportunity to attend or nor; or (5) deny the rezoning.

The motion to continue the public hearing until October 16, 2007, made by Vice-Mayor Jones and seconded by Councilman Mumpower carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "no."

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-87- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing two members to the Asheville School Board.

The terms of Ann Von Brock and Dolly Jenkins-Mullen, as members of the Asheville School Board expired on April 1, 2007.

On April 10, 2007, City Council instructed the City Clerk to arrange interviews for William Todd Weatherly, Jacquelyn Hallum, John Legerton, Brian Sarzynski and Precious Folston.

Councilman Mumpower supported an elected School Board and suggested we put on a future agenda a discussion of an elected vs. appointed School Board. Vice-Mayor Jones felt that City Council needed to have a community dialogue on this prior to Council discussion.

Councilman Davis suggested inviting Asheville City School Superintendent Robert Logan to a Council meeting in order that Council may ask him some questions. Mayor Bellamy said that the scheduling of that meeting is already in progress.

After Council spoke highly of the candidates, William Todd Weatherly received 0 votes, Jacquelyn Hallum received 5 votes, John Legerton received 3 votes, Brian Sarzynski received 2 votes and Precious Folston received 3 votes. Another vote was taken because two members received 3 votes - John Legerton received 3 votes and Precious Folston received 4 votes. Therefore, Jacquelyn Hallum and Precious Folston were appointed as members of the Asheville School Board to each serve a four-year term respectively, terms to expire April 1, 2011, or until their successors have been appointed.

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B. SUSTAINABLE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Economic Development Advisory Committee (SEDAC).

The terms of Bruce Tompkins, Carol King, Frank Taylor, Patti Glazer, Marvin Slosman, as members on the SEDAC expired March 1, 2007. In addition, Pat Whalen and Jack Cecil have resigned, thus leaving unexpired terms until March 1, 2008. In addition, Kimberly Hodges has resigned, thus leaving an unexpired term until March 1, 2009.

Councilwoman Cape, liaison to SEDAC, said that within the climate of the HUB and the creation of this new regional economic development organization, she felt the role of the SEDAC needs to be looked at and addressed. She asked Council to consider what the role is of the City's SEDAC in the climate of the HUB project. Secondarily, if we define a role for such a committee ourselves, how do we see that committee functioning. Do we see it as an advisory policy-setting body or is it a body much like we did with the Environmental Committee, where we said these are some ideas we would like to have and we need you to be our research team to dig into these and bring them back to us. If you look at the list of people who have been on SEDAC, many of them now are moved over to the HUB and the energy and the vibrancy they used to put into SEDAC is now in a larger area. Should Council decide that SEDAC should move forward, and she's not thinking that it shouldn't, she thinks 18 members of SEDAC is too large. In summary, she would like to know the process by which we look at what the role of the committee is, how many people are on it, and what we can do as a guiding body to encourage the best performance and usefulness of our committees.

Councilman Davis moved to postpone the interview stage until the Boards & Commissions Committee has had an opportunity to review the questions posed by Councilwoman Cape. This motion was seconded by Mayor Bellamy.

Vice-Mayor Jones said that she felt that the questions posed are important enough that it be a City Council discussion and not the Boards & Commissions Committee discussion only.

Councilman Davis and Mayor Bellamy agreed that the discussion be a City Council discussion.

Mayor Bellamy said that when City Council created SEDAC there was no other tool out there, other than the Chamber's Economic Development Committee, looking at manufacturing. That has since changed since the formation of HUB. Unless we have specific assignments for SEDAC, she felt that it has outlived its life. She said that Council will be receiving a presentation from HUB leadership in May. After we hear the HUB presentation and look at the bigger picture of what is trying to be accomplished, we will see that some of the same players are already engaged in the larger HUB process.

It was the consensus of Council to delay the interview process until after we hear the presentation by HUB leadership and after Council discussion about the role of SEDAC.

At the suggestion of Councilman Newman, Mayor Bellamy felt it would be a good idea to invite SEDAC to the same meeting in May that the HUB leadership will attend in order to ask questions to both bodies. If we, or they, identify some compelling activities we need SEDAC to work on, we move forward with the interview process. If not, then Council would make a decision acknowledging that.

Councilwoman Cape wanted to make sure that the SEDAC members know this is not a dispersion on any of them, but it's more of a sense of how HUB is taking off and how we are no longer just focused on just a City economic development plan - we are looking at partnering.

C. RESOLUTION NO. 07-88- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville Film Commission.

The terms of Alison Watson, Kathleen Kasben, Jim Lawrence, Donna Daniels, Robbie Williams and Michael Rangel expired on November 1, 2006. Ms. Watson is interested in being reappointed.

Vice-Mayor Jones said that after talking with the Chair of the Film Commission about the viability of the Film Commission, the Boards & Commissions Committee recommended moving forward with appointments. They suggested that after Council seats these individuals, we ask them to talk about the size of the Commission.

Based on Council knowledge, either personal, professional or by their credentials, it was the consensus of City Council to (1) reappoint Ms. Alison Watson; (2) appoint Mr. Alan Berger, Ms. Brenda Lunsford Lilly and Mr. Ty Hallock as members to the Film Commission to each serve a three-year term respectively, terms to expire November 1, 2009, or until their successors have been appointed; and (3) charge the Film Commission with assessing the size of their board. If they determine they need the two additional members, then Council will discuss it at that time. If not, then the Committee membership can be formally reduced.

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D. RESOLUTION NO. 07-85 - RESOLUTION AUTHORIZING CONVEYANCE OF PROPERTY AT CATAWBA AND BROADWAY TO HEALTH ADVENTURE FOR PUBLIC PURPOSES

City Attorney Oast said that this is the consideration of a resolution authorizing the conveyance of real property at Catawba Street and Broadway to the Health Adventure

Back in 2004, the City entered into an Agreement with the Health Adventure, Inc., for the exchange of property on the site of the Health Adventure's new proposed location at the corner of Broadway and Catawba Streets. Pursuant to the agreement, the purpose of this exchange is to allow the Health Adventure to use the old leaf dump site in connection with its outdoor programs, while the City will use Parcel B for the continuation of the Reed's Creek Greenway.

Since the authorization of this exchange, representatives of the Health Adventure and the City have worked out the details of the Agreement, and have been working on the details of the transaction. Personnel transitions in the administration of both organizations have extended this process. Also, there was a need to obtain a conditional rezoning of Parcel A to allow the Health Adventure to use it as contemplated, and this was completed in October of 2005.

The parties are now ready to proceed with the agreed-upon exchange. Pursuant to the Agreement, the previous resolution, and the statute referenced therein, the exchange was to be finally approved by Council following an advertised 10-day notice. If this process is followed, the earliest that Council could authorize the conveyance is May 8. Due to some unanticipated exigencies, however, the Health Adventure would like to complete the transactions by May 2.

Because this conveyance is to an entity carrying out a public purpose, there is a statute that authorizes the City to convey it in another way that will permit the closing to occur on or before May 2. This method requires Council to adopt a resolution and then publish a notice (as opposed to publishing a notice and then adopting the resolution). The sale cannot be consummated until 10 days after the date of publication. In view of the facts that: (1) the Agreement was approved by Council following a public presentation; (2) the property was conditionally rezoned following an advertised public hearing; and (3) the Health Adventure has been public about its plans with the Montford neighbors and with the community at large, authorizing the conveyance using this method appears to be an appropriate alternate way of meeting the objectives of the Agreement, and will allow the conveyance to occur in time for the Health Adventure to satisfy its exigencies. Had the "notice followed by resolution" process been followed, this likely would have been a consent agenda item in view of the previous Council actions and the wide public exposure The deed to the Health Adventure will contain appropriate restrictions limiting the use of the property to public purposes, and the conditional zoning restricts the use as well.

Pros:
- Follows through on previous agreement
- Allows City to proceed with completion of greenway
- Allows Health Adventure to proceed with its plans
- Allows closing to occur by May 2
- Project has been the subject of several public processes already

Cons:
- Changes process from notice followed by action to action followed by notice

If Council approves of this transaction, adoption of the resolution is recommended.

City Attorney Oast responded to Councilman Mumpower's concern about the urgency of this action at this meeting.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 07-85. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 308

E. RESOLUTION NO. 07-86 - RESOLUTION REQUESTING INCLUSION IN LOCAL BILLS PENDING IN THE 2007 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

Councilwoman Cape said that there were several bills which have been introduced in the 2007 Session that enables localities to adopt certain measures to help them achieve efficient and environmentally sensitive building practices. She asked for Council's support for the City of Asheville to be included in the coverage of House Bill 666 - "An act allowing Mecklenburg County to provide building permit fee rebates for buildings that are built to leadership in energy and environmental design standards" and House Bill 1097 - "An act to amend the Charter of the Town of Chapel Hill to permit the town to provide development incentives in exchange for reduction in energy consumption." We are not signing onto the particulars of what those programs would look like (that would be another conversation by City Council), it just gives us a larger range of incentives to offer towards our strategic goals.

Councilman Mumpower understood the timing issues, but felt that we are stepping out of normal procedure and would not be able to support this resolution.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-86 This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

Councilman Mumpower (1) presented the new Drug Commission poster and asked for the community's help is coming up with effective posters; (2) announced the For Our Kids event at Bartlett Arms on Saturday, April 21, 2007; and (3) invited drug dealers who are tired of being on the streets to come to a program in Shiloh which meets every week and they will get them a coach, try to get them some education, and help them find a meaningful job.

Councilwoman Cape suggested contact information be placed on the drug posters. She also encouraged the community to participate in Earth Day activities this week.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Mary Steiner, resident near Pisgah View Apartments, presented Council with a drawing of illegal activities around Pisgah View Apartments. She urged Council to get rid of all drug dealers out of the projects. She felt that drug addicts target senior citizens. Mayor Bellamy said that she would refer Ms. Steiner's information to the Police Chief.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:25 p.m.

Tonia Lipe
CITY CLERK

MAYOR

Tuesday – April 24, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Walter Plaue led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 7, 2007, AS "WORLD AIDS ORPHANS DAY"

Vice-Mayor Jones read the proclamation proclaiming May 7, 2007, as "World Aids Orphans Day" in the City of Asheville. She presented the proclamation to Mr. Ron Curran of the WNC Aids Project, who briefed Council on activities taking place during this day.

B. PROCLAMATION PROCLAIMING APRIL 24, 2007, AS "WILMA SHERRILL DAY"

Mayor Bellamy read the proclamation proclaiming April 24, 2007, as "Wilma Sherrill Day" in the City of Asheville. She presented the proclamation and a gift to former Representative Sherrill. Former Representative Sherrill thanked City Council for their work over the years and looked forward to working with them in a different capacity.

II. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda Item "D" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON APRIL 10, 2007, AND APRIL 17, 2007

B. ORDINANCE NO. 3465- BUDGET AMENDMENT TO APPROPRIATE DONATIONS AND SMALL GRANTS RECEIVED BY THE ASHEVILLE FIRE & RESCUE DEPARTMENT FROM VARIOUS SOURCES

Summary: The consideration of a budget amendment, in the amount of $5,406, to appropriate donations and small grants received by the Asheville Fire & Rescue Department from various sources.

Asheville Fire & Rescue has received $5,406 in donations from various sources to date. This action requests that these funds be appropriated for departmental use.

Asheville Fire & Rescue receives donations and small grants from various sources throughout the year. These funds cannot be used to fund Fire Department general operations and must be appropriated to enhance fire prevention activities. To date, $5,406 has been received. Specific uses for these funds have been identified, including purchasing promotional items for fire prevention, items for fire prevention education classes, and the purchase of a brochure rack for fire prevention education materials. Approval of this budget amendment will provide the department with the necessary budget authorization to expend these funds.

PROS:

- These funds have been provided at 100% with no city match.
- Asheville Fire and Rescue will be able to work more effectively with fire prevention education with these funds appropriated.
- Citizen availability to fire prevention materials will increase.
- Target age groups (children and elderly) will be better reached with fire prevention messages.

CON:

- None identified at this time.

Staff recommends City Council approve a budget ordinance amendment in the amount of $5,406.00 to appropriate donations and small grants received by the Asheville Fire & Rescue Department from various sources.

ORDINANCE BOOK NO. 23 - PAGE 330

C. RESOLUTION NO. 07-89- RESOLUTION ACCEPTING THE BID AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CARL WALKER AND ASSOCIATES FOR SPECIFICATION AND OVERSIGHT FOR REPAIRS AND MAINTENANCE TO THE CIVIC CENTER PARKING DECK

Summary: The consideration of a resolution accepting the bid of Carl Walker and Associates and authorizing the City Manager to execute an agreement with Carl Walker and Associates for specification and oversight for repairs and maintenance to the Civic Center Parking Deck.

The City of Asheville owns and operates the Civic Center, Rankin Avenue, and Wall Street parking decks. The Civic Center deck was built in 1976 and the other two in 1988. In 2003 an assessment was conducted on the condition of all three facilities. Numerous conditions were identified that needed repair. The Civic Center deck, being the largest and oldest, required the most repairs. The assessment was divided into emergency repairs and non-emergency repairs. The emergency repairs were completed in 2005. Funds in the amount of $525,000 for the oversight contract and to do most of the non-emergency repairs to the Civic Center deck have been accumulated and are in the current budget.

Carl Walker and Associates will specify the details of the repairs to be made, assist in the preparation of bids, analyze and recommend the bid responses, oversee the quality of the repair work, and inspect and sign off on the completed contracts. The contract with Carl Walker and Associates is estimated to cost $75,000. The contractor estimates that they will be able to specify the work needed, draft requests for proposals and recommend appropriate contractors within 90 days of the management contract being signed by both parties.

Pro:

- Correcting problems in the decks now will prevent more costly repairs later and will extend the useful life of the parking facility.

Con:

- There will be some inconveniences to parking patrons as the work progresses. With proper planning these can be minimized.

This action conforms with the Strategic Operating Plan in Planning Focus Area- Goal #2- A Multi-modal Transportation System, Task #1: "Determine opportunities for managing traffic demand through changes to commuting patterns and transportation modes, land use patterns, signalization improvements, etc."

City staff recommends that City Council approve a resolution accepting the bid of Carl Walker and Associates and authorizing the City Manager to execute an agreement with Carl Walker and Associates in an amount not to exceed $75,000 for specification and oversight for repairs and maintenance to the Civic Center Parking Deck.

RESOLUTION BOOK NO. 30 – PAGE 315

D. PUBLIC PROCESS AND TIMELINE FOR PRITCHARD PARK RECOMMENDATIONS

This item was pulled from the Consent Agenda for discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

PUBLIC PROCESS AND TIMELINE FOR PRITCHARD PARK RECOMMENDATIONS

Summary: Asheville City Council has charged the Downtown Commission and Recreation Board with appointing a joint ad hoc committee to develop and oversee a public process for Pritchard Park recommendations.

The purpose of the public process is to gain citizen input on the current use, management and operation of Pritchard Park in order for the committee to develop recommendations for park enhancements. The evaluation process includes analyzing what is going well with Pritchard Park, what needs improvement and what are the opportunities for enhancing the park as a community park amenity. Based on the community's feedback, the committee will make specific recommendations to City Council for park improvements. The committee will complete and disband its work when recommendations are delivered to City Council.

Progress to Date: Based on City Council's direction, staff has convened a joint preliminary meeting of the Recreation Board and Downtown Commission members. At that meeting, the Recreation Board nominated three members to serve on the joint committee (Adam Pittman, Wind Motika and Scott Barnwell). The Downtown Commission named three members to the committee at its April 13 meeting. The remainder of the committee will be comprised of Amy Sawyer, the coordinator for the 10 Year Plan to End Homelessness, and a member of the Asheville Police Department as well as any other community stakeholders the committee feels is necessary to conduct a thorough community process.

Recommended Public Process: The boards have approved the public process and timeline listed below.

Step	Description	Timeframe
Committee Formed	Boards nominate three members from each body to participate on the Pritchard Park Committee, request the Asheville Police Chief to nominate a seventh member and invite Amy Sawyer, the coordinator of the 10 Year Plan to End Homelessness to join.	Committee named by April 24 Subsequent meeting dates developed thereafter
Update to City Council	Present an update to City Council on the committee's formation and the steps in the public process.	April 24
Focus Groups	Invite key stakeholders to participate in a focus group process geared toward identifying key problems and opportunities.	Late April
Community Input Meeting	Host an open community meeting in downtown Asheville to gain input; incorporate small focus group exercises to gain input.	May
Committee Analysis & Recommendations	Pritchard Park Committee analyzes and evaluates public input in order to develop recommendations for City Council consideration.	Late May/Early June
Presentation to City Council	Pritchard Park Committee Chair presents recommendations to City Council.	Late June

The Downtown Commission, Recreation Board and City staff recommend City Council adopt the Pritchard Park Committee's proposed public process and timeline for Pritchard Park recommendations.

The following individuals spoke in support of allowing people to come together to share meals in Pritchard Park:

Rev. Amy Cantrell
A pastor of a church in Atlanta, Georgia
Ms. Denise Pendleton, small business owner and Asheville resident
A student at Warren Wilson College
Ms. Millie Riedel, Asheville resident
Mr. James Sheeler
Ms. Lindsey Popper

Councilman Mumpower said there is a struggle of what is loving and what is enabling. This is not about an absence of compassion for the homeless, not about food or about

indifference or economic separation. For a lot of us, it's about behavior. A lot of people come to Pritchard Park and indulge in various behaviors that are extremely inconsiderate of others around them. The equation works both ways - not only us being concerned about the homeless, but the homeless being concerned about their responsibilities to others. He personally does not believe that we uphold people by letting them beg on our streets, be publicly intoxicated, or letting them break our laws. He will support this, but he hoped we can challenge the Committee to not only be nice, but be realistic.

Councilwoman Cape was concerned about the swiftness of the process and hoped that if the Committee sees that it needs more time, that there is flexibility in the process to ensure that the goals are met and not kept to a strict timeline. Mayor Bellamy assured Councilwoman Cape that if the Committee requests additional time, that Council would be amenable to that.

Mayor Bellamy said that on May 29, 2007, City Council will be hosting a meeting on homelessness so this issue is far from over.

Councilman Mumpower moved to endorse the joint ad hoc Pritchard Park Committee and approve their public process and timeline for Pritchard Park recommendations, with the understanding that Council will leave it open to the Committee to make modifications to the process if necessary. This motion was seconded by Councilman Davis.

After a short discussion initiated by Councilman Freeborn and Councilman Newman of the key stakeholders, Councilman Mumpower and Councilman Davis each agreed to accept the friendly amendment to include Rev. Amy Cantrell and someone from the streets to be key stakeholders and invited to participate in the focus group process.

Mayor Bellamy reminded the community that this Council is not sitting idly by regarding the homeless. We are in the process of installing restrooms downtown; using the Housing First model, we have housed 33 individuals who were formerly homeless; we have a 10-Year Plan to End Homelessness and are funding said Plan; and the City of Asheville hosted a one day event to help our homeless bringing in several aspects all into one location.

The amended motion made by Councilman Mumpower and seconded by Councilman Davis carried unanimously.

III. PRESENTATIONS & REPORTS:

A. COMMUNITY RELATIONS COUNCIL ANNUAL REPORT

Dr. Larry McCallum, Chairman of the Asheville-Buncombe Community Relations Council (ABCRC), thanked City Council for allowing him to give the ABCRC's annual report.

The mission statement of the ABCRC is that "We are people helping people develop mutual respect and eliminate discrimination in our community."

The ABCRC works with members of our community in targeting the issue of discrimination in housing, public accommodation, and employment. The services of this council are available to all residents of Buncombe County and the City of Asheville.

The highest priority of the ABCRC is addressing issues of discrimination in housing, public accommodations, and employment. Activities and programs which foster mutual respect are also incorporated as a role of the Council. By doing so, the Council serves as a representative voice for those who cannot speak for themselves.

The ABCRC is currently focusing on the major issue of providing service to a more diverse community. The Latino and Russian Communities are underserved. The process of

building trust, understanding, and especially communication is hampered by the lack of funding for staff members to bridge this gap.

The Council seeks your help in funding these additional staff members for the next budget year.

The face of our community is changing and will continue to do so in a short period of time. It is an interesting fact that with people numbers also have a face. If we do nothing things will continue to change, but when the obvious is in view, it is essential that actions occur in accordance with change. Again he stated that they need Council's help in the next budget year.

He was asked to share with Council the Board's goals and objectives for the year 2007/2008. The following are the top priorities that were developed from their Strategic Planning Retreat:

Organizational Development

1. We want to seek additional funding, through grants, donations, fundraisers, and fees for services.
2. Initiate a marketing and public relations campaign that will communicate the services and mission of the ABCRC.
3. Improve the process for selection of board members and implement a more formal orientation and training for new board members.

Programming

1. Continue successful program targeting the elimination of illegal discrimination in employment, housing, and public accommodations.
2. Represent a voice for those who cannot speak.
3. Grow viably contemporary programs by inviting the community in through forums and workshops designed to keep the ABCRC at the center of community needs and issues.

Education

1. Promote quality education through cultural sensitivity, understanding, tolerance, and leadership training opportunities.
2. Promote inclusiveness of the faith community in the resolution of community concerns.
3. Improve the interaction between law enforcement and the public at all levels of the community.

More specifically for the 2007-2008 year our goals are to:

- Expand our outreach to more diverse communities
  - With your help we would like to hire additional culturally sensitive personnel.
  - This would allow us to increase investigations and testing to eliminate discrimination in these communities.
- Expand the awareness of the Community Relations Council
  - The Council is in the process of developing a marketing committee to promote the services of the council.
  - It is also a goal to add youth members to many of our committees to add their expertise and to grow the council.
- Promote quality education through cultural sensitivity, understanding, tolerance, leadership, and training
  - We currently have an Education Committee, but we want to redesign it for greater involvement
  - Continue our scholarship program – each year the Council awards two scholarships to students in the Asheville City and Buncombe County School Systems
  - Respond to requests for providing specific training in the areas of anti-bullying, gangs, and conflict resolution.

As Accomplishments

- The ABCRC held the second Annual African American-Latino Community Conference. This full day conference provides networking opportunities for the African American-Latino Communities and reduces racial polarization. We were pleased to have Congressman Heath Shuler and Representative Susan Fisher with us and we would like to have all of you in attendance this year.
- Developed the first Annual Law Enforcement Community Relations Award Program. This program's purpose is to develop a close relationship between law enforcement. This award is presented through nominations from the community.
- Secured a new source of funding with the Asheville Housing Authority. The Council will assist residents of the housing communities in community building, transitions to jobs and housing readiness.
- Established a closer working relationship with the religious community. Several meetings were held the organization of Christians for a United Community to partner on goals to reduce racism. Workshops were conducted that address racial tolerance at member churches.
- Investigated and closed with settlements over one hundred housing and employment complaints. These settlements totaled over $40,000, including back pay, lost wages, housing deposits, and other types of compensation.
- Assisted in the relocation of persons in North Asheville, West Asheville, and Central Asheville. The people were generally poor and are currently being relocated due to development. Council has been instrumental in getting developers and the city to assist in relocation. Council also assisted the residents in working with other essential outside agencies that helped with the relocation process.
- Council members were requested to and assisted with the peaceful "One America March" last May. The march involved over 4,000 people moving through downtown Asheville. To our knowledge, there were no incidents of violence reported.
- The Council awarded two scholarships for outstanding community service to two young people. The council has awarded eight scholarships to date.
- The Council was requested to and assisted with the coordinated state of "Black Asheville" conference held on February 17, 2007, at UNC-Asheville.
    - The Council presented this year's Distinguished Service Award to Virgil Smith.

He again thanked Council for this opportunity to speak with them and to share a few highlights of their year. What you have heard was simply the tip of the iceberg and to tell about all that was done would take more than the allotted ten minutes. They do appreciate Council's financial support. He hoped that Council will assist them in providing additional service to an increased segment of population who are not receiving their full services.

On behalf of City Council, Mayor Bellamy thanked Dr. McCallum and the ABCRC for their hard work on behalf of the City of Asheville.

B. AIA DESIGN CENTER PRESENTATION

Mr. Alan McGuinn, Co-Chair of the Asheville Design Center, said that bridging the French Broad is the most important public development decision facing WNC in our lifetime. This project has the opportunity to double the size of downtown Asheville. It provides an opportunity to link urban and economic development to transportation, highways and the community. It also provides an opportunity to connect downtown to west Asheville and Emma.

Showing slides, he reviewed the NC Dept. of Transportation (NC DOT) proposed Alternatives 2 and 3. Both Alternates 2 and 3 mix interstate and local traffic on Patton Avenue, this is against the Community Coordinating Committee (CCC) report. He showed Alternate 5 and Alternate 4. The shortcomings of Alternate 4 are (1) highest cost alternative; (2) excess

number (7) of bridges; (3) complicated interchanges; and (4) excess right-of-way size. The positive elements of Alternate 4 are (1) by bending 240 northward, Patton Avenue is opened with development sized parcels; and (2) with the straightening of Patton Avenue, development and connections can be made to West End/Clingman Avenue Neighborhood, Hilliard and the River.

He reviewed different Smoky Park Bridge scenarios, noting that a new bridge could establish an iconic image parallel to City Hall or the Vance Monument and it could reinforce the culture of place.

The Asheville Design Center's Alternate 4b proposal accomplishes (1) consumes less land; (2) returns right-of-way to the tax rolls; (3) provides for mixed-use development; (4) less impact on adjacent property; (5) allows for connection to local road network; (6) user friendly interchanges; (7) less highway movements; and (8) potential for a signature bridge.

A comparison chart of asphalt, right-of-way total area and cost/acres of asphalt were shown as follows: Alternate 4 - $371,000,000; Alternate 5 - $314,000,000; and Alternate 4b - $150,000,000.

Comparison charts were used to show by the year 2025, the City will have added 20,000 new residents and Buncombe County will have added 80,000 new residents.

We see this as an opportunity for our community and the region in that it will have (1) more usable land for potential development as identified in the 2025 Plan; (2) connecting west Asheville to the downtown; (3) multi-modal integrated transportation; (4) connections to the river; (5) utilizes Brownfield redevelopment; (6) less visual and auditory impact on Montford; (7) increased state, county and city tax base; (8) potential reclaiming of surplus right-of-way; and (9) transformation of the regional economic base.

He outlined the 57 group community stakeholders. Their recommendations are (1) NC DOT Alternates 2 and 3 should not be pursued any further; (2) the Asheville Design Center's 4b should be included in the NC DOT Environmental Impact Statement process; (3) the CCC report and AIA 10 principles of livability must be met; (4) the overall completion date should be maintained and expedited; (5) a multi-disciplinary team (Urban Design, Transportation Planning, Design Engineer, Landscape Architect, Planning) should be commissioned to produce a context sensitive solution; (6) excess right-of-way land should return to the community for development or park space; (7) construction if I-40/I-26 connection should be reprioritized with construction starting prior to the connector; and (8) focus highway resources on local transportation such as improved connection of Emma Road to downtown, improvements to Sweeten Creek, varied transportation options, etc.

The bottom line is that this (1) makes our community more livable; (2) realizes development opportunities; and (3) saves land, time and money.

Mayor Bellamy said that the NC DOT has asked Council to hear their presentation on this issue and that has been scheduled for May 8, 2007. At that meeting, Council will have the opportunity to take action.

Mr. McGuinn said that they had a 3-hour worksession with the NC DOT about a month ago. At that meeting, they didn't say our Alternative 4b didn't work, they said they needed more information to make sure that the scheme does work. So, they have been working to prove that it does work. They could use some help engineering-wise to prove that this really does work. That help could come from the NC DOT, the City or the County. We do need to work with the NC DOT on this process and have it included as one of their alternatives.

Councilman Newman thanked the people who have put in countless hours on this project. This is a specific design that the community can really fight for. The question is, from an

engineering standpoint, does it meet all the standards for a federal interstate project and does it accomplish all of the transportation objectives that are set forth for the project. He would be open for the City of Asheville to help in terms of getting the initial engineering analysis questions answered. If the initial engineering is viable, then the NC DOT can carry it forward and that key information will not be holding the project up.

In response to Councilman Newman, Metropolitan Planning Organization Coordinator Dan Baechtold explained what the process would be if Alternative 4b is found to meet the standards for a federal interstate project.

Councilman Newman asked City Attorney Oast to research the question of how the right-of-way land that the NC DOT acquired years ago (and compensated property owners for that land), would go back to the community if a different alternative is chosen. In addition, he felt that the City needed to develop a process for infill development if a different alternative is chosen.

In response to Council's willingness to help with engineering questions, Mr. Baechtold said that the discussion on May 8 might make it clearer in terms of what the NC DOT is capable of taking on as part of their process vs. what they would need outside assistance with.

When Councilwoman Cape asked what kind of in-house expertise the City could offer in terms of GIS or engineering support, Mr. Baechtold felt that the information the NC DOT would probably need would be a pretty specialized type of service from probably an engineering firm that is familiar with big highway design, and familiar with the North Carolina process of environmental issues.

It was the consensus of Council that staff spend the time between now and May 8 to see what might be needed and have some options available for Council to consider, based upon what they hear from the NC DOT. Mr. Baechtold can then also have available a list of firms that may be of some assistance.

At 6:44 p.m., Mayor Bellamy announced a short recess.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REVISING THE SUBDIVISION STANDARDS

ORDINANCE NO. 3466- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REVISING THE SUBDIVISION STANDARDS

Mayor Bellamy opened the public hearing at 7:04 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regarding revisions to the subdivision standards. This public hearing was advertised on April 12 and 20, 2007.

Staff has noted that the subsections of the UDO related to subdivisions have remained virtually unchanged since the UDO was adopted in 1997. Much of the current code references standards or processes that have changed over the last decade and is in need of updating. While making these updates, staff has taken this opportunity to try to re-organize and simplify the information to improve clarity and comprehension. Lastly, as the City of Asheville grows and evolves, new citywide goals and objectives have been adopted; policy direction has been followed with the introduction of several new standards, along with the evaluation of another, to better guide residential development in the City.

The following is a summary that describes the changes proposed by the planning staff. Some of the more significant changes/additions have been identified with an asterisk (*).

Corrections – Existing standards were closely reviewed for inaccurate or lost references. Those references have been removed (where appropriate), corrected, or modified to reflect current standards and practices.

Remove Engineering/Construction Standards – these standards are covered separately in the *Standards and Specifications Manual*.

Update Definitions – add new definitions for "Planned Community" and "Gated Community".

**Re-organization/Re-formatting* – As with other recent amendments, all staff involved in the review of subdivisions agreed that it was in the City's best interest to produce a revised code that was easier to understand and apply. Paring down and re-organizing the content of the section was proposed by group of planning staff members who worked together to develop an outline that was easier to read and follow. Much of the former code was simply "cut-and-pasted" into the new outline with some new information added where necessary.

* *Establish a threshold for Level III Review for Large Single Family Subdivisions* – Heightened awareness and concern over the real and potential impact of large residential single family subdivisions has resulted in the requested consideration of those developments as Level III reviews. No special conditions beyond those already required for Conditional Use Permits (CUP's) are proposed.

Add New Compatibility Standard for 4-lot Homes. Staff is proposing to add new standards that would strengthen compatibility between new infill homes on small 4-lot subdivisions and the existing homes in the area.

Re-emphasize Enforcement of Subdivision Review by Plat – Currently, the division and transfer of land by deed is prohibited and constitutes a Class 1 Misdemeanor. This standard has been relocated to a more prominent and frequently referenced section of the code.

Provide timeframes for re-submissions and revisions to plats before re-application is required – Currently, no timeframe is provided and establishing one will aid surveyors and staff to properly process a request.

In addition to these proposed changes, staff also evaluated a recommended change to our *Alternative access for small (four single family lots or less) subdivisions* (Sec. 7-11-1(j)2) that would eliminate a separation requirement between these small subdivisions. The alternative standards for small subdivisions were created to encourage small-scale residential infill development that would have much lighter road and access requirements for the creation of new single family lots. A separation requirement of 1500 feet between these subdivisions was intentionally added to control the proliferation of lots with non-standard access and infrastructure. After consideration (see pros and cons below), staff is not recommending that the separation requirement be eliminated and is instead proposing to amend the established subdivision modification process to review alternative requests on a case by case basis; these requests would be reviewed and approved by the Technical Review Committee. Should the Commission wish to explore this further, staff would recommend the consideration of an alternative that would either 1) reduce the separation requirement, or 2) establish a standard(s) for waiving the separation requirement.

Lastly, City Council provided direction to staff to bring forward an amendment that would prohibit gated communities. This request was incorporated into an earlier draft of the new subdivision standards; however, at their March meeting the Planning & Zoning Commission

requested that this portion of the amendment be removed from the rest of the subdivision standards for separate consideration at a later date. Additionally, the Commission requested that alternatives that would restrict gated communities in lieu of a prohibition be presented. Most recently, the Commission reviewed this separate amendment for gated communities at their April 4th meeting where the amendment was once again continued to allow staff additional time to investigate a more defensible set of standards. A revised draft will be presented to the Commission at their upcoming May 2nd meeting.

In summary, this ordinance is intended to:

1. Replace the existing *Subdivision Plat Approvals* Section (Sec. 7-5-8) in its entirety, with a corrected and updated version. This version includes text that would allow for reduced separation between 4-lot subdivisions to be considered as a 'Subdivision Modification'.
2. Replace Article XV *Subdivision Regulations* in its entirety, with a newly revised and updated version.
3. Amend Article II to include a definition for "Planned community"
4. Amend Article XI (Sec.7-11-1(j)2) to include new standards for compatibility of new structures (Commission may also choose to amend this same subsection to change separation requirements).
5. Amend the existing *Site Plan Review* Section (Sec. 7-5-9) to establish a Level III review for subdivisions over 50 lots.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros:
- Provides a format that is easier to read and comprehend.
- Better reflects City adopted goals/objectives and current practices.
- Provides opportunity for influence on larger and higher impact subdivisions.
- Ensures the compatibility of new structures built on 4-lot subdivisions with other homes in the area.

Con:
- Large subdivisions would require a public hearing.

Eliminating the Separation Requirements for 4-lot Subdivisions

Pros:
- Will increase the opportunity for infill lots off of private drives
- Will require less impact from necessary infrastructure (however, there are no site disturbance limitations for single family home development)
- Will result in infrastructure cost savings

Cons:
- Will result in a significant increase in the number of lots with non-standard access
- Will result in a significant increase in the amount of non-standard (reduced) infrastructure that could not be maintained by the city (homebuyer to incur cost of maintenance)
- Will likely result in less connectivity, or opportunity for connectivity between subdivisions
- Cannot guarantee that lighter infrastructure requirements would result in a reduced impact to the overall site, or that cost savings incurred by developer will be passed on the homebuyer

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances the City of Asheville establishing subdivision standards.

Mayor Bellamy closed the public hearing at 7:10 p.m.

Councilman Mumpower moved to approve the amendment to the UDO to revise the subdivision standards. This motion was seconded by Councilman Newman.

There was considerable discussion, initiated by Councilwoman Cape, about the separation requirement of 1500 feet between the subdivisions. Councilwoman Cape requested further information on the reasoning of the arbitrary 1500 foot separation since she felt this would be a good tool to create affordable housing, like cottages, and would allow for smaller roads, configurations and still allow us to utilize some pieces of land. She suggested that if there was another subdivision within 1500 feet and there were reasons why another one may be good in this area, perhaps they would have to get the community in the area to okay the project.

When Councilman Mumpower wondered if there was another objective way to limit the abuses of the 4-lot subdivisions, Ms. Tuch said that each case is different. The separation was a simple, easy to apply method for staff to control that unnecessary proliferation with the possibility for unique or special circumstances to be considered through the modification process.

In response to Councilman Mumpower, Ms. Tuch said that the 1500 feet separation was a figure arrived at by the Engineering Department, but it was probably an attempt to control the proliferation of 4-lot subdivisions.

Councilwoman Cape could agree with the ordinance as written now, if staff would have a willingness to come back and give some thought to what some of these considerations could be, e.g., not two built side-by-side on the same street, etc. She asked them consider a set of guidelines, not just an arbitrary number. Ms. Tuch said that they can establish some basic guidelines as a hand-out for developers. She also noted that the subdivision modification section of this amendment does sort of describe what justifies a modification.

Mayor Bellamy asked that as we look at whatever criteria there is for 4-lot subdivisions, they also have landscaping requirements so if there is not the 1500 foot distance that there be some type of buffering between the 4-lot subdivisions. Ms. Tuch said that the landscaping ordinance will be back before Council on May 8, 2007.

Councilman Mumpower was not comfortable with moving forward as he felt the 1500 foot separation is an arbitrary number. Therefore, he withdrew his motion to approve the ordinance.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved to approve Ordinance No. 3466. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Mayor Bellamy announced that the following three public hearings overlap. Therefore, it was her suggestion, and Council's consensus, to hear the staff presentations, open and continue the public hearings after public comment and Council questions, and vote on the three amendments separately on May 8, 2007, which will give City staff the opportunity to allow staff time to respond to the public's and Council's questions. In addition, Mayor Bellamy asked that a page be set up on the City's website for citizens to review the questions and responses. It was noted that when the public hearing is continued on May 8, that the public comments will be limited to new information only.

PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REVISING THE OPEN SPACE REQUIREMENTS

Mayor Bellamy opened the public hearing at 7:34 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) revising the open space requirements. This public hearing was advertised on April 12 and 20, 2007.

This code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan (SOP) related to the Natural and Built Environment. The SOP proposes enhanced recreational facilities, especially greenways as well as a fee-in-lieu program. The UDO currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern. The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies. Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

In summary, open space (1) expands open space requirements into smaller developments; (2) recognizes the qualitative differences between urban open space amenities and suburban open space amenities; (3) eliminates the open space "penalty" for denser residential or mixed use developments; (4) provides the developer with a fee-in-lieu option; and (5) helps implement the Greenway Master Plan.

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pro:

- Creates a simpler, more flexible set of open space regulations.

Con:

- Some projects may not be pursued due to expense of compliance.

Staff recommends City Council approve an ordinance amending the UDO revising the open space requirements. The Planning and Zoning Commission recommends approval of the proposed code amendment by a unanimous vote (6-0).

PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CREATING RETAINING WALL REQUIREMENTS

Mayor Bellamy opened the public hearing at 7:34 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) creating retaining wall requirements. This public hearing was advertised on April 12 and 20, 2007.

Since the steep slopes and ridgetop ordinance will result in the increased construction of retaining walls to minimize grading and land disturbance, a separate ordinance regulating retaining walls has been developed in concert with that ordinance, although the retaining wall requirements will apply to a broader range of circumstances than just steep slope and ridgetop situations. We feel there needed to be some requirements to screen the walls, make them more attractive and to address their visual impacts. If you have retaining walls at a certain height, there are landscaping requirements that can be one of two kinds (1) you can provide foreground landscaping or (2) you can provide an attached green screen to the retaining wall to address the

appearance issues. In addition, there are provisions to allow the use of either the natural or artificial stone to serve as an aesthetic issue associated with retaining walls.

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pro:

- Provides a mechanism to address the impacts of retaining walls.

Con:

- Will likely add to the cost of retaining walls.

Staff recommends approval of an ordinance amending the UDO creating retaining wall requirements. The Planning and Zoning Commission recommends approval of the proposed code amendment by a unanimous vote (7-0).

PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS

Mayor Bellamy opened the public hearing at 7:34 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) deleting hillside as development requirements and replacing them with steep slope and ridgetop development requirements. This public hearing was advertised on April 12 and 20, 2007.

City Council has requested that staff develop new regulations pertaining to steep slope and ridgetop development. Council direction was to strengthen the regulations and broaden their scope. Steep slope and ridgetop development regulations, to be effective, must take into account a wide variety of factors. These factors include:

- Percent of slope
- Extent of grading
- Width of road corridors
- Residential density
- Nonresidential intensity of development
- Structure height
- Preservation of trees and other significant vegetation
- Geotechnical analysis for very steep slopes and identified landslide hazard areas

The ordinance has been crafted to account for these factors. City staff has developed this ordinance by examining "best practices" in numerous communities across the country. We have reviewed the ordinance components with a focus group of design professionals. We have received comments from the public via a well-attended public meeting and through email and other correspondence. We have also examined development in and around Asheville to ascertain what makes some steep slope development relatively innocuous and other such development conspicuous.

This ordinance is intended to replace the hillside requirements (Section 7-12-4) and augment the protected mountain ridges regulations (Section 7-12-3).

To summarize the Steep Slope and Ridgetop ordinance, it proposes to:

- Provide definitions for technical terms

- Designate steep slopes and ridgetop areas
- Apply to virtually all new development and to additions of a certain size
- Establish grading allowances based on degree of slope
- Establish road corridor width standards
- Provide standards for artificial slopes
- Limit structure height in steep slope and ridgetop areas
- Require preservation of trees and stands of rhododendron and mountain laurel
- Provide density and intensity limits
- Require geotechnical analysis
- Allow density and intensity bonuses for clustering or location of development on less steep areas

Issue of Concern:

Areas to be designated as "steep slope areas". Staff has been directed by Council to strengthen and broaden the steep slope requirements. Pursuant to this direction, we initially proposed areas previously designated as "hillside" areas (2,220 feet or higher in elevation and 15% or greater in slope) and added areas below 2,220 feet with a slope of 25% or greater. Once the impact of the added language was determined for nonresidentially-zoned properties (such as the Hospital), we revised the added areas to cover residentially-zoned areas only. This issue was considered by the Planning and Zoning Commission on several occasions, the last of which was April 4, 2007. After significant discussion, the Commission voted 6-1 (Byers opposed) to recommend the language in the ordinance apply the "steep slopes" designation to areas above 2,500 feet in elevation and having slopes of 25% or greater. This recommendation would strengthen the requirements for areas covered by the "steep slopes" designation but would reduce the area covered by such designation below either the staff proposal or the existing "hillside" regulations. The Commission was convinced by public comments that the areas covered by their recommendation were the most significant areas in terms of public safety and viewshed impacts, that there were potential impacts on affordable housing and general development cost, and that there were areas covered by the hillside requirements (particularly areas such as the Pioneer Welding site and parts of The Ramble) that would be negatively impacted by the staff proposal. He showed three photographs illustrating the effect of the adjustment in elevation on Reynolds and Town mountains.

Staff has concerns about how to align this proposal with the general charge from Council to strengthen the requirements and broaden their scope. This proposal strengthens the requirements but limits their scope. Alternative options for Council consideration are:

- Retaining the staff proposal from March 7 ("hillside" plus residentially-zoned areas below 2,220 feet with a slope of 25% or greater).
- Retaining the "hillside" area as the sole "steep slope" area (in other words, simply strengthening the requirements in the area already regulated).

The amendments have been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pro:

- Provides a more comprehensive and effective approach to steep slope and ridgetop development regulation.

Con:

- Will likely result in increased cost of development on steep slopes and ridgetops.

Staff recommends approval of the proposed code amendment after due consideration of the appropriate designation of "steep slope" areas. The Planning and Zoning Commission recommends approval of the proposed code amendment by a vote of 6-1.

He noted that depending on Council action, some tables, charts and illustrations in the Steep Slopes and Ridgetop ordinance will require adjustment prior to codifying.

On this issue alone since September, 2006, there have been (1) four Planning & Zoning Commission meetings; (2) one Planning & Zoning Commission half-day retreat; and (3) one community meeting.

Steep slopes & ridgetops - (1) where to apply; and (2) what to regulate: density, amount of grading, amount of tree removal, height and width of road corridor; height of structures; and appearance of retaining walls.

Where to apply - steep slopes: "Hillside" areas (previously regulated) - areas above 2220 feet in elevation and having slopes greater than 15%. Other "steep slope" areas - areas not designated as "hillside" but having slopes greater than 25% in residential zones. Using a map, he showed the approximate steep slope qualifying areas.

Where to apply - ridgetops: (1) "protected mountain ridges" (previously mapped and regulated); and (2) areas within 100 vertical feet of a ridgeline that is 500 or more feet above the adjacent valley floor when the ridgeline is designated watershed boundary.

What to regulate - density (1) regulate density allowed based on slope of property; and (2) standard density in RS-2 example is 2 units per acre. He used a slide showing the percent of slope in the City of Asheville and Buncombe County, noting that Buncombe County doesn't start their regulations until 25% slopes.

What to regulate - grading - regulate percent of grading allowed based on slope of property. He used a slide showing the percentage slope in the City of Asheville and Buncombe County.

Associated with grading is the cut and fill slopes that are created. The staff proposal is: (1) 1.5:1 cut slope, provided the vertical dimension is held to a maximum of 30 feet and "reforestation" vegetation is planted; and (2) 2:1 fill slope, provided the vertical dimension is held to a maximum of 40 feet and "reforestation" vegetation is planted.

What to regulate - tree removal (1) protection of trees on both the uphill and downhill sides of the sites to be developed; and (2) preserve both larger trees and large groupings of mountain laurel and rhododendron.

What to regulate - road corridor width. Our standards determine how wide that is width is because we might require sidewalks or an area outside the street pavement area for utilities. We think it would be appropriate to include a provision that would really limit that right-of-way to 32-40 feet right-of-way with a 20 foot pavement area.

What to regulate - height - measure height to the effective scale of the building and provide incentives - (1) height bonus for darker buildings (LRV =/<25) with 50 foot and downslope setback; and (2) bonus does not apply to ridgetop development.

The following individuals spoke in support of staff's recommendation of "hillside" plus residentially-zoned areas below 2,220 feet with a slope of 25% or greater for various reasons, but basically in order to ensure responsible development on high profile, fragile areas. There was a request (1) for a mandatory geotechnical analysis of any slopes of 25% or greater that are proposed for development in areas designated as high hazard or moderate hazard on the

Buncombe County Slopes Stability Index Map prepared by the N.C. Geological Survey; and (2) for factual data (science based information, altitude study, etc.) to be provided by experts.

Dr. Peter Gentling, north Asheville resident
Mr. Mike Lewis, north Asheville resident
Ms. Mia Evans, north Asheville resident
Mr. Aaron Thomas, Asheville resident
Mr. Jay Quinn, representing the Grove Park Sunset Mountain Neighborhood Association
Mr. Joel Bassett, Asheville resident
Ms. Heather Raybum, north Asheville resident
An Asheville resident
Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods
Ms. Beth Trigg, Montford resident
Mr. James Sheeler, Asheville resident
Mr. Jane Mathews, Asheville resident
An owner of steep slope property

The following individuals spoke in support of the Planning & Zoning Commission's recommended language to apply the "steep slopes" designation to areas above 2,500 feet in elevation and having slopes of 25% or greater for various reasons but basically in order to support the balance issue between sustaining our tax base in the community as well as looking at protecting the quality of life in our community:

Ms. Laura Copeland, representing the Asheville Area Chamber of Commerce
Mr. Paul Zurick, representing Biltmore Farms
A representative from Mountain Council for Accountable Development
Mr. Shawn Sullivan, licensed general contractor and Vice-President of the Asheville Homebuilders Association

Ms. Suzanne Malloy suggested Council take the existing proposal of 2220 feet up to 2500 feet, exclude the density requirements, and apply the grading standards, tree protection standards, alternative landscaping standards, some height standards, etc. Doing that, she feels that Council will actually be able to protect those areas and increase the hillside development ordinance standards.

Mr. James Wood, Asheville resident, commented on retaining walls. He commented as follows: (1) requested to put a maximum height, length and square footage on retaining walls; (2) make sure that retaining walls don't become eyesores from roadways; (3) request for more dense planting requirements to adequately cover the retaining wall; (4) American holly should also be preserved; and (5) planting of trees and shrubs is better than attaching a green screen.

Ms. Barber Melton, member of the Flood Damage Reduction Task Force, supported the staff's recommendation of "hillside" plus residentially-zoned areas below 2,220 feet with a slope of 25% or greater and read the following resolution adopted by the Task Force on April 20, 2007: "Resolution supporting City of Asheville Planning Department staff's recommendation to City Council regarding steep slope ordinance. Whereas, Asheville City Council established the Flood Damage Reduction Task Force in June 2006; and, Whereas, the Flood Damage Reduction Task Force was charged with to review and make recommendations to City Council on ways to reduce damage due to flooding; and, Whereas, City Council is considering amending the Unified Development Ordinance as it relates to steep slopes and ridge top development; and, Whereas, the Flood Damage Reduction Task Force has determined, based on expert presentation, that the development of steep slopes can have an impact on flood damage downstream. Now, therefore, be it resolved by the Flood Damage Reduction Task Force that they: Request that Asheville City Council approve City of Asheville Planning and Development staff's recommendation regarding the Steep Slope Ordinance, particularly as it relates to requiring these regulations impact properties over 2220 feet in elevation with a 15% average slope."

Mr. Robert Cox, owner of a steep slope lot on Windswept Drive, urged Council to not apply these standards to previously approved subdivisions.

An owner of steep slope property voiced the following concerns: (1) density bonuses are too great; (2) no mandatory requirement for using the low light reflective value materials and colors; (3) against the alternative landscape plan option; (4) fee in lieu of for open space requirements.

The following questions were raised by individual Council members, some of which were responded to by Mr. Shuford: if a density bonus is sought through an easement on sensitive areas, does that mean we would place a conservation easement on the property with a land trust organization or something less formal; was any consideration given to looking at a more focused area of the actual land that would be graded or the actual footprint of the development, opposed to looking at the entire size of the property; can you build multi-family developments up to 8 units in single-family zoned areas in order to encourage clustering; request for additional information on slide potential based on grades and examples in Asheville where the property is 25% or less where people have had serious problems with slides; would every development automatically get the density bonuses because by definition they have to preserve the amount of space that the steep slope ordinance requires them to set aside; is it possible to make the policies around things that will help developments blend in mandatory rather than incentives; request for additional information on what we can incentivize and what we can make mandatory; what are the options to strike a balance between the ability to construct affordable housing and provide additional protections for our ridges and steep slopes; request for comparison information on (1) if the City passes the Planning & Zoning Commission's recommendation, will Buncombe County have stricter regulations than the City and (2) if the City passes the staff's recommendation, will Buncombe County have stricter regulations than the City; under the staff's recommendation, how many existing homes would not have been built; request for Chamber of Commerce to provide Council with a list of names and contacts for the experts they consulted in order to support the Planning & Zoning Commission's recommendation; request to find out the particulars of the development on Cisco Mountain; could the development on Reynolds Mountain happen under our current hillside regulations; is the extensive road grading on Reynolds Mountain in the City of Asheville; data on whether elevation is really related to soil stability; would like an outside expert opinion on a grade reduction of the geotechnical analysis requirement; how many total acres are there in the City of Asheville; what is the process for pre-existing subdivisions and is there an opportunity for a variance or an appeal process for the owner; request for additional information on green screens for retaining walls and are there any existing green screens in Asheville; request that everyone share the educational research; is there a way to separate out the viewshed protection elements from the personal safety elements; need to come up with better mapping for the overlay hillside, steep slope process that is not just a number, but has some relevance to where there are good, sensible places to build in the community; information on the possible creation of development encouragement zones; how can we accommodate the regional beauty of our slopes and still have development where it needs to be done; request to find a way to restrict the type of development near the French Broad River (homes practically built on stilts); need to have steep fines or stop work orders if situations similar to the mudslide on Cisco Road happens; is our stormwater ordinance strong enough to prevent similar situations on Cisco Road; request for additional information on why the recommended retaining walls are so tall; how many houses do we have within Asheville that are in danger of sliding; what is the history of the Sunset Mountain development; request for information on taking control over other people's property without compensation; since the Town of Boone is currently in a lawsuit over their ridgetop and hillside ordinance (which is more stringent than ours), information was requested about whether the City would have to compensate developers or owners because they couldn't reap the total benefit of their land; and whether compensation is due to property owners if the City down-zones their property.

Mayor Bellamy asked that Council submit their questions in writing to staff in order to have them responded to and placed on our website.

In response to Vice-Mayor Jones, Mr. Shuford said that parts of Reynolds Mountain are in the City of Asheville. The area was subdivided in the County around 1999 and a portion was brought into the City. There was an extraterritorial jurisdiction area discussion with the Town of Woodfin about what part of Reynolds Mountain would go into Woodfin and what part would go into Asheville. There is a portion that is in Asheville. In fact, there are two homes that are at the top of the ridge that are very prominent. Those are in the City of Asheville, but again the lots were created in the County and not under the City hillside regulations. A good portion of Reynolds Mountain, since that time, has been annexed into Woodfin and the development that is primarily seen from US 19-23 is in the Town of Woodfin. He also noted that one of the reasons why portions of Reynolds Mountain went into Woodfin was to avoid our infrastructure standards.

Mayor Bellamy requested more stringent landscaping requirements in the subdivision regulations and for infill development. She felt that requiring additional landscaping is necessary even if the uses are the same. In addition she asked that we limit speculative grading as much as possible.

Councilwoman Cape moved to continue the three following public hearings until May 8, 2007: (1) revisions to the open space standards; (2) creation of retaining wall requirements; and (3) revisions to the steep slope and ridgetop requirements. This motion was seconded by Councilman Freeborn and carried unanimously.

At 9:57 p.m., Mayor Bellamy announced a short break.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-90- RESOLUTION ESTABLISHING ENERGY AND CONSERVATION GOALS AND BENCHMARKS FOR THE CITY OF ASHEVILLE

RESOLUTION NO. 07-91- RESOLUTION ADOPTING LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN (LEED) STANDARDS

Public Works Director Mark Combs said that this is the consideration of a resolution establishing energy and conservation goals and benchmarks for the City of Asheville and consideration of a resolution adopting Leadership in Energy and Environmental Design (LEED) Standards.

The Sustainability Advisory Committee on Energy and the Environment (SACEE) has completed City Council's directive on December 12, 2006, to (1) recommend energy conservation goals for City operations; and (2) recommend level of LEED certification for new City buildings.

The SACEE has worked diligently with ICLEI staff, experts in the field, and with other municipalities across the U.S. to formulate pragmatic and thoughtful recommendations which will benefit Asheville and its citizens. Two separate resolutions have been drafted outlining how staff should implement each goal.

For Directive 1 (energy conservation goal), the annual City energy usage snapshot is (1) electrical energy costs for 2001-02 is $2,989,127; and (2) fuel costs (gasoline, diesel, CNG) for Fiscal Year 2006 is $1,122,950 which equals 536,614 gallons. The recommendation is to reduce greenhouse gas emissions by City operations by 2% per year from 2007 emissions measurements until we have achieved an 80% reduction from baseline year emissions (2001-02). That would include (1) developing a Strategic Energy Management Plan; and (2) create a Sustainability Coordinator position to implement program. The rationale would be (1)

benchmarked other cities nationwide; (2) received input from ICLEI staff; (3) goal of 2% per year is reasonable and achievable; and (4) 80% cuts in emissions are being referred to as a "solution commensurate to the scale of the problem."

In summary, Directive #1: Define specific energy and conservation goals for Asheville: The SACEE recommends a 2% per year reduction (from Fiscal Year 2006-07 levels) until we reach an eighty percent (80%) overall reduction.

Pros:

- 2% is a pragmatic, attainable goal which considers staff and resource limitations
- Any change in culture is best implemented in slow, incremental steps
- Reducing energy usage 'avoids' rising energy cost expenses to the organization
- Asheville is taking a leadership role in the community (to share successes)

Cons:

- Capital funding may be required to accelerate investment in cleaner and more efficient vehicles, equipment and building systems.

This action conforms with the Strategic Operating Plan in Natural & Built Environment, #33.

He explained that the LEED is the national green building standard developed by the U.S. Green Building Council. He then explained the LEED point system and using a chart explained the different LEED certification levels and whether it is more expensive to build green. For Directive 2 (LEED standards for City buildings), the recommendations are (1) new, occupied City buildings greater than 5,000 sq. ft. designed and built to achieve LEED Gold Certification level; (2) new, occupied City buildings less than 5,000 sq. ft. be designed and built to achieve LEED Silver Certification level; and (3) for buildings greater than 5,000 sq. ft., if energy savings payback period is greater than 10 years, then design and built to LEED Silver Certification level. The rationale would be (1) studies indicate that the cost premium of the Gold level over the Silver level is only 0.3% or less; (2) a "Gold" building will lead to a much higher cost savings than a Silver certified building, outweighing the additional cost; and (3) community stakeholders have indicated that they want Asheville to be a leader in sustainability practices.

In summary; Directive #2: Develop Specific guidelines for future municipal facilities to be LEED certified, the SACEE recommends the following:

a) Buildings greater than or equal to 5,000 square feet will be built to LEED 'Gold' certification level;
b) Buildings less than 5,000 square feet will be built to LEED 'Silver' certification level; and,
c) Any building which cannot recoup the additional expenses for LEED construction standards within ten (10) years will be built to LEED 'Silver' certification level.

Pros:

- For a modest investment in building design and construction, significant energy savings will be realized
- As energy costs continue to go up, homes and commercial buildings (lease) which use less energy will financially benefit both owners and occupants
- Less energy production results in cleaner air (better community health, tourism, etc.) and conserves precious energy resources
- LEED-type building practices is a growing world-wide trend

Cons:

- Capital funding may be required for the additional costs in design and construction

This action conforms with the Strategic Operating Plan in Natural & Built Environment, #34.

The Sustainability Advisory Committee on Energy and the Environment recommends City Council approve a resolution establishing energy and conservation goals and benchmarks for the City of Asheville and a resolution adopting leadership in Energy an Environmental Design (LEED) Standards.

Mr. James Wood hoped that the City pushes for Gold standards and it sends a strong message.

In response to Vice-Mayor Jones, Mr. Combs said that LEED is becoming the prominent type of building culture and as that culture gains ground the building materials are far easier to get a hold of and volume is driving down the price.

Councilman Freebom was interested in seeing what our energy costs are today as an organization and if we reduce our gas emissions by 2% per year, how will that affect our bottom line. Co-Chair of the Sustainable Advisory Committee on Energy and the Environment Margie Mears said that they will provide Council with those numbers, as they are still gathering benchmark material. They feel that the first year savings is in the order of $80,000 or more.

Councilwoman Cape felt that the Council did a great job in selecting people for this Committee. They did the research Council requested and she commended the process.

There as a brief discussion, initiated by Councilman Mumpower, about additional fire stations being LEED certified.

Councilman Mumpower felt that if the numbers are correct, it wouldn't make sense to do anything but what is being proposed. On the other hand, the 2% per year until we reach an 80% reduction in a City that is anticipated to grow by 25% during that period, doesn't seem realistic, but arbitrary. He hoped this is not another fantasy goal. He would also speak against the Sustainability Coordinator. He wondered why the City Manager is not already challenging every department to look for ways to save money on energy.

City Manager Jackson said that it is not new that our organization is sensitive to energy costs and it's not new that our organization sets goals for economizing, fuel usage and evaluating ways to make our buildings more efficient. We are a high performance organization, but we have been short on the tracking systems and overall arching plans for these kinds of goals. He felt the Committee has been very beneficial and would be happy to work with the Committee to take this to the next level.

Councilman Newman felt this is a real important commitment the City is making. He believes there are huge opportunities for energy and economic savings, but it won't be easy. He said that the 80% reduction goal is not arbitrary, but based on what the large majority of the recycling community is telling us that we need to do in order to avoid the serious impact of global warming. By establishing this goal, we need our City employees to think about what we can do to reduce energy but we also need to the community to think about ways to be involved as well.

On behalf of Council, Mayor Bellamy thanked Councilwoman Cape for her leadership on this issue. She felt the goals are realistic and are based on good data. She asked that the next step for the Committee be to develop an education program for our community to be presented to Council. We need to make sure that community is involved and that they understand why it's so important to be involved. She suggested they use the Government Channel, eNews, and flyers.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-90, establishing energy and conservation goals and benchmarks for the City of Asheville. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Mumpower moved for the adoption of Resolution No. 07-91, adopting the LEED Standards (but not create a Sustainability Coordinator position to implement Strategic Energy Management Plan at this time, but include that discussion during the budget process). This motion was seconded by Councilwoman Cape and carried unanimously.

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B. RESOLUTION NO. 07-92- RESOLUTION AUTHORIZING SUBMISSION OF THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2007-08 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

At the request of Mayor Bellamy, Councilwoman Cape moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously.

At this time, Mayor Bellamy turned the gavel over to Vice-Mayor Jones and left the meeting.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing submission of the City's Consolidated Annual Action Plan for 2007-08 to the U.S. Dept. of Housing and Urban Development.

The City expects to have available $2,184,696 in CDBG funds and $1,685,274 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2007. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 39 projects.

A summary of the draft Action Plan was published on March 25. A public hearing was held on April 10. With the end of the required 30-day comment period, staff asks that Council take action to approve the plan on April 24. The plan is due to be submitted to HUD by May 12.

Pros:

- Allocates $3,869,970 in compliance with federal rules and enables the City to utilize these funds
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium
- Directly addresses most of the priorities set out in the Strategic Plan
- Leverages other funding in the ratio of $9.40 for every $1 of CDBG and HOME funds

Cons:

- It is not possible to fund all of the applications received at the level requested.
- Funding for four programs is partially dependent on receipt of program income from a projected land sale.

Staff recommends City Council approve a resolution authorizing submission of the City's Consolidated Annual Action Plan for 2007-08 to the U.S. Dept. of Housing and Urban Development.

Councilman Mumpower said that we about to take approximately $4 Million from the federal government, and even though there are some good things in this package, we are taking money from people who don't have that money (they are about $7 Trillion in debt), and will speak against the motion just on that basis.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-92. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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At this time, Mayor Bellamy re-entered the meeting and Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-93 - RESOLUTION SUPPORTING THE REQUEST OF RENAMING A SECTION OF LONG SHOALS ROAD BETWEEN I-26 AND NC HIGHWAY 191 TO "SERGEANT JEFF HEWITT MEMORIAL HIGHWAY"

Mayor Bellamy said that this request came from Representative Charles Thomas who is working with the Buncombe County Sheriff's Department. She said that in the past, the N.C. Dept. of Transportation has only named bridges for fallen troopers or law enforcement officers. Since there is a bridge on the same road in South Asheville, they have asked that City Council be open to either a bridge or a highway.

Said letter from Buncombe County Sheriff Van Duncan read that "on April 4, 2004, Buncombe County Sheriff's Office Sergeant Jeffrey T. Hewitt was killed in the line of duty while attempting to serve a mental commitment order in southern Buncombe County. Sergeant Hewitt was fatally wounded by a shotgun blast after being ambushed as he and other members of the Sheriff's Office approached the respondent's residence. Sergeant Hewitt's actions on that fatal night possibly saved the lives of the other Deputy Sheriffs. Sergeant Hewitt was an 11-yar veteran of the Sheriff's Office and a member of the Sheriff's Emergency Response Team as well as a 6-year veteran of the United States Marine Corps, serving as a Sergeant with the Military Police during Operation Desert Storm. Sergeant Hewitt's life tragically ended in the same community that he not only worked, but had also lived for a number of years with this wife Tracie and stepson Taylor, who continue to reside there. The Buncombe County Sheriff's Office requests that the section of Long Shoals Road (NC Highway 146) between I-26 and NC Highway 191 be renamed the "Sergeant Jeff Hewitt Memorial Highway" in memory of the service and dedication Sergeant Hewitt provided the Sheriff's Office as well as the citizens of Buncombe County. Long Shoals Road is a section of highway Sergeant Hewitt traveled every day, not only in a patrol car, but with his family. Tracie and Taylor continue to travel this road daily. Renaming this section of road the "Sergeant Jeff Hewitt Memorial Highway" will serve as a constant reminder of the ultimate sacrifice Sergeant Hewitt made in order to ensure a better quality of life for the citizens of Buncombe County."

Councilman Mumpower said that he fully supports honoring Sergeant Hewitt, but recalled that the City has, or is in the process of naming the park at the new Wal-Mart location in his

memory. He questioned doing both because there are others who have died in Iraq and Afghanistan who have made sacrifices as well.

Vice-Mayor Jones would support moving forward with this resolution as she felt the portion of the highway would have a greater significance for his family.

Councilman Davis noted that the Asheville Police Department was also involved in the accident of Sgt. Hewitt and should be commended for their work.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 07-93 and asked City staff to research the memorial park at the new Wal-Mart location so that Asheville is only providing one memorial recognition for Sgt. Hewitt - and that recognition would be this request by Representative Thomas. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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VII. OTHER BUSINESS:

A. SALES TAX DISCUSSION

Mayor Bellamy said that on April 11, 2007, City Attorney Oast sent identical letters to Senator Martin L. Nesbitt Jr., Senator Tom Apodaca, Representative Susan C. Fisher, Representative Bruce Goforth, and Representative Charles C. Thomas expressing Council's position on matters relating to local taxation, tax equity, and the current Sullivan Act litigation.

Councilwoman Cape said that Council needs to have the discussion of (1) if we can settle the conditions that we asked for in Resolution #2 of Resolution No. 07-79, how would we determine to use the sales tax for the benefit of the community; and (2) if this tax money does come forward, what would we use it for.

Mayor Bellamy said that one of the conditions from Resolution #2 was "at least 30% - 40% of the sales tax revenues must be earmarked for programs and services that directly support low-wage workers and poverty reduction efforts, such as affordable housing, child care for working families, transit services, or other programs to boost wages for low income workers." City Council has been presented with a draft 10-year Capital Improvement Plan (CIP) for use of the 1/2 cent sales tax in the areas of public safety, housing, transit, Civic Center and sidewalks/ greenways, starting with $6 Million in 2007-08.

Mayor Bellamy said that she was in Raleigh last week and members of the Chamber of Commerce were talking to the leadership of the General Assembly about some possibilities for the City of Asheville to regain the 1/2 cent sales tax. It's important that the City of Asheville have a plan to use the money if received, opposed to it being assigned for us.

Councilman Davis felt that this draft CIP directly affects our ability to have a lower property tax rate and to provide a lot of amenities for our community that we need to provide. He felt that pay-as-you-go is a good thing, but there are opportunities here in this CIP that is funded that gets us to a better place quicker, which the whole community benefits from.

Councilman Davis moved to support the 1/2 cent sales tax to be used toward a CIP, with the details being worked out at a later date. This motion was seconded by Councilwoman Cape.

Councilwoman Cape noted that this is a draft CIP and wouldn't support putting public safety in these expenditures. Personally, she would like to see us concentrate on the items we said would relieve a burden for low-wage workers and poverty reduction efforts, through transit and affordable housing initiatives. She recommended that we consider a small line item in this for HUB contribution as we go forward with the economic development picture in this community.

Councilman Newman strongly opposed this. With this draft CIP, he felt we are not even trying to earmark a significant percentage of the funds on poverty reduction or focused programs that benefit low-wage working families. To put a little bit of money in the Housing Trust Fund and $100,000 for transit is a poor starting point for discussion.

Councilman Freeborn could potentially get behind something like this draft CIP. He has heard that we don't have much of a chance getting the 1/2 cent sales tax because the state is going to keep it. His preference would be that the state give it back to the people and let them spend it. He assumes, in the draft CIP, we would be floating a bond for $4 Million for the relocation of the transit center. He would need a lot more information about that before he would agree to anything like that. If we put money towards transit, it needs to be significant dollars. Regarding housing, he would like to see us put more money toward redevelopment projects. We need to be serious about breaking up concentrated poverty in our community and $400,000 a year isn't going to do it. The money for the sidewalks/greenways and the Civic Center is good, but he does have a concern of spending $10 Million for an emergency training center.

Mayor Bellamy said that conversations are being held about the 1/2 cent sales tax and we need to have a plan to use the money because there are other competing forces for our $6 Million, e.g., HUB.

Councilman Freeborn felt that City staff should have provided this information to Council ahead of time so that there could have been a more productive discussion.

Vice-Mayor Jones said that Asheville is already on record saying that they would support a new sales tax only under certain conditions, which were outlined in Resolution #2, including ""at least 30% - 40% of the sales tax revenues must be earmarked for programs and services that directly support low-wage workers and poverty reduction efforts" and the draft CIP does not address those conditions in the 30-40% range. Nothing against the HUB Project and as good as the goals may be, the $6 Million out of the pocket of the working people of Asheville is not where it should be funded from.

Councilman Mumpower said that there are no circumstances under which he would envision supporting a sales tax increase.

Councilwoman Cape said that we have stated clearly that there are things that we would like to see if this goes forward. It's also fair for us to say what we would use this money for. The draft CIP needs to reflect that. The option that we have here is that we can get really creative about how we can use this money because we can bond off this money if it's a steady revenue stream coming forward, e.g., a build out of the transit system, some significant redevelopment programs, parks and greenways, and the Civic Center. She didn't think using the $6 Million for HUB is smart, but there are very loud and strong people who are talking about that. She said it could be part of our funding stream, because the economic picture that the HUB will offer will help our issues of affordability, jobs, etc., as the ultimate goal of the HUB is to create jobs and a good quality of life. She would delete the public safety from the draft CIP and look creatively at what the funding mechanisms of this money with HUB having a little piece at the bottom.

Councilman Davis and Councilman Freeborn could support Councilwoman Cape's ideas.

Councilman Davis restated his motion to support the 1/2 cent sales tax to be used toward a CIP (not the draft one), with at least 30-40% of the sales tax revenue being earmarked for

programs and services that directly support low-wage workers and poverty reduction efforts, with the details being worked out at a later date, and with a small portion being allocated to the HUB project.

Mayor Bellamy explained that City staff tried to do their best in the draft CIP to address Council's request that at least 30-40% of the sales tax revenue being earmarked for programs and services that directly support low-wage workers and poverty reduction efforts.

Councilman Newman said that another condition from Resolution #2 was that "Asheville is allowed to use a 1% hotel occupancy fee (either from an increase or the existing revenues) for renovation of the Asheville Civic Center and/or other public venues, e.g., the performing arts center." Those parts of the discussion are not happening. Part of the other dynamic is that if Council gives them a list, then they will say City Council has fully endorsed this and this is what they are asking us to do. That is how that information will be used in the legislature.

Mayor Bellamy wanted to make sure that Council knows that as Mayor, every part of the motion that was adopted by Council is moving forward.

In response to Councilman Newman, Councilwoman Cape said that there has been talk about a comprehensive transit plan that she would like to see us be able to fund, whether that is solid infrastructure around an expansion of a regional transportation network, in conjunction with the County eventually, or some infrastructure for street car light rail in conjunction with buses. If we can put together a good transit picture and really fund it, she thinks it would be a high value to the working people in this community. She also thinks we have redevelopment opportunities on the land behind McCormick Field, or an affordable housing fund that has more depth to it.

Councilman Freeborn said that we have a transportation study underway to look at taking our transit system and expanding it regionally. And then there is money aside in the Transportation Improvement Plan to assess our route structure, look at what resources we have, how they are being utilized, where we would expand, how we would do that, and what resources are needed. He suggested that we decide how much of this we would want to put towards transit and put that amount of money towards implementing those plans. That would be his suggestion for transit.

Councilman Davis said we are all aware of how difficult concentrated poverty is and not giving people hope to get out of it. A worthy goal would be to fund a portion for McCormick Heights and the transit part is good if we can come up with a workable plan.

Vice-Mayor Jones suggested that if the state is thinking of keeping the 1/2 cent sales tax and not give it back to the working people, that they give the $6 Million to our community for mental health services.

The motion made by Councilman Davis and seconded by Councilwoman Cape carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis, Councilwoman Cape and Councilman Freeborn voting "yes" and Vice-Mayor Jones, Councilman Mumpower and Councilman Newman voting "no."

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:21 p.m.

Kesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 8, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Representatives of the 9th grade student government of Asheville High School led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 12, 2007, AS "STAMP OUT HUNGER NATIONAL FOOD DRIVE DAY"

Councilman Davis read the proclamation proclaiming May 12, 2007, as "Stamp Out Hunger National Food Drive Day" in the City of Asheville. He presented the proclamation to Post Master Danny Jones, President of the Asheville Branch Jeff Graznger, and Post Office Coordinator of the Food Drive Cassandra Scott, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING MAY, 2007, AS "NATIONAL HISTORIC PRESERVATION MONTH"

Mayor Bellamy read the proclamation proclaiming May, 2007, as "National Historic Preservation Month" in the City of Asheville. She presented the proclamation to Ms. Sharon Fahrer, from the Montford Historic District, and Ms. Stacy Merten, Historic Resources Commission Director, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

Mayor Bellamy added an item to the Consent Agenda (Item "F") regarding opposition to Wireless Telecommunications Facilities proposed legislation.

Councilman Mumpower requested that Consent Agenda Items "B," "E" and "F" be removed from the Consent agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 24, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO DISPOSE OF AN INTEREST THE CITY HAS IN REAL PROPERTY LOCATED AT 24 GRAIL STREET

This item was pulled from the Consent Agenda for individual discussion.

C. RESOLUTION NO. 07-94- RESOLUTION OF INTENT TO PERMANENTLY CLOSE AN ALLEYWAY OFF RICHARD STREET AND SET A PUBLIC HEARING FOR JUNE 12, 2007

Summary: The consideration of a resolution of intent to permanently close an alleyway off Richard Street and set a public hearing for June 12, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Joseph R. Bly has requested the City of Asheville permanently close an alleyway off Richard Street that runs between his properties on Richard Street.

Public Works Department staff has researched and determined this alleyway is not maintained by the City. Closure of this alleyway will not deny any of the adjoining property owners' reasonable means of ingress and egress as all adjoining property owners have joined in signing the petition requesting the alleyway to be closed.

Prior to the public hearing scheduled for June 12, 2007, agencies that may be affected by the closure of an alleyway off Richard Street will be contacted, including Utilities, City of Asheville Departments and the Greenway Commission.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the alleyway, staff can find no potential challenges regarding the closure of the alley.

City staff recommends City Council approve a resolution of intent to permanently close an alleyway off Richard Street and set a public hearing for June 12, 2007.

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D. SUMMER YOUTH PROGRAM REVIEW

Summary: The City of Asheville is creating (CAYLA) City of Asheville Youth Leadership Academy to train and place Asheville youth in meaningful summer jobs within our community.

Component A:

The City of Asheville has traditionally funded a Summer Youth Employment Program. Over the past several years, the City has elected to contract with JobLink to administer the program. JobLink noticed us in late fall that they would not be pursuing renewal of their contract for this upcoming program year.

The Asheville City Schools (ACS) Foundation has expressed an interest to administer this program. ACS Foundation will provide two full-time VISTA (Volunteers in Service America) members for a total cost of $11,000, representing a 36% cost reduction in administrative services fees for the coming year. The City will provide on-site supervision and office space for these individuals. The positions will be allocated as follows:

City of Asheville Youth Leadership Academy Coordinator: Develop and implement the City of Asheville Youth Leadership Academy; act as a liaison for youth, parents and community; establish, build and maintain relationships with local agencies to develop job opportunities for youth; identify and build partnerships with educational institutions to provide educational opportunities for youth.

Weed and Seed Service Project Coordinator – The West Riverside Operation Weed and Seed (WROWS) is a program designed to encourage community support and involvement in high-risk areas in order to improve neighborhood residents' quality of life; the program also functions as an outreach for at-risk youth. WROWS currently funds and employs a full-time Weed and Seed Site Coordinator. The Weed and Seed Service Project Coordinator (VISTA Position) will train and supervise up to 5 youth to work on weed and seed programs and assist the Coordinator as needed.

The City is creating this program with the following objectives in mind:

- To provide an employment experience that stresses the development and practice of real-world labor expectations;
- To bring greater awareness of the various support networks and programs available within the city's government and other community bases organizations;
- To provide opportunities for career instruction, financial literacy training and various academic and social supports.
- To mentor students about long-term career opportunities in public service, with the hope of preparing them for entry level professional careers in the Asheville area.

CAYLA student workers will be chosen by a committee from eligible applicants (10^{th} to 12^{th} grade) at Asheville High School. The committee will be comprised of educators and community leaders. Each student will be required to submit an application and at least two written recommendations to the committee. The committee may choose to interview the students, as well.

Students will be supervised by someone at the site of their job and will work 28 hours per week in the summer. Fridays will be set aside for workshops on leadership, community service, and career exploration. They will be paid through the City of Asheville payroll process, and will make approximately $7 an hour, with a $2,000 stipend set aside for college at the successful completion of this program. During the school year, students will be required to attend monthly community service projects held on the weekends.

Component B:

In recognition that this is the transition year, City staff is prepared to provide some level of continuation of City of Asheville Summer Youth Job Program for Summer 2007 as a bridge opportunity in order to transition to a CAYLA only model.

- This program will be available to 20 youth at $5.15 per hour for 35 hours weekly for eight weeks. These youth would be placed in the Parks and Recreation department.
- Youth who were employed through Joblink last year (2006) and who successfully completed the program will be contacted about their interest in summer employment for 2007 bridge program. These youth will be given preference in the selection process.

This action aligns with the City's Strategic Plan: (1) This program supports the City Council's long-term strategic goal to develop strategies for youth and education programs; and (2) This program supports the City Council's long-term strategic goal of building intergovernmental relations among key governmental agencies.

City staff has included $130,000 in the Fiscal Year 2007-08 budget for this program and your consideration. If approved, both programs can be completed. If council elects to fund the program at a reduced level, staff will adjust the scope of the program accordingly.

Staff recommends that City Council allow city staff to enter into a Memorandum of Agreement with the Asheville City Schools Foundation to administer the CAYLA program.

Staff recommends that City Council support the $130,000 allocation request for this program in Fiscal Year 2007-08 in order to create CAYLA and provide final year of the Summer Youth Program for 20 students.

E. RESOLUTION AMENDING THE MEMBERSHIP STRUCTURE OF THE AD HOC PRITCHARD PARK COMMITTEE

This item was pulled from the Consent Agenda for individual discussion.

F. RESOLUTION EXPRESSING OPPOSITION TO SENATE BILL 831 - WIRELESS TELECOMMUNICATIONS FACILITIES, PROPOSED LEGISLATION UNDER CONSIDERATION BY THE NORTH CAROLINA GENERAL ASSEMBLY

This item was pulled from the Consent Agenda for individual discussion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO DISPOSE OF AN INTEREST THE CITY HAS IN REAL PROPERTY LOCATED AT 24 GRAIL STREET

Summary: The consideration of a resolution authorizing the City Manager to dispose of an interest the City has in real property located on Grail Street by private sale.

In 1990 the Housing Authority (the City's redevelopment agency) sold a house at 24 Grail Street and an adjoining parcel to Hospitality House of Asheville, subsequently renamed Homeward Bound of Asheville, as a transitional shelter for the homeless. The City also made a $100,000 Community Development Block Grant (CDBG) to Homeward Bound to acquire and renovate the house.

The deed for each property includes a restriction whereby the ownership of the property reverts to the City of Asheville if it ceases to be used as a homeless shelter.

Homeward Bound has operated the properties as a shelter continuously for 17 years. Recently, Homeward Bound decided to focus on assisting the homeless to obtain permanent supportive housing rather than providing temporary shelter. Homeward Bound plans to sell this transitional shelter and use the sales proceeds to expand or replace its "A HOPE" day center, which is no longer large enough for its purpose.

Homeward Bound has found a buyer for the property, but is unable to convey it because of the existence of the deed restrictions. It has requested that the City remove the deed restrictions, in exchange for a commitment by Homeward Bound to use the proceeds of sale to

expand or replace its "A HOPE Center." According to the City Attorney's Office, the conveyance of the City's reversionary interest to a non-profit to promote a public purpose is authorized by law.

Pros:

- Directly supports implementation of the City and County's 10-year Plan to End Homelessness.
- Supports expansion of the A HOPE Center, which helps reduce the impact of homelessness on our downtown.
- Continues to support the broad objectives of the original CDBG grant.

Con: The only negative impact is the City surrenders its right to eventually re-possess property worth approximately $225,000 to the CDBG fund.

Staff recommends City Council approve of the request subject to Homeward Bound using the proceeds of the sale to replace or expand the A HOPE Center.

After a brief discussion, Councilman Mumpower moved to refer this item to the City Council Planning & Development Committee and if necessary to the City Council Housing & Community Development Committee and bring it back before Council on May 15, 2007. This motion was seconded by Councilman Freeborn and carried unanimously.

E. RESOLUTION NO. 07-95 - RESOLUTION AMENDING THE MEMBERSHIP STRUCTURE OF THE AD HOC PRITCHARD PARK COMMITTEE

Summary: City Council has appointed the Pritchard Park Committee to lead a public process to gain citizen input on the current use, management and operation of Pritchard Park in order for the committee develop recommendations to Council for park enhancements. The City Council has the authority to make changes to its appointed committees. City Council has determined that it is in the public interest to change the structure of the Pritchard Park Committee. The change is that "The Pritchard Park Committee membership is hereby amended to include a representative of the Downtown Asheville Residents Network (DARN) to be appointed by the president of DARN."

Ms. Susan Griffin, Chair of DARN, expressed concern that there was no direct voice for DARN. She asked City Council to appoint Mr. Larry Holt to represent DARN or to give DARN the authority to appoint him.

Councilman Mumpower was concerned about the mission of the Committee. His understanding is that they will be looking primarily at the facility itself and it would be his contention that that is not the problem. The problem is the people abusing the park. The arrest records for those who abuse the park are dramatic and we should either expand the mission of this committee or create some other initiative to go after the core problem - the people that abuse it.

Mayor Bellamy said that we are not getting our money out of the complete usage of the park. Her concern is the number of people who use it as well as the types of services that are offered there and how the present day diversity of usage is wane. We are addressing the social issues with the Downtown Social Issues Task Force and on May 29, we will be listening to public comments on the issue of homelessness. She would like to see the utility of Pritchard Park increased and the diversity of the people who use the park increase as well.

Councilwoman Cape believes that we need to get back to the small committee of Recreation Advisory Board, the Downtown Commission with support of the Police Department to

look at the use and design of Pritchard Park and take the social issues out of the Pritchard Park Committee's hands because that is a large topic for perhaps a separate committee.

Mayor Bellamy suggested waiting to talk about the social issues part until after Council receives feedback from their community meeting on May 29 and identify key players who want to be involved in the bigger issue. In addition, she suggested the Pritchard Park Committee cease meeting until after the May 29 meeting until Council can clearly identify what the expectations of the Committee are. In the meantime, however, we will need to address enforcement and creative ways to deal with enforcement. We do have police presence in Pritchard Park, however, people still litter and do other illegal things in the Park.

Vice-Mayor Jones moved to adopt Resolution No. 07-95, to add Mr. Larry Holt as the DARN representative to the Ad Hoc Pritchard Park Committee. This motion was seconded by Councilman Newman.

Councilwoman Cape asked City staff provide Council with some best practices of how other cities handle this issue prior to May 29. She had an idea of a hall monitor in the park who would act as a caretaker and who would be able to be an intermediary with the police.

The motion made by Vice-Mayor Jones and seconded by Councilman Newman carried on a 6-1 vote, with Councilwoman Cape voting "no." In addition, it was the majority of Council's consensus to (1) ask the Pritchard Park Committee cease meeting until after May 29 until they get clear expectations of Council; and (2) instruct City staff to provide best practice scenarios prior to May 29.

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F. RESOLUTION NO. 07-96 - RESOLUTION EXPRESSING OPPOSITION TO SENATE BILL 831 - WIRELESS TELECOMMUNICATIONS FACILITIES, PROPOSED LEGISLATION UNDER CONSIDERATION BY THE NORTH CAROLINA GENERAL ASSEMBLY

Summary: The consideration of a resolution expression of opposition to SB 831 – Wireless Telecommunications Facilities, proposed legislation under consideration by the North Carolina General Assembly.

State Senator David Hoyle has introduced *SB 831 – Wireless Telecommunications Facilities*, a bill to preempt the authority of municipalities and counties in determining where cell towers should be located. Federal Communications Commission regulations would govern placement of these towers.

Under this bill, a city or town could not prohibit cell towers in residential areas or residential zoning districts and could not impose separation requirements between towers. No permit application fee or financial surety requirement could be imposed unless also required for other types of commercial development. The bill would limit the duration of any moratorium on placing additional cell towers in a jurisdiction.

The League of Municipalities opposes this legislation. City staff does likewise. Land use decisions are best made at the local level, based on the welfare of the community. Telecommunication towers have been carefully regulated in the City of Asheville to avoid aesthetic and public safety conflicts. This bill has the potential to have a significant negative effect on the aesthetics of the City and region, affecting our tourism and quality-of-life economy as well as potentially creating conflicts with City and regional emergency services communications.

Staff recommends City Council approve a resolution expressing opposition to SB 831 – Wireless Telecommunications Facilities, proposed legislation under consideration by the North Carolina General Assembly.

Councilman Mumpower said that from a procedural standpoint, since this was added on as a last minute item, he would vote against it.

Councilman Freeborn moved to approve Resolution No. 07-96. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. CRIMESTOPPERS ANNUAL REPORT

Mr. Tom Sobol, President of the Crimestoppers Board of Directors, said that program started in 1983. He gave Council some brief statistics: budget of approximately $72,000 a year ($36,000 by the City and $36,000 by the County); last year 396 calls came into the unit; out of those 396 calls, 111 arrests were made from the tips; and out of the 108 fugitives aired on the American Most Wanted program, 76 were either arrested or surrendered. Part of arrests were major tips that lead to one major bank robbery, several strong armed robberies, 3 major drug dealers and a recovery of multiple stolen vehicles. There were $12,275 in payments were paid out by the board. The activities of Crimestoppers continue to help people in our community.

Mr. Sobol responded to various questions from Council regarding the amount of money to administer the Committee and how tips are handled. He said that he would be happy to send Council a copy of their entire budget, assuring Council that this is money well spent.

On behalf of City Council, Mayor Bellamy thanked Mr. Sobol and the efforts of the entire board of Crimestoppers.

B. TRANSIT SYSTEM FREE FARE PROMOTION REPORT

Transit Services Manager Bruce Black said that the following is a summary of the findings concerning the transit system free fare promotion from Mid August through Mid November, 2006.

- The Asheville Transit System fleet consisted of nineteen buses operating over 24 routes prior to and during the free-fare promotion.
- Four additional evening routes were added on July 1, 2006.
- The system serves Asheville, Warren Wilson College, Weaverville and Black Mountain. It connects with Apple Country Transit to serve Hendersonville.
- Ninety percent of the population in Asheville, where density exceeds 4000 people per square mile, is within ¼ mile of a bus route.
- Seventy-five percent of the population in Asheville, where density is less than 4000 people per square mile, is within ¼ mile of a bus route.

Ridership:

- Pre-promotion ridership has been growing at twice the national average.
- Ridership grew by 8.5 percent in Fiscal Year 2006.
- During the no-fare promotion ridership increased by 58 percent over the same period last year. Fifty percent of the 58 percent increase can be attributed to the fare-free promotion.
    - Number of trips transported during promotion period: 484,118
- Since the promotion ridership has increased by 19.4 percent over the same period last year. In round numbers:
    - Eight percent of the 19.4 percent increase can be attributed to the promotion.
    - Seven points of the 19.4 percent increase can be attributed to new evening service
    - Three points of the 19.4 percent increase can be attributed to normal growth
    - One point of the 19.4 percent increase can be attributed to the Passport program
    - Topeka Kansas exhibited a 5.6 percent post program growth after an increase of 83 percent during their fare free program
- After the promotion, evening service ridership has increased by 82 percent
    - Evening service is now transporting ⅓ as many trips per hour as the core daytime services.
- During the promotion the number of bicycle trips declined by 6 percent
- During the promotion the number of wheel chair trips increased by 14 percent
- Ridership for Fiscal Year 2007 is projected to exceed 1.4 million trips, up from 1.1 million trips in Fiscal Year 2006. This includes the additional riders during fare free.
- Ridership for Fiscal year 2008 is projected to exceed 1.38 million trips.

Performance Characteristics:

- The total number of complaints has declined from one in every 7,521 trips to one for every 12,500 trips after promotion ended.
- Forty two percent of all complaints by the 45th day of operation concerned buses running late.
    - During the promotion, on time performance was 89 percent.
    - After the promotion on-time performance for first quarter of 2007 rose to 97 percent overall.
    - The amount of time needed for each passenger to board decreased about 20 percent (From 4 to 3+ seconds)
    - The overall amount of boarding time increased due to the increase in passengers

- People used the bus for shorter distances increasing the number of times the bus had to decelerate to stop, and accelerate back into traffic.
    - 30 percent of riders transfer and can be affected by late buses.
- The major reasons for riding were:
    - The convenience of the system and not having another means of transportation.
    - Five percent stated that parking was a problem
    - One percent rode for environmental reasons
    - Seven percent stated that they were "Just Riding"
- Twenty one percent of passengers were unhappy with the crowded buses
- Ridership by those who had vehicles they could have used for the trip remained steady at 14%. This increase of 4 points over last year.
- The number of riders with incomes of $10,000 and below increased 7.5% during fare free.
- Those in the $10,000 and above range decreased by 7.5 percent.

Financial Impacts:

- There were no additional significant increases in direct operating expenditures during the promotional period
- Several transmissions had to be replaced post promotion
- The buses were used much harder and required more manpower to clean.
    - People were shifted from other tasks.
    - Maintenance did increase, but no additional people were hired.
        - Preventive maintenance that could legitimately be delayed was postponed
- Net increase in revenue from post promotion ridership levels and lower per passenger yield:
    - Fare box revenue per trip is down 6.7 percent December through March
    - Fare box revenue is up 10.2 percent December through March. Fare box revenue was up 11.8 percent July through August
    - Fare box revenue is projected to up 11percent for fiscal year.
    - Per trip revenue is projected to be down 6 percent for fiscal year
- The operating subsidy for promotion period operations were increased to replace fare box revenue lost:

Estimated net loss of bus fare revenue vs. last year:	$ 96,300
Estimated net loss of Para-transit revenue vs. last year:	$ 13,125
Cost of additional security:	$ 10,000
Cost of advertising:	$ 12,000
Total subsidy from City of Asheville:	$132,125

Externalities:

The free-fare promotion had no direct effect on parking demand in downtown Asheville.

In summary, the goal of promotion was to gain permanent riders. 257,625 passengers during fare free transit promotion; 95,749 additional passengers; 10,500 of these were on evening service; and an increase of 59% over the same period this time last year.

Since the promotion, ridership is up 19.4%: 8% from the promotion; 7% from evening service; 3% from normal growth and 1% from passport program.

Complaints have decreased; on time performance has improved; ridership has increased and remains steady; record year for ridership; outperformed only other data we have for a similar promotion; and parking not affected by promotion.

Other considerations: price of gasoline; and stress on system and employees.

What has been accomplished: (1) explored the amount of demand that was constrained by economic concerns; and (2) explored the impact of very high transit demand on the existing system.

Recommendations: (1) in order to constrain short trips and overly casual use of the system, any future long term promotions should have a minimal fare (25 cents), (2) free days are still be viable for promotional purposes but should be tied to a community incentive such as red ozone days; (3) preparation for prolonged increases in demand make some activities, such as vehicle purchase strategic as well as operational; (4) the fleet should be enlarged as possible; and (5) a contingency fleet should be created.

Councilman Newman explained that the data observations show that Council made a good decision using the fare free policy as a promotional tool, rather than as an on-going policy. Over two years, the ridership has a projected increase of about 27%. That indicates to him that as we look at smart targeted improvements that the community is asking for, we can have some success around the transit system. If we continue to think about smart service level improvements, smart partnerships and creative marketing with the community, and if we can sustain the kinds of growth over the last two years, in the future these trends will become very important to the way Asheville looks in 10-20 years from now. We have laid the foundation for some future success.

Mr. Black responded to various questions/comments from Council, some being, but are not limited to: is there a general projection of where we will land at year end for operating revenue; is it true that riders are estimated to pay for about 16% of the bus service; have we seen an increase of monthly passes; can riders get monthly passes from the hub downtown and if not, why; where does the increase in ridership from the passport program come from;

Vice-Mayor Jones noted that while we lost revenue from the fare box during that 90 days we have had incremental income increases going forward that hopefully will be sustained.

Councilman Mumpower was concerned about how much we subsidize transit. He shared the concerns from the bus drivers of the fare free promotion as follows: (1) homeless people who have not bathed caused bad odor, fleas and unsanitary conditions and this is causing regular passengers unpleasant conditions while using the bus; (2) level of verbal abuse and bad language has increased considerably and is very difficult to control on the crowded buses; (3) increased passenger counts are causing elderly to have to stand at time and operators are concerned about their safety; (4) new passengers are not educated as to basic rules and some do not want to comply; (5) operators state that there is a need for more supervision and support to help handle the problems created by the fare free program; (6) schedules need to be adjusted in order to handle the overload and problems that are created by the fare free program; (7) operators state that it is becoming unbearable to handle the pressure of trying to operate the buses on schedule; (8) buses are not as clean and sanitary with the added passengers and hours of service; (9) students that should normally ride the school buses are using the transit buses which are causing regular and elderly passengers to have to stand - this is creating an unfair situation and also safety concerns and operators have no way of controlling this problem with the fare free program; (10) operators state that they are concerned about the wheelchair and handicapped passengers who ride regularly; (11) the over-crowding is creating safety concerns with these passengers; (12) operators are concerned about not being capable for maintaining the published scheduled and many passengers are missing their connections and have a lay-over time waiting on the next bus; (13) operators are concerned that the transit system is losing regular passengers that use the bus over the years because of the problems that fare free program is causing - operators believe that some of these passengers are searching for alternative means of transportation; and (14) operators state that working conditions and safety issues in which they are responsible for are not being recognized during transit planning on free fare issues. He feels that report is the reality of the fare free program.

In response to Councilwoman Cape, Mr. Black said that most of the bus driver's concerns have stopped with the end of the fare free program. Our biggest problem is getting a better on-time performance.

Councilman Newman requested additional information on the percentage of riders who are using our discounted monthly passes and what percentage of our overall ridership is that. He cited that the fare free program's benefit was getting new people to try transit and felt that tool should be an option kept in the toolbox for the future. However, in the future, he suggested the program run maybe a week or 30 days every few years as a way to have people try transit.

It was the consensus of Council to ask staff to (1) provide additional information on the percentage of riders who are using our discounted monthly passes; (2) compile current feedback from the bus drivers; (3) request the Energy & Environment Committee to provide additional information about free days being tied to red ozone days; and (4) provide information (including costs) for a one-day family pass to ride the bus.

Mayor Bellamy said that the other recommendations outlined by Mr. Black will be reviewed in the budget process.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING ENFORCEMENT PROVISIONS

ORDINANCE NO. 3467 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING ENFORCEMENT PROVISIONS

Mayor Bellamy said that this public hearing was originally scheduled on April 10, 2007, but continued to this date.

Mayor Bellamy opened the public hearing at 6:52 p.m.

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) concerning enforcement provisions. This public hearing was advertised on March 30 and April 6, 2007.

Section 18, Chapter 7 of the City of Asheville Code of Ordinances contains the enforcement provisions for dealing with persons who refuse to comply with the Chapter 7 of the City Code also known as the UDO.

City staff has undertaken a review of the enforcement provisions in an attempt to streamline the enforcement process and resolve violations in a more expedient manner.

These proposed amendments should lesson the time it takes from starting an enforcement action to the beginning a lawsuit, if the person refuses to come into compliance.

The highlights of the amendments are:

1. Making it a criminal offense to interfere to hinder, resist or obstruct a city employee attempting to enforce the UDO.

2. Requiring staff to send a Notice of Violation to both the tenant and owner at the outset of the enforcement action. This is to give both the owner and tenant a thirty (30) day period to appeal the notice of violation as opposed to giving the tenant thirty days to appeal and then having to give the owner a separate thirty days to appeal, thereby increasing the time for enforcement.

3. Allow staff to notify tenants and owners of civil citations through delivery confirmation as opposed to sending certified return receipt mail. Notices of Violation still must be served in person or by certified mail. This process makes it easier for staff to issue citations for violations.

4. Adding a one time large fine for persons who damage or destroy items or vegetation that cannot be replaced, for example cutting down a 50 year old tree or demolishing a historic structure without first obtaining the necessary permits. For example, the property owner who cuts down a large tree in violation of the UDO shall be assessed the large one time fine in addition to a civil penalty of $100.00 per day until the landscape on the property is brought into compliance with 7-11-2.

5. The City amending the civil penalty for a violation of Chapter 7, Article XIII (sign violations) from $50.00 for every 72 hours to $100.00 per day.

Pros:

- Reduces the amount of time an enforcement action is maintained against a parcel of property.
- Protects staff from persons who actively resist investigations.
- Places a greater civil penalty for destroying items that cannot be replaced.
- Creates a uniform fine structure for most UDO violations.

CON:

- Property owners will be held more accountable for zoning violations committed by tenants.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville concerning the enforcement provisions.

Mayor Bellamy closed the public hearing at 6:55 p.m.

There was considerable discussion initiated by Councilman Mumpower about property owners being held liable for zoning violations committed by the tenants. Councilman Mumpower felt that we are placing authentic property owners at greater risk than seems appropriate.

Mr. Euler responded to Vice-Mayor Jones' comments regarding the reasoning behind our enforcement fines.

In response to Mayor Bellamy, City Manager Jackson said that he would check to see if our website can contain information where citizens can see if there is a violation on a piece of property.

When Mayor Bellamy asked what the appeal process is for neighbors who are impacted by the violations, City Attorney Oast said that the City cannot, by ordinance, give neighbors any greater standing to appeal than they have by law and that has to be established on a case by case basis. There is legislation pending currently in the North Carolina General Assembly that would change that so that anyone within 100 feet of a property where an issue arose could appeal, but they would automatically have standing. He said that we can provide in the ordinance that aggrieved persons may appeal as provided by the appropriate statute.

In response to Mayor Bellamy, Planning & Development Director Scott Shuford said that staff is looking at more enforcement of snipe signs and Council may not need to make any adjustments to strengthen the penalties under the nuisance ordinance.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3467. This motion was seconded by Councilman Newman and carried on a 6-1 vote with Councilman Mumpower voting "no."

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At 7:15 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe, Reid Thompson, Greenlife Grocery of Asheville, LLC, Board of Adjustment and Asheville Metals Recycling. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:45 p.m., Mayor Bellamy stated that the closed session would be continued after the completion of the agenda for the regular meeting.

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED AT 100, 105, 108-1/2, 115 AND 9999 FAIRVIEW ROAD, KNOWN AS THE WHITAKER HILL PROJECT, FROM CI COMMERCIAL INDUSTRIAL DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW

OF THE CONCEPTUAL MASTER PLAN FOR DEVELOPMENT TO CONSIST OF RESIDENTIAL AND COMMERCIAL USES

ORDINANCE NO. 3468 - ORDINANCE REZONING PROPERTY LOCATED AT 100, 105, 108-1/2, 115 AND 9999 FAIRVIEW ROAD, KNOWN AS THE WHITAKER HILL PROJECT, FROM CI COMMERCIAL INDUSTRIAL DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW OF THE CONCEPTUAL MASTER PLAN FOR DEVELOPMENT TO CONSIST OF RESIDENTIAL AND COMMERCIAL USES

Mayor Bellamy opened the public hearing at 7:51 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property located at 100, 105, 108-1/2, 115 and 9999 Fairview Road, known as the Whitaker Hill Project, from CI Commercial Industrial District, RM-16 Residential Multi-Family High Density District/Conditional Zoning and RM-8 Residential Multi-Family Medium Density District to Urban Village District for review of the conceptual master plan for development to consist of residential and commercial uses. This public hearing was advertised on April 27 and May 4, 2007.

The current proposal is to rezone to Urban Village district and approve a conceptual master plan for 30 acres along Fairview Road. The current zoning of the project area is CI Commercial Industrial, RM-16 Residential Multi-family High Density/Conditional Zoning and RM-8 Residential Multi-family Medium Density District. The property which is made up of 5 parcels lies on both sides of Fairview Road. The property includes two commercial buildings on the south side of Fairview Road which will be demolished. On the north side of the road the largest parcel has been cleared and graded because of the former proposal for a multi-family project. The master plan which shows the scale of the development and layout of streets and other infrastructure cannot substantially deviate from what is approved without returning to City Council for review of the changes. This master plan exists as the "big picture" guide for the development project.

According to the master plan submitted, this three-phase project proposes 118 buildings (including single family houses) with a total of 506 units at a density of 16.77 dwelling units per acre. In addition, the developer is expecting a full build out of 100,000 square feet of commercial space. The building heights in the urban village vary. Village center buildings are proposed to be up to five stories tall along Fairview Road. At other locations internal to the site, the heights will reach up to four stories. Where the urban village fronts with the existing Oakley neighborhoods along Stoner Road and Westview Avenue, the scale of the residential style buildings will be two or three stories. The residential character of the development will range from larger multi-family buildings down to single family homes. Live work units will also be provided as a part of the development. At this point in the review, specific details about building fenestration, the commercial uses for mixed-use buildings, and exact footprints are not provided. General character images however are provided for the project for mixed-use and residential buildings. The style will be similar to an older Asheville shingle style or craftsman style. The master plan indicates the general street network and land use configuration for the scale of development, as well as suitable open space, a range of building heights, setbacks and building types. The commercial node and area of highest density and building heights will be centered along Fairview Road as was mentioned. This area centered along Fairview Road, relating to the street should have the positive effect of slowing down the speed of traffic. In other areas of town such as Biltmore Village, similar urban development patterns have the effect of taming traffic. Besides the quantity of traffic along Fairview Road, fast moving traffic has been mentioned as a concern by residents of Oakley. The development has the benefit of providing several access points into area roads. The primary access is along Fairview Road, but the close proximity to Sweeten Creek Road is helpful for the development. A secondary access is along the lower end of Stoner

Road. The existing residences along Stoner Road should experience minimal impacts from traffic because traffic is directed to Thompson Street. Thompson Street will be the future site of the Wilma Dykeman Riverway planned along the Swannanoa River. A traffic impact analysis (TIA) was initiated for the development and studied intersections at the periphery of the development. The review at this point recommends some lane improvements at the intersection of Sweeten Creek and London Road and the intersection of Glendale Avenue and Thompson Street. The exact improvements along Fairview Road at the proposed access points will be determined by TIA amendments for each specific phase of the project. Finally a smaller access into the development has been recommended by the Technical Review Committee (TRC) for Westview Avenue. Connectivity can be a challenge in the community and this access point would be more for safety access instead a major point of access into the development. The transit system services this development through the number 12 bus line along Fairview Road. A bus shelter will be required for the development.

On Monday, March 19, 2007, the TRC held an informal review of the proposal. Staff and the TRC made specific recommendations on revisions needed for the master plan. On April 2, 2007, the TRC met and reviewed site plan and made some additional comments for the project. The majority of the conditions will be addressed in a more detailed review by the TRC as the phases of the development come forward.

The owner of 105 Fairview Road (Phase three of the site master plan) is including this property in the rezoning request but has a special concern. The property has been accepted by the North Carolina Department of the Environment and Natural Resources (DENR) into the brownfields program. The plan to remediate the site is being reviewed by DENR to include the urban development shown in the urban village. If the proposed uses are not accepted, the owner would like to withdraw the parcel from the rezoning and master plan and have it revert back to CI District (the existing zoning for the parcel). This will be a special condition that the owner would like to include as a part of the approval.

Recently, a community meeting organized by the Oakley Community was held and the project was discussed among other items. The primary concern with the proposal seemed to be traffic growth and the existing challenges with traffic along Fairview Road. The style or type of development was secondary to the traffic concern. Some people mentioned traffic calming efforts as something that would be beneficial for the community.

The Residential Multi-family Medium Density District (RM-8 district) is established to allow for a range of medium density residential options, integrating multi-family along with single-family attached and detached residences. This district is intended to provide a transitional area between high density single-family and multi-family areas and may allow some compatible non-residential uses as well.

The Residential Multi-family High Density District (RM-16) is established to permit a full range of high density multi-family development and associated institutional, public and commercial uses. Infrastructure capable to handle the demand related with the resulting intensity of use is required. It was applied to this property as a part of a conditional zoning for a higher density development approved in 2005 and was known as Biltmore Point.

The Commercial Industrial District (CI district) is intended for a wide range of commercial and industrial uses including warehouses and manufacturing and well as retail sales, offices and even residential uses. Similar to RM-16 described above, this district requires infrastructure capable to support the development to be build or in place. The residential limitation is 16 units per acre.

These three underlying zoning districts are not dissimilar from the proposed rezoning to Urban Village, in that the office, retail and full range of residential densities will be allowed and that the existing infrastructure will be fully capable of supporting the scale of development. The

advantage of rezoning the entire area to Urban Village provides better integration of these uses as well as a more cohesive master plan for the community.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This rezoning was recommended for approval by a 7-0 by the Planning and Zoning Commission. Three people spoke at the Planning & Zoning Commission meeting and expressed concerns about scale, traffic, tree canopy loss and connectivity into the neighborhood. A recent community meeting held in Oakley provided some comments and concerns regarding traffic generation from the project. Others spoke about school crowding issues at Oakley School.

Pros:

- Provides a variety of uses and building styles similar to a traditional "sustainable" neighborhoods
- Infill redevelopment of previously disturbed sites revitalizes the area and locates development in an area where infrastructure already exists, resulting in efficient use of land
- Development proposes a wide mixture of housing types and an efficient use of land
- Presents a walkable community that can support transportation options
- Project is suitable to support transit and is located on an existing bus line
- Potential to be a 'main street' amenity with local businesses for the Oakley Neighborhood
- The neighborhood character is preserved by single family scale development at the edge of the urban village
- Traffic impacts could be mitigated through adequate design and multiple access points from the development

Cons:

- Existing block-style grading may prohibit connectivity between phases two and three (south of Fairview Road)
- Traffic growth is an issue for the neighborhood who already express concerns about speed and volume

At their April 4, 2007, meeting, the Planning and Zoning Commission voted 7-0 to recommend approval of the rezoning and the master plan. They also recommended that traffic calming be considered for Stoner Road. Staff concurs with these recommendations.

Mr. Chris Cole, representing the developer, spoke in support of the rezoning. He addressed the issue of transportation, noting that through design they will be able to mitigate the speed while maintaining the volume on these roads. They have budgeted specifically for the implementation of traffic calming meaures on Fairview Road and the surrounding roads and they will work with the neighborhood and City staff to where they can most effectively utilize those dollars. He then spoke about the issues of greenbuilding and their progressive stormwater design.

Mr. Daryl Rantis, architect for the developer, spoke in support of the rezoning.

The following individuals spoke against the rezoning for various reasons, some being, but are not limited to: the access point on Westview Avenue will negatively affect the surrounding neighbors since Westview is a small, narrow road with a steep incline; concern that there will be a tunnel effect on Fairview Road through the development; volume of traffic will increase significantly along Fairview Road and surrounding roads; additional traffic calming measures on Fairview Road; impact on the school system; request that the master plan stay open for future amendments and input from the neighborhood; concern of lack of water with the new

development; concern that new homes will raise surrounding area property taxes for fixed income residents; and development will put a strain on providing City services:

Dr. Kelly Ivers, resident on Westview Avenue
Mr. Cory Black, representing over 100 families in the Oakley Community Association
Ms. Dodson, Oakley resident
Ms. Peggy Ray, resident on Winston Avenue
Mr. Jake Quinn, Asheville resident

At 8:22 p.m., Mayor Bellamy closed the public hearing.

In response to Councilwoman Cape, City Attorney Oast said that the City cannot charge impact fees for schools.

Councilwoman Cape initiated discussion regarding the tunneling effect on Fairview Road through the development. Mr. Cole explained the grade change, noting that you will not see 5 story buildings on Fairview Road. He said that they will decide, stylistically, every lot from colors, style and roof design.

In response to Councilman Mumpower, City Traffic Engineer Ken Putnam gave his objective analysis regarding traffic, noting that at full build-out in five years, the traffic study indicated 6,000 cars a day, however, a two-lane road can carry twice that much. He did note that there will be some work to bring the speed down on Fairview Road, which is 30 mph but the 85 percentile speed is 43 mph. In the study, we have left the door open for more studies to be done, either as amendments or new traffic impact studies as they bring the phases forward to us, so we can address their internal roadway network and address things on Fairview and Stoner Roads.

When Councilman Mumpower asked if the concept of the access point on Westview Avenue is doable, Mr. Putnam said that the concept came from the Fire Department and he believed that the access point on Westview is possible.

In response to Councilman Mumpower regarding water availability, Mr. Glines said that the water capacity was not noted as an item of concern from the Water Department representative at the TRC meeting.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3468 to rezone property located at 100, 105, 108-1/2, 115 and 9999 Fairview Road, known as the Whitaker Hill Project, from CI Commercial Industrial District, RM-16 Residential Multi-Family High Density District/Conditional Zoning and RM-8 Residential Multi-Family Medium Density District to Urban Village District, along with the master plan and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The site development must comply with the conceptual master plan and other documents presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits and (6) Traffic calming should be considered for Stoner Road following traffic calming procedures and funded by the developer. This motion was seconded by Councilman Mumpower.

After discussion initiated by Councilman Newman regarding a condition to clarify the height of the buildings at street level on Fairview Road, Vice-Mayor Jones and Councilman Mumpower agreed to a friendly amendment as follows: "design of structures along Fairview Road shall be modulated to avoid a tunnel effect of tall buildings lining the roadway and enforced by City staff through approval of structure design and using computer generated models and other techniques to illustrate that variation."

In response to Councilwoman Cape's suggestion of specifying the ability to have more space for future widening Fairview Road, Mr. Cole said that one issue they face on both sides of Fairview Road is a dramatic fall off on one side and a dramatic build-up on the other side. They likely will excavate inward on the north side of Fairview Road and use buildings as retaining structures on the south side of Fairview Road. Their hope is to modulate the speed of the traffic on Fairview Road with a street section that they institute, whether that is one side on-street parking, a small medium in the middle of the road or perhaps a bike lane. The key for them is the ability to modulate the buildings so that they can afford a wide variation of square footages.

When Mayor Bellamy asked if there was any consideration to a lesser amount of units since 506 units is a big impact to the neighborhood, Mr. Glines said that we don't have a density cap in the Urban Village District.

Vice-Mayor Jones recognized that the concerns about tax valuation are real and last year the Council worked hard to be revenue neutral. She said that as land values go up, City Council will not take advantage of the tax rate.

The motion made by Vice-Mayor Jones and seconded Councilman Mumpower (with the friendly amendment regarding the design of the structures along Fairview Road) carried on a 6-1 vote, with Mayor Bellamy voting "no."

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Councilman Newman moved to change the agenda and discuss the New Business Items next. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

V. UNFINISHED BUSINESS:

A. REPORT ON CREATION OF AN INDEPENDENT AIRPORT AUTHORITY GOVERNANCE STRUCTURE

Airport Director David Edwards said that the Asheville City Council approved a resolution on November 14, 2006, to explore the feasibility of creating an independent authority governance structure through the General Assembly of North Carolina for the Asheville Regional Airport. The County of Buncombe approved a similar resolution on December 5, 2006.

Over the last several months staff and certain elected and appointed officials of the City, County and Airport Authority have reviewed numerous items related to the creation of an independent airport authority. While this information is being conveyed by Airport Authority staff, it is information that has been discussed and assembled by all parties involved in this discussion.

This information is being provided for City Council's consideration on how or whether to move forward on the creation of an independent airport authority for the future operation and development of the Asheville Regional Airport.

The Airport and Authority history is as follows: (1) the Asheville Regional Airport was built by the City of Asheville between 1958 and 1961 for the benefit of Western North Carolina and operated by the City of Asheville until 1979; (2) the Asheville Regional Airport Authority was

established in 1979 as a joint governmental agency organized and created by the City of Asheville and the County of Buncombe, pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport; (3) the Authority since its creation has been successful in the development and operation of the Airport and has matured into a full self-sustaining enterprise requiring no local financial assistance for its operations, maintenance and capital programs; (4) the Airport has become a regional asset for all of Western North Carolina that supports economic development through aviation and non-aviation development, and critical aviation related services; and (5) the Authority will cease to exist under the current joint agency agreement in April, 2018, and the Airport will revert to the City of Asheville to operate, maintain and develop. Using maps, he reviewed the current Airport property boundary, the 1979 Airport property map, and the Airport property removed by the City.

The following are regional independent Authority benefits: (1) the region would benefit from a more permanent governance structure that will create an environment for long-term stability and growth of the Airport; (2) such a governance model will provide for recognition that the Airport is a regional asset serving all of Western North Carolina; (3) would create an independent Airport Authority which would hold title to all Airport assets; and (4) would provide for a more business-like model enhancing the ability of the Airport to support and stimulate economic growth of the region. City and County benefits (1) would relieve both the City and County of all responsibility for the development, operation, and maintenance of the Airport, as both entities have certain liabilities related to the Airport under the current governance structure; (2) would relieve the County and City of any current or future financial obligations for the Airport; (3) would insulate the City and County of any potential issues related to noise and growth impacts of the Airport; and (4) provides for the inclusion of Henderson County. The Airport and Authority benefits (1) would streamline processes such as grant acceptance, long-term leases, etc.; (2) would allow the Authority greater flexibility in property acquisition and development; (3) would provide for a stable governance model; (4) would facilitate needed financing for Airport improvements; and (5) would remove potential local political conflicts which may negatively impact the ability of the Airport to properly serve the region.

The draft legislation includes the following: 5 member Authority Board; 4 year terms; 2 appointments by the City of Asheville; 2 appointments by Buncombe County; and 1 appointment by Henderson County.

Using graphs, he showed the revenues and expenses and net income from Fiscal Year 2002 through Fiscal Year 2007. In addition, he reviewed the proposed budget for Fiscal Year 2007-2008.

Regarding diversification of revenues, airports need to diversify their revenue streams in order to be financially sound. This includes the development of certain airport property for non-aviation use. By diversifying revenues airports are able to maintain a cost structure which will help to retain and expand air service which is a commercial airport's primary mission. Without diversification of revenues, an airport's cost structure may become cost prohibitive to the point of deterring air service growth which in turn ahs a negative economic impact on the region.

Regarding dollars invested, the original City investment in land acquisition for the Airport was approximately $270,000. The County supported the Airport with a $5.5 Million bond issue for airport development. There is approximately $2 Million in principal remaining with annual debt service payments of about $400,000. The Airport/Authority cannot remit funds to the City directly from the Airport for the transfer of the Airport property based on federal regulations and further discussions with the Federal Aviation Administration (FAA).

Regarding reimbursement of past contributions, the final policy is that after the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49

U.S.C. sec. 47107 (l) (5), 47107 (p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to sec. 47107 (p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

Using maps, he showed future non-aviation development in the east and west areas. The estimated valuation of non-aviation development is $563,593,560 (total land and building value). The estimated potential payment of lieu of taxes for non-aviation development (not by Airport) at build-out would be $684,503 for the City; $826,393 for Buncombe County; and $2,303,337 for Henderson County.

The draft independent authority legislation has been submitted through the House, sponsored by Representative Goforth. In order for the bill to be introduced into the Senate crossover date of May 17, 2007, Representative Goforth needs direction as to whether the participating governing bodies desire to move ahead with the creation of the new Airport Authority.

Based on a 2006 economic impact study by the N.C. Dept. of Transportation, the Asheville Regional Airport provides the following estimated economic impact: Direct impact of 338 jobs, annual economic impact of $44,053,000, and annual payroll of $13,218,100; Indirect impact of 1,612 jobs, annual economic impact of $156,311,600, and annual payroll of $5,214,000; and imposed impact of 516 jobs, annual economic impact of $37,985,300, and annual payroll of $3,740,100. Totals jobs of 2,466, annual economic impact of $238,349,900 and annual payroll of $22,172,300. The Airport also provides the County with a significant source of property tax revenue with 134 based aircraft at a calculated value of $63,200,000, which would result in ad valorem taxes of $372,880 based on the county rate of $0.59 per $100. This study estimated that there were 174,250 visitors to the area that utilized the Asheville Regional Airport.

Proposed Option A - Summary: (1) create an independent Airport Authority which would include board representatives from the City of Asheville, Buncombe County and Henderson County; (2) the City would convey title of all Airport land and assets to the new Authority at no cost; (3) Henderson County would enter into an agreement with the City to resolve the Bent Creek property item and related water service items; (4) the Airport Authority would resolve to work with the City on a joint-use fire station at the Airport to assist the City in meeting its fire service needs in south Buncombe County; (5) specific language would be included in the independent Authority legislation related to a payment in lieu of taxes for non-airport related commercial business activities on Airport property; and (6) a reversionary provision would be included in the legislation that would convey all Airport land and assets back to the City if the independent Authority ceased to exist.

Proposed Option B - Summary: (1) create an independent Airport Authority which would include board representatives from the City of Asheville, Buncombe County and Henderson County; (2) the City would continue to lease all Airport land and assets to the new Authority at the current rate of $1 per year; (3) the term of the lease would be for 25 years with an option for the Authority to extend the agreement for an additional 25 years; (4) Henderson County would enter into an agreement with the City to resolve the Bent Creek property item and related water service items; and (5) the Airport Authority would resolve to work with the City on a joint-use fire station at the Airport to assist the City in meeting its fire service needs.

Proposed Option C - Summary: (1) maintain the current governance structure between the City of Asheville and Buncombe County; (2) revise the current agreement to streamline

existing provisions and requirements outlined in the agreement; and (3) extend the term of the existing agreement.

Proposed Option D - Summary: Do nothing and let the current agreement run its course and expire in 2018.

Councilman Freeborn stated that his preference would be Option A.

Councilman Mumpower said that when this effort was initially initiated there was some belief that the City might receive more direct benefit in compensation for giving up this asset. Unfortunately oversight agencies limit the ability for the Airport Authority to do that. When we talk about regionalism, he feels that means Asheville is giving something up and other people are benefiting. That is not a fair exchange. He does see some advantages to the Airport, but they are secondary, not primary. The Airport has developed in good fashion under the existing parameters and as we get closer to the agreement deadline there might be some policy changes or windows of opportunities that may evolve, but to go in this direction now and get no more than the City of Asheville is getting seems a questionable policy decision.

Councilman Davis had a difficult time in finding the City's real advantage to this, noting that he does understand the Airport operations would run smoother and the idea of regionalism with Henderson County.

Councilman Newman when we talk about regionalism and facilities that could be merged, the Airport is an obvious one. Even though we are not getting a lot, based on the federal regulations we aren't giving up that much. This could have a significant positive benefit for Asheville's relationship at the regional level. He didn't want to rush into any decision, however, if Council wants to keep the door open to this and think through the questions, we could ask our legislators in the House to pass the bill with the full understanding and trust that nothing would happen in the Senate unless all parties, including Asheville, agrees to it. That is done in the legislature to keep ideas alive. If we miss the May 17 deadline, the issue will be dead for a year. He is supportive enough of the concept that he would like to keep the issue alive for consideration.

Mayor Bellamy suggested a hybrid option as follows: (1) extend the contract from 2018 for an additional 20 years so that the Airport can issue debt on the land or acquire new land to expand; and (2) change the composition of the existing board so that the current at-large seat is a Henderson County appointment. This will give the City at least one or two years (depending on the legislative cycle) to allow more time to discuss the issues. The City and Henderson County can then continue to talk about compensation for appointment to the board. In addition, the issue regarding the Bent Creek property and related water service items would be resolved.

City Attorney Oast said that to amend the interlocal agreement with the hybrid option would not require legislative action.

In response to Councilman Davis, Mr. Edwards said that they would like an extension on the existing agreement. There are some provisions in the agreement that we may be able to update in working with the City Attorney, e.g., grant approvals don't have to go to the City and County for approval if the Airport has the funds available to match it. He hoped that we can continue to move in a positive direction.

In response to Vice-Mayor Jones, Mr. Edwards said that the Airport Authority will be considering a resolution later this week that basically outlines that they will work with the City on the potential for a joint-use fire station at the Airport to assist the City in meeting its fire service needs.

In response to Councilman Mumpower, City Manager Jackson said that the service area of that joint-use fire station is the commercial development surrounding the Airport and our preliminary modeling supports a location in that area and we don't want to be precluded from the possibility of locating that on City land.

Mayor Bellamy felt that a third point in her bullet hybrid would be to have the Airport work with the City Attorney on ways to streamline specific provisions in the interlocal agreement using the example Mr. Edwards gave of not requiring City and County approval of the Airport receiving federal grant funds if the Airport has the funds available to match it.

Councilman Mumpower did not want to rush into this since there is no pressure for a decision to be reached now under the hybrid option. Until we get the equity nailed down, he didn't think we should move forward.

In response to Councilman Mumpower, City Manager Jackson recognized that there are some unanswered questions at this point. If there is a level of comfort from Council to move this forward to the crossover date, then that dialogue would continue. Staff supports (1) continuing the review and the dialogue in trying to keep the legislative option open; or (2) trying to address some of the issues with Henderson County, since we have made significant progress with them.

Vice-Mayor Jones moved to support the hybrid option to (1) extend the contract from 2018 for an additional 20 years so that the Airport can issue debt on the land or acquire new land to expand; (2) change the composition of the existing board so that the current at-large seat be a Henderson County appointment; and (3) have the Airport work with the City Attorney on ways to streamline specific provisions in the interlocal agreement using the example Mr. Edwards gave of not requiring City and County approval of the Airport receiving federal grant funds if the Airport has the funds available to match it. This motion was seconded by Councilman Freeborn.

City Attorney Oast said that Council will need to see this item again because they will need to formally vote on amending the interlocal agreement by resolution.

Vice-Mayor Jones felt that the hybrid option (1) cleans up the property exchange with Henderson County; (2) helps the Airport do business, which indirectly benefits Asheville too; (3) shows good will by the Airport Authority to work on the fire station regardless of what is done tonight; and (4) is a step in the right direction in terms of something that the state delegation is interested in seeing move forward in some degree. She doesn't see a huge win for Asheville, but there are some positives. If we make good efforts and there are some reciprocal negotiations that maybe we can get to the next level in two years.

After Councilman Newman said that a disadvantage of the hybrid option is that there will be substantial development around the Airport and all that will be government property and there will be no contribution to our tax base, a brief discussion was held resulting in City Attorney Oast stating that there are some substantial restrictions on the disposition that can be made of Airport revenues but he would investigate whether we can put a requirement in the interlocal agreement for a payment in lieu of taxes by the tenant.

Councilman Freeborn noted that whatever Council agrees to tonight still has to be approved by Buncombe County.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

Councilman Newman moved for City Council (1) to send a resolution to our legislators expressing Council's openness to Option B (the lease option with the Airport); and asking our legislators to support legislation that would keep Option B alive past the crossover date while expressing Asheville's clear intent that no action will be taken to move this legislation to the

Senate until all parties, including Asheville, ask them to.; and (2) ask the Mayor to personally contact the Buncombe County State Senator and get his word that that is his clear understanding, again expressing our clear intent that we have not endorsed Option B and we are not raising expectations that we will follow-through with it, but just simply keeping that option open. This motion was seconded by Vice-Mayor Jones.

Councilwoman Cape confirmed that we are asking for a little more time to do further investigation of all the facets of Option B. She didn't like outlined benefit of insulating the City and County of any potential issues related to noise and growth impacts of the Airport. People in that area need the opportunity to speak about noise and growth and she would like more information on the governance structure in terms of the Authority.

City Attorney Oast confirmed that the motion which was approved supporting the hybrid option means that City staff will work with Buncombe County to develop some amendments to the interlocal agreement to accomplish the hybrid facets. That will come to Council through a resolution to amend the interlocal agreement. The motion by Councilman Newman is to preserve our options of the independent Airport Authority, but not necessarily endorsing it one way or the other.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 10:20 p.m., Mayor Bellamy announced a short break.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE LANDSCAPE STANDARDS

Mayor Bellamy said that this public hearing was held on April 10, 2007, and continued to this date. However, City staff has requested that the action be continued until May 22, 2007. Therefore, Councilman Mumpower moved to continue this action until May 22, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

C. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE OPEN SPACE STANDARDS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to this date. However, due to the lateness of the hour, Councilman Mumpower moved to continue this public hearing until June 19, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

D. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING RETAINING WALL REQUIREMENTS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to this date. However, due to the lateness of the hour, Councilman Mumpower moved to continue this public hearing until June 19, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

E. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to this date.

Planning & Development Director Scott Shuford said that at the April 24, 2007, meeting when Council first considered the ordinance, a fairly wide range of alternative ideas about the area to which the steep slope requirements should apply were proposed, including alternatives suggested by the Planning and Zoning Commission and a Chamber of Commerce subcommittee. Council expressed some interest in a possible alternative to the staff recommendation that recognized that, regardless of elevation, slopes below 25% were less problematic for development than those at or above that percentage. Council also requested information on the bonus requirements and whether the light reflectivity value standards could be mandatory as opposed to being associated with a height bonus. Additionally, Council wanted some follow-up on the takings and geotechnical analysis issues.

Taking the last issue first, he previously provided Council members with information from Dr. Rick Wooten of the North Carolina Geological Survey who is perhaps the foremost expert on landslides in NC. This information suggests that the threshold for requiring a geotechnical analysis proposed by staff and the Planning and Zoning Commission is entirely reasonable. If, however, Dr. Wooten's slope stability analysis for Buncombe County finds unique circumstances that require adjustment to this threshold, staff is prepared to pursue appropriate changes to the ordinance at that time. We do not recommend any adjustment to this standard except in its application (see below).

With regard to where the requirements should apply, staff has examined the information provided by the public and we have the following suggestions:

Areas below 2,220 feet in elevation having 25% or greater slope. First, the prior staff recommendation proposed extending slope requirements into areas below the long-standing "hillside" elevation threshold of 2,220 feet when slopes were 25% or greater. This significantly extended the area covered by the regulations but primarily applied to scattered sites of a few acres or smaller in size. Public comment noted that these areas often offered infill development opportunities having been previously passed over for development on adjoining less steep slopes. Given these circumstances, staff suggests that Council consider exempting steep slope areas below 2,220 feet in elevation from all requirements proposed for steep slope areas above 2,220 feet except the geotechnical analysis requirements (which would apply once the slope reached 40% or greater or if the area represented a moderate to high risk for landslides). The development of these areas would be governed by underlying zoning and general grading requirements.

Areas above 2,220 feet in elevation and having slopes between 15 and 24.9%. Public comment has noted that slopes below 25% were less problematic for development than those at or above that slope percentage. Whether areas of such slope represent major opportunities for affordable housing is debatable, but these areas are certainly better suited for development than those having slopes above 25% and are often on lower, less visible sections of mountainsides. Given these circumstances, staff suggests the Council consider substantially increasing the amount of grading and allowable density in these areas from what staff previously recommended, in effect essentially maintaining the current hillside grading and density limits. The recommended adjustments are illustrated in the following tables. The other proposed requirements, including tree preservation, road corridor design, height, etc. would remain in effect for these areas.

EXISTING GRADE	PERCENT GRADING	
	PRIOR	NEW
15-19%	45%	65%
20-25%	40%	55%

MAXIMUM NUMBER OF UNITS PER ACRE BY EXISTING GRADE										
Existing Grade	RS-2		RS-4		RM-6		RS-8 RM-8		RM-16	
	P	N	P	N	P	N	P	N	P	N
15%-19%	1.2	1.4	1.8	2.5	2.7	3.8	3.6	5.0	7.2	10.0
20%-24%	1.0	1.2	1.4	2.0	2.4	3.0	3.2	4.0	5.6	7.5

KEY: P=PRIOR N=NEW

Areas above 2,220 feet in elevation and having slopes 25% or greater.
No changes recommended.

With regard to the question about the relationship between grading allowances, tree preservation requirements and the density/intensity bonus requirements, it seems there is confusion between what parts of the site are allowed to be graded and what parts preserved to create a bonus. The key issue is that a preservation easement would be required to obtain a bonus. In other words, a significant portion of the site would have to be set aside and governed by a preservation easement in order to qualify for a bonus. You could not count up the percent of each lot in a subdivision that isn't allowed to be built on and claim a density bonus, for example.

NCGS 160A-381 provides that zoning ordinances may promote health, safety, morals and general welfare of the community. The law provides specifically that a zoning ordinance may regulate many aspects of buildings and structures, including height, lot coverage, and open space. Other aspects of buildings may be regulated, but a connection must be established the regulation the legitimate purposes of regulation, and this has been an evolving concept over the years. With regard to using light reflectivity value (LRV) as a requirement instead of as a condition of a height bonus, LRV is an objective, measurable factor, qualitatively no different from a setback requirement, but it is nevertheless a somewhat untested concept. If a connection can be made between LRV and the purposes for which regulation is permitted, with findings in the ordinance, then such a regulation would be legally defensible. In general, regulations such as LRV are always easier to apply when they are the landowner's choice rather than a requirement. With this in mind, a low LRV as a condition for a height bonus would be easier to enforce and would clearly alert the affected property owner to the regulation. If council chooses to make low LRV a requirement, it is suggested that the regulation only apply when the structure exceeds a certain height.

With regard to the concern raised about the ordinance constituting a "taking," the following comments that may require additional elaboration from the City Attorney. Successful takings claims involve a demonstration that no reasonable use of the property may be allowed under a regulation. Since the proposed steep slope regulations create density/intensity reductions based on empirical requirements that have a demonstrated public purpose (e.g., less density on steeper slopes), but do not preclude the use of any affected property for land uses allowed in the underlying zoning, and since the application of the ordinance would be subject to a variance in appropriate circumstances, he believed the likelihood for a successful takings case is extremely limited.

Staff would like to receive Council direction on the above issues and any others you may wish to consider at the May 8, 2007, meeting. We would then return on May 22, 2007,

with a revised ordinance that reflects that direction instead of attempting to wordsmith Council's comments immediately at the May 8 meeting.

He said that he has received two letters, which he passed out to Council, from Suzanne Molloy and Neil Thomas.

Mr. James Wood suggested that the N.C. Dept. of Environmental and Natural Resources numbers be posted at the construction sites when there is the potential for erosion or stormwater issues to let people know who they can contact to deal with the impact.

Mr. John Carroll, President of the Council of Independent Business Owners, said that the steep slope ordinance is a very complex issue and can have unintended consequences. In relationship to what has been presented, he asked Council to consider (1) that this is a private property right issue; (2) is very heavily affecting affordable housing in our community; (3) affects the future of our community; and (4) the solution is not a one size fits all. The issue of viewshed needs to be looked at along with the issues of safety. On some of the very steep slopes we have in our area Council may want to rely on geotechnical reviews in order to help make decisions.

An engineer with LandDesign talked about what is a steep slope and what it actually measures to. He finds that a 30% slope is pretty much a breakpoint where costs and things become more excessive. Using maps he showed drawings of homes with a 30% slope, 25% slope and a roadway with a 30% cross slope. In addition he showed a slope analysis. He felt that an affordable project is doable on a 30% slope and over 30% slope you should have a geotechnical analysis.

Mr. Gerald Green, Asheville resident, felt that may be a reason to have a different standard for urban areas, near urban areas and suburban areas. He also felt that City Council needs to clarify the intent of the ordinance.

Mr. Albert Sneed spoke against the ordinance. He felt that people who have invested to build on their lot will be hurt if this ordinance is enacted. He urged Council to specify what the goal is and send it back to the Planning & Zoning Commission with specific instructions.

Mr. Paul Zurick, representing Biltmore Farms, said that the bottom line is about sustainability. There needs to be a balance of mixed housing and jobs. The City has a limited about of developable land and it should be used as prudently as possible. He urged Council, especially as it relates to the 15-25% slopes to step back so that we can retain the focus on sustainability.

Mr. Robert Coxe, owner of steep slope property, explained how he bought his lot for its view and how his property will be severely affected by this proposed ordinance.

Mr. Jay Quinn, Asheville resident, was concerned about grading in the 15-19% range and the 20-25% range.

Mr. Joel Bassett, Asheville resident, questioned how the drafted state legislation will impact our ordinance.

Mayor Bellamy closed the public hearing at 10:59 p.m.

Throughout the considerable discussion, the following questions/comments were raised by Council and responded to, mainly by Mr. Shuford: how does the draft state legislation impact our ordinance; look at some opportunities for utilizing visualization, along with public input sessions, for understanding these issues; look at how we structure the

ordinance in terms of readability; can we use the fee in lieu of for sidewalks if sidewalks can't be built in the area; how many houses have slid off existing slopes in Asheville; how would the lot on Dr. Martin Luther King Drive by the red light be affected by this ordinance; and above 2220, do we, or how do we regulate slopes between 15-25%.

Councilwoman Cape suggested we require the LRV. There needs to be further discussion on where we apply the geotechnical analyses. She still has questions on the height in the ordinance. She wants to move the ordinance forward in terms of the basic, but there is a lot more work that we need to discuss and perhaps send it back to the Planning & Zoning Commission for things like recognition of viewshed, LRV, roof massings and whether gutters and curbs need to be on the roads, etc.

Councilman Newman felt that the proposal seems to achieve some of our goals, but some parts still don't go far enough in terms of protecting public safety. Information he has seen from the N.C. Geological Survey indicates that the risk of land movements and slides starts at about 36%. He moved that geotechnical analysis be required on all slopes of 36% or more regardless of zoning, and regardless of elevation, as well as all identified hazard areas as per the future mapping that will come out by the N.C. Geological Survey identifying areas that are significant slide risks based on soils and geology. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower didn't think this is about safety, but about trying to fix a potential problem. He felt this is just another level of bureaucracy.

Councilman Newman moved to support staff's recommendation of no application below 2,220 feet, except for geotechnical analysis requirements which would apply once the slope reached 36% or greater (as described and voted on earlier). This motion was seconded by Vice-Mayor Jones.

Councilman Freeborn made a friendly amendment to clarify Councilman Newman's motion to say that we will not apply the steep slope ordinance to anything below 2220 feet except for the requirements of the geotechnical analysis.

The clarified original motion made by Councilman Newman and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilwoman Cape moved that above 2220 feet, single-family residences be included in our existing hillside ordinance. This motion was seconded by Councilman Freeborn. City Attorney Oast said that Council is asking to amend our hillside ordinance and because that is a zoning amendment, it will need to go through the Planning & Zoning Commission first.

After discussing several options regarding the number of feet in which to apply the ordinance in slopes of 25% or greater, Mr. Shuford said that Council has given him things that can be changed to this particular ordinance to address the issues. If Council would like, we can take some of these examples given and produce some information similar to what we did with the Planning & Zoning Commission's 2500 foot elevation and give Council some idea of the amount of the existing hillside area that would be affected by these different things and then Council would have a basis for making a decision. He suggested Council instruct staff to look into that area and come back in a couple of weeks without having to go back to the Planning & Zoning Commission for more input.

At the suggestion of Mayor Bellamy, it was the consensus of Council to hire a consultant, if necessary, to develop a visualization tool for Council to see the different impacts of our community. Mayor Bellamy also suggested a Council bus tour of the different elevations.

Councilwoman Cape suggested using the N.C. Geological Survey mapping model as a viewshed area or a slope area rather than picking an elevation area.

Mr. Shuford said that it sounds like Council is interested in having the final version of the information from the N.C. Geological Survey before making any decisions and that will come out sometime mid-summer. He suggested Council table the steep slope ordinance until after the N.C. Geological Survey is available. During that time staff will work on the analysis suggested by Mayor Bellamy and make some other suggestions to Council and perhaps get a couple of the other issues worked out. In the meantime, we have a good ordinance that serves the city well for 30 years with the hillside regulations.

Councilwoman Cape suggested mapping the priority viewshed area and pull them out as an overlay district for hillside and steep slope regulations.

At the request of Councilwoman Cape, it was the consensus of Council to instruct Mr. Shuford to put the amendment regarding including single-family homes in the hillside regulations on the Planning & Zoning Commission's June agenda.

After discussion, Councilman Freeborn moved to schedule a worksession on June 12, 2007, from 4-5:00 p.m., in the Council Chamber of the City Hall Building, in order to look at the maps and data. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-97 - RESOLUTION OF INTENT TO CONSIDER AN ORDINANCE TO AMEND THE CHARTER OF THE CITY OF ASHEVILLE TO PROVIDE FOR PARTISAN ELECTIONS

RESOLUTION NO. 07-98- RESOLUTION SETTING A PUBLIC HEARING ON THE QUESTION OF AMENDING THE CHARTER OF THE CITY OF ASHEVILLE TO PROVIDE FOR PARTISAN ELECTIONS

City Attorney Oast said that this is the consideration of a resolution of intent to amend the Charter of the City of Asheville to provide for partisan election

North Carolina law provides that a city may change several features of its form of government. One of the features it may change is to provide that elections be partisan elections.

The process prescribed for this amendment is:

1. Adoption of a resolution of intent
2. Public hearing (10 days notice; not more than 45 days following resolution of intent)
3. Adoption of ordinance amending charter (not earlier than next regular meeting; not more than 60 days after public hearing)
4. Publication of notice within 10 days of adoption of ordinance.

The amendment to the Charter must have been finally adopted and approved at least 90 days prior to the first election for Mayor or Council held pursuant thereto. Pursuant to N.C.G.S. 163-279, for municipal elections held on a partisan basis, the first primary is held on the second Tuesday after Labor Day, which this year is September 11. This means that the ordinance must be finally adopted on or before June 12.

With Council's current regular meeting schedule, there is just enough time to complete the process in time for the September 11 primary, if the following schedule is observed:

May 8 – Adoption of Resolution of Intent
May 22 – Public hearing
June 12 – Adoption of ordinance
September 11 – Hold first primary

Council may, but does not have to, provide that the amendment is only effective upon a vote of the people at a special election to be held within 90 days. If no such election is provided for by Council, the voters may force a referendum on the question by petition. If such an election is called by either method, it would lengthen the time for completing the amendment process, such that the amendment would not be effective in time for the 2007 election.

In 1994, using a similar process, Council amended the Charter to change from partisan to non-partisan elections. In 1997, the Charter was again amended to provide for four-year staggered terms.

The Institute of Government reports that, of the 500 plus municipalities in North Carolina, 9 of them use a partisan election system, including Charlotte and Winston-Salem, among the larger cities.

A resolution of intent to amend the Charter is presented for Council's consideration. If the resolution is adopted, it will be necessary to set a date for a public hearing.

Councilman Newman said that the public hearing would be on the question of involving political parties in Asheville municipal elections. He thinks City Council should consider this is because (1) political parties are already involved in municipal elections in that they have actively supported the candidates from their party by raising funds, sending out mailings, etc.; (2) a Council member's basic philosophy has a direct bearing on how they tend to view the issues; and (3) having this process creates a level playing field between both the political parties in the general municipal elections.

Mr. Jay Quinn, Asheville resident, felt that the way the elections are run now is adequate, but we should do away with all Council members being elected at large.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Jones moved to adopt the resolution of intent to consider an ordinance to amend the Charter of the City of Asheville to provide for partisan elections. This motion was seconded by Councilwoman Cape.

Councilman Mumpower was concerned that we are creating artificial hurdles for independent and third party candidates to get their names on the ballot. He felt that Council still needs to address the issue of the 4th seat on Council.

Mayor Bellamy noted that Council did address the issue of the 4th seat, but that there was not a majority of Council to ask that the Charter be amended to say that the 4th highest vote-getter automatically would get the empty seat. Councilman Mumpower felt Council should then look at different options to address that concern.

Councilman Davis would support a public hearing on this issue and would also support addressing the issue of the 4th seat at a later date.

Councilman Mumpower asked for information that provides examples of the modeling standard across the state of a weak mayor, professional manager model compared to a strong

mayor model. He thinks that we will find that there will are non-partisan elections for cities with a system such as ours - the weak mayor, professional manager model.

Mayor Bellamy said that in reality, the position of Mayor should be a full-time position and treated as such. She would like to see that changed in our Charter. She explained why the other reality is that partisan elections make the hurdles harder for African Americans.

Councilman Newman said that if he thought changing to partisan elections would affect minority involvement, he would absolutely oppose it but he hasn't seen any evidence of that. He cited Winston-Salem and Charlotte as having strong minority representation on Council. He thinks that one of the potential benefits of it would be that it could potentially lower the cost for candidates to run for office.

Mayor Bellamy noted that in Charlotte they have ward system and districts are drawn so that African Americans can have a presence on the Council.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

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Councilwoman Cape moved to set a public hearing on May 22, 2007, to consider amending the Charter of the City of Asheville to provide for partisan elections. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

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B. BOARD OF ELECTIONS NEW ELECTION UPDATE

Mayor Bellamy said that she has received the following information from Ms. Trena Parker, Director of Elections, regarding instant runoff voting in North Carolina. Said information read "The General Assembly approved pilot programs for 10 cities and 10 counties. This would allow the City of Asheville to hold only one election-essentially combining the primary and general. The Board of Elections Chair, Jones Byrd, has spoken with Mayor Bellamy regarding the possibility of the City of Asheville being one of the pilot elections. The Elections Board has not decided either way and thought it best to pass along this information for your consideration."

VOTING

When the Instant Runoff Voting (IRV) method is used for a particular contest, voting for one's top choice or choices is the same as if IRV were not used. Each voter is allowed to vote for as many candidates as there are seats to be filled in column A (see Exhibits – Example IRV Ballots). Each voter is then allowed the opportunity to indicate two alternate candidate choices, one per column in each of columns B and C, ranked in order of preference.

For example, in the Office of Mayor contest there is one seat to be filled. Each voter may vote for one candidate in column A, and then may indicate a first alternate candidate choice in column B, and a second alternate candidate choice in column C. In the City Council At-Large contest there are two seats to be filled. Each voter may vote for as many as two candidates in column A, and then may indicate a first alternate candidate choice in column B, and a second alternate candidate choice in column C.

COUNTING – FIRST ROUND

In the first round of counting, all ballots will be counted exactly as if IRV were not used, counting only the results in column A. At the completion of the first round of counting, if it is determined that a sufficient number of candidates received total votes exceeding the threshold of victory for all seats in that contest to be filled, normal procedures apply and there will be no need for a second round of counting. If not all seats are filled, those candidates who have won seats will be removed from further consideration, and a number of candidates not exceeding twice the number of remaining seats to be filled will advance to the second round of counting, those candidates being the ones with the greatest numbers of first round votes.

COUNTING – SECOND ROUND

If a second round of counting is required, each office shall be counted separately according to the following procedures:

A) Counting a single-seat contest:

1) Ballots shall be maintained in separate groups according to where or how they were cast, by precinct or one-stop polling locations, or by mail.
2) For each such group, ballots shall be separated into three stacks, designated **Stack A**, **Stack B**, and **Stack C**.
3) If a ballot contains a vote in column A for either runoff candidate, it shall be placed into Stack A. Because these votes have already been counted in the first round, there is no need to count them again.
4) If a ballot does not contain a vote in column A for either runoff candidate, but does contain a vote in column B for either runoff candidate, it shall be placed into Stack B.
5) All remaining ballots shall be placed into Stack C.
6) Stack B ballots shall be counted by machine or by hand. Only those votes cast for either runoff candidate in column B shall be considered. These totals shall be added to the totals for those candidates from the first round of counting.
7) Stack C ballots shall be counted by machine or by hand. Only those votes cast for either runoff candidate in column C shall be considered. These totals shall also be added to the totals for those candidates from the first round of counting.
8) Repeat steps 1-7 as necessary until all ballots for the entire jurisdiction have been counted.
9) The runoff candidate with the greatest total votes shall be declared the winner.

B) Counting a multi-seat contest:

1) Ballots shall be maintained in separate groups according to where or how they were cast, by precinct or one-stop polling locations, or by mail.
2) For each such group, ballots shall be separated into five stacks, designated **Stack A**, **Stack B**, **Stack B2**, **Stack C**, and **Stack D**.
3) If a ballot contains as many votes in column A as there are total seats to be filled, and all such votes are for candidates who either won seats in the first round or advanced to the second round, it shall be placed into Stack A. Because these votes have already been counted in the first round, there is no need to count them again.
4) If a ballot contains in column A exactly one vote fewer than the number allowed or exactly one vote for a candidate who did not win a seat in the first round and did not advance to the second round, and does contain a vote in column B for any runoff candidate not already voted for in column A, it shall be placed into Stack B.
5) If a ballot contains in column A more than one fewer votes than the number allowed or more than one vote for candidates who did not win seats in the first round and did not advance to the second round or at least one of each of these, and does contain a vote in column B for any runoff candidate not already voted for in column A, it shall be placed into Stack B2.

6) Of all remaining ballots, any which contains in column C a vote for a runoff candidate already voted for in column A or B shall be placed into Stack D, and the rest shall be placed into Stack C.
7) Stack B2 ballots shall be counted by machine or by hand. Only those votes cast for a runoff candidate in column B shall be considered. These totals shall be added to the totals for those candidates from the first round of counting.
8) All Stack B2 ballots which contain in column C a vote for a runoff candidate already voted for in column A or B shall be placed into Stack D, and the rest shall be placed into Stack C.
9) Stack B ballots shall be counted by machine or by hand. Only those votes cast for a runoff candidate in column B shall be considered. These totals shall be added to the totals for those candidates from the first round of counting.
10) Stack C ballots shall be counted by machine or by hand. Only those votes cast for a runoff candidate in column C shall be considered. These totals shall also be added to the totals for those candidates from the first round of counting.
11) Repeat steps 1-10 as necessary until all ballots for the entire jurisdiction have been counted.
12) The runoff candidate with the greatest total votes shall be declared the winner of a seat in this contest.
13) If not all seats have been filled, for each precinct or other ballot group recombine all ballots, then repeat steps 1-12 to determine the next winner.

Mayor Bellamy asked Council if they wish to participate in the IRV pilot program.

Rev. Christopher Chiaronmonte felt this would be a fair way to save taxpayers time and money.

Ms. Leesa Kulba spoke against the IRV.

Councilwoman Cape said that this has been used in other countries with great success. She thinks there is an educational process in it and would be interested in knowing more about it.

Councilman Davis moved that the City of Asheville not participate in the Instant Runoff Voting method. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilwoman Cape voting "no."

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of March 30 - April 26, 2007: Joseph R. Martin (Transit Services), Helen Brown (Streets), Barbara Ayers (Water), Solomon Norwood (Streets), Debra McIntosh (Sanitation), Michelle Koussa (Streets), Cindy Tate (Streets), Greg Turner (Streets) and Jim Wilson (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City was served with the following Complaint on April 21, 2007: Reid Thompson v. City of Asheville and Greenlife Grocery of Asheville, LLC. The nature of the proceeding is a petition for writ of mandamus and certiorari to compel the City and Greenlife to comply with the Unified Development Ordinance and noise ordinance. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Randy Teague asked City Council to adopt a resolution supporting incorporation of the Town of Leicester. Mayor Bellamy stated that City Council place this item on an upcoming agenda for consideration.

Rev. Christopher Chiaronmonte spoke about the poor treatment of the homeless in Asheville.

CLOSED SESSION

At 12:16 a.m., Mayor Bellamy announced that the closed session would continue.

At 12:25 a.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 12:25 a.m.

Tarsha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 15, 2007 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Diana Hollis Jones, Presiding; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Mayor Terry M. Bellamy

PLEDGE OF ALLEGIANCE

The Asheville Middle School Student Council led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 13-19, 2007, AS "MUSEUM WEEK"

Councilman Newman read the proclamation proclaiming May 13-19, 2007, as "Museum Week" in the City of Asheville. He presented the proclamation to Ms. Pam Myers, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING MAY 13-20, 2007, AS "AMERICORPS WEEK"

Councilwoman Cape Jones read the proclamation proclaiming May 13-20, 2007, as "Americorps Week" in the City of Asheville. She presented the proclamation to Ms. Sarah Hancock and Ms. Cicely Rogers.

C. PROCLAMATION PROCLAIMING MAY 15, 2007, AS "JACK INGRAM DAY"

Councilman Davis read the proclamation proclaiming May 15, 2007, as "Jack Ingram Day" in the City of Asheville. He presented the proclamation to Jack and Ilene Ingram.

D. PROCLAMATION PROCLAIMING MAY 20-26, 2007, AS "NATIONAL PUBLIC WORKS WEEK"

Councilman Freeborn read the proclamation proclaiming May 20-26, 2007, as "National Public Works Week" in the City of Asheville. He presented the proclamation to representatives of the Metropolitan Sewerage District, City of Asheville Street Division, City of Asheville Water Department and City of Asheville Engineering Department.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", "E" and "G" were removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 8, 2007

B. RESOLUTION NO. 07-99 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 11 BOSTON WAY

Summary: The consideration of a resolution authorizing the Mayor to convey air space adjacent to 11 Boston Way.

On April 10, 2007, the City Council of the City of Asheville directed the City Clerk to advertise for upset bids regarding an offer to purchase air rights to City owned property adjacent to 11 Boston Way; (PIN 9648.19-60-1082, 9647.07-69-2935, 9647.07-69-1953) for the sum of $11,665.00. The notice ran in the Asheville Citizen-Times on April 27, 2007, as provided in N. C. Gen. Stat. sec. 160A-269. No upset bids were received in response to said advertisement.

Approval of the resolution will authorize the sale of the property to Kessler Asheville, LLC for the amount of $11,665.00.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate characteristics of the building design intended to conform to the historic nature of Biltmore Village.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 11 Boston Way.

RESOLUTION BOOK NO. 30 - PAGE 326

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THREE AGREEMENTS WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO RECEIVE GRANTS IN THE AMOUNT OF $2,500,000, $2,000,000 AND $75,000 TO PERFORM FLOOD DAMAGE REDUCTION ASSESSMENTS AND IMPROVEMENTS

This item was removed from the Consent Agenda for individual discussion.

D. BUDGET AMENDMENT TO RECEIVE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES GRANTS

This item was removed from the Consent Agenda for individual discussion.

E. BUDGE AMENDMENT TO APPROPRIATE $600,000 FROM THE HEALTH CARE PROGRAM'S FUND BALANCE RESERVES TO COVER ONE-TIME COSTS INCURRED DURING THE CURRENT FISCAL YEAR

This item was removed from the Consent Agenda for individual discussion.

F. RESOLUTION NO. 07-101 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS ADDRESSING COMPLIANCE ISSUES IN THE PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution authorizing the mayor to execute agreements addressing compliance issues in the Pack Square Renaissance Project.

Asheville's downtown – or most of it – is included in the National Register of Historic Places.

As a condition of receiving a grant to assist in road and sidewalk construction in connection with the Pack Square Renaissance Project, work is required to be done in accordance with certain guidelines so as to ensure that there is no effect on historic properties or districts, or that any impact is minimized to the extent possible. Pursuant to the City's agreement with the Pack Square Conservancy (herein "PSC"), PSC is responsible for carrying out all aspects of the work on Pack Square, including compliance with applicable laws and regulations. For administration of government grants, however, the City is the entity that is legally responsible to the granting government.

The City was the recipient of some N.C. Dept. of Transportation (DOT) grants in 2006, and executed a Municipal Agreement with DOT for the carrying out of the work funded by those grants. That agreement contained some provisions requiring assessment of impact on the Downtown Historic District. In order to ensure that PSC performed the work provided in the Municipal Agreement, the City entered into an agreement with PSC specifically addressed to the Agreement with DOT. Recently, the City was contacted by the State, indicating that some of the historic assessment requirements of the Municipal Agreement had not been executed properly. After several meetings, the parties (the City, the State, and PSC) have agreed to resolve these issues by entering into a Memorandum of Agreement, setting forth a few requirements in addition to the 2006 Municipal Agreement, including an update of the City's architectural inventory, performance of the archaeological survey in the project area, and the use of the historic granite and curbstones. The Agreement with PSC will be amended to ensure that PSC carries these requirements out.

The resolution (1) authorizes the Mayor to sign the Memorandum of Agreement with DOT, and (2) authorizes the Mayor to sign the amended agreement with PSC.

Pros:
- Resolves a dispute that could jeopardize existing funding.
- Requires the compilation of some information that will be useful to the City.

Cons:
- Adds expense to the project (but this will be the Conservancy's expense).

If Council approves of the proposed method for resolving the grant administration compliance issues, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 - PAGE 328

G. RESOLUTION APPROVING THE FISCAL YEAR 2007-08 CAPITAL IMPROVEMENT BUDGET FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

This item was pulled off the Consent Agenda for further discussion.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

C. RESOLUTION NO. 07-100- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THREE AGREEMENTS WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO RECEIVE GRANTS IN THE AMOUNT OF $2,500,000, $2,000,000 AND $75,000 TO PERFORM FLOOD DAMAGE REDUCTION ASSESSMENTS AND IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to execute three agreements with the North Carolina Department of Environment and Natural Resources (NCDENR) to receive grants in the amount of $2,500,000, $2,000,000 and $75,000 for a total of $4,575,000 to perform flood damage reduction assessments and improvements.

In September 2004, Western North Carolina was severely impacted by flood from Hurricane Frances and Ivan. In November 2004, the North Carolina General Assembly approved Senate Bill 7 to provide financial aide to the area in efforts to reduce damage caused by future flood events.

NCDENR held four meetings from January 2006 to June 2006 to get input from local stakeholders to determine to prioritize the needs of the community as they relate to flood damage reduction. This group consisted of property owners, local government, environmental agencies, developers and community leaders. The group developed a prioritized list of action items to implement in order to reduce future flood damage.

NCDENR allocated money based on those priorities to the appropriate local governments to implement. We received three separate grants in the total amount of $4,575,000 with no required local match. Staff will be dedicating time toward the implementation of these objectives. The following is a breakdown of the contracts.

Amount	Task	Description
$2,500,000		This three-phase flood damage reduction measure institutes a watershed-wide program for flood damage reduction in the Swannanoa watershed.
	1	This phase includes the watershed modeling, economic analysis and project development.
	2	This phase includes implementation of the measures recommended in phase I
	3	This phase includes modeling of future conditions.
$2,000,000		Assist in the development of the Wilma Dykeman Riverway Plan specifically by assisting in acquiring property that is prone to flooding.
$75,000		Development of an Emergency Flood Preparedness and Response Plan for Biltmore Village

Pros:

- These grants will allow us to reduce damage to properties as a result of flooding.
- This money will be paid from State funds as opposed to local money only.
- The City of Asheville will work cooperatively with Black Mountain and Buncombe County to perform the work in the $2,500,000 contract. This will require a memorandum of agreement between all three agencies. Staff has met with representatives from both groups. The memorandum of understanding will be executed by the City Manager following approval of this contract.

Con:

- We will need to dedicate staff time to moving these projects forward. The implementation of this work will be a high priority for our office.

Staff recommends City Council approve a resolution authorizing the City Manager to execute three agreements with the North Carolina Department of Environment and Natural Resources (NCDENR) to receive grants in the amount of $2,500,000, $2,000,000 and $75,000 for a total of $4,575,000 to perform flood damage reduction assessments and improvements.

City Engineer responded to questions raised by Councilman Mumpower.

Councilman Mumpower moved for the adoption of Resolution No. 07-100. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 327

D. ORDINANCE NO. 3469 - BUDGET AMENDMENT TO RECEIVE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES GRANTS

Summary: See Consent Agenda Item "C" above.

Councilman Mumpower moved for the adoption of Ordinance No. 3469. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 353

E. ORDINANCE NO. 3470 BUDGE AMENDMENT TO APPROPRIATE $600,000 FROM THE HEALTH CARE PROGRAM'S FUND BALANCE RESERVES TO COVER ONE-TIME COSTS INCURRED DURING THE CURRENT FISCAL YEAR

Summary: The consideration of a budget amendment to appropriate $600,000 from the Health Care Program's fund balance reserves to cover one-time costs incurred during the current fiscal year.

The City's Health Care Program has experienced a number of one-time expenses during the current fiscal year that were not anticipated when the budget was adopted last spring. For example, there has been a spike in expenses due to the occurrence of several high dollar claims amounts. Also, there were several hospital medical bills from prior years that were delayed in reaching the City, and therefore they had to be paid out of the current year's budget. The City also incurred additional expenses during the transition period from the old third party administrator to the new administrator.

To cover these one-time expenses, staff is recommending that Council appropriate $600,000 from the Health Care Program's reserves. As of June 30, 2006, the fund balance reserve for the Health Care Program was $5.48 million. Staff believes that this $600,000 appropriation from the Health Care Program reserves will leave more than enough available in reserves to cover claims incurred but not reported, protect us against the volatility of the health care market, and provide a sufficient "rainy day" cushion. Based on an analysis conducted in conjunction with Ferguson last year, we determined that a fund balance amount of approximately $3.1 million for health care is sufficient.

It should also be noted that the Health Care Program's fund balance is considered "reserved" by the City's auditors. Therefore, this fund balance appropriation will not affect the year-end unreserved fund balance projection that staff presented in the 3rd Quarter Financial Report.

PRO:

- Provides an adequate budget for the projected FY 2006-07 expenditures in the Health Care program.

CON:

- None.

City staff recommends City Council approve the budget amendment to appropriate $600,000 from the Health Care Program's fund balance.

Chief Financial Officer Ben Durant responded to questions raised by Councilman Mumpower. As a result, City Manager Jackson said that we will have our consultant evaluate this loss and ask for their advice on whether they suggest changes in the stop loss coverage or other practices.

Councilman Freeborn moved for the adoption of Ordinance No. 3470. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 355

G. RESOLUTION NO. 07-102 - RESOLUTION APPROVING THE FISCAL YEAR 2007-08 CAPITAL IMPROVEMENT BUDGET FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The consideration of a resolution approving the Fiscal Year 2007-08 Capital Improvement budget for the Asheville Regional Airport Authority.

Section IV "Capital Improvements" of the current land lease agreement between the City of Asheville and the Asheville Regional Airport Authority grants the Airport the authority make capital improvements for aeronautical purposes and purposes incidental to the airport provided that written approval is first obtained from the City of Asheville. Staff has reviewed the Authority's capital improvements program and recommends approval.

Staff recommends City Council approve the Fiscal Year 2007-08 Capital Improvement budget for the Asheville Regional Airport Authority.

In response to Councilman Mumpower, City Manager Jackson said that a one page document has been provided to Council regarding the budget; and in the future when similar requests are made, similar documentation will be provided to Council in their agenda package.

Councilman Mumpower moved for the adoption of Resolution No. 07-102. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 329

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE TRANSIT COMMISSION ANNUAL REPORT

Transit Commission Chair Karen Austin updated City Council on their annual report.

Ms. Austin said that their mission is to facilitate public mass transit to all customers. The vision of the Commission is to create a first-class innovative model of public transportation that moves people affordably, efficiently, and equitably in an environmentally sustainable manner.

Short range goals (1-5 years) as of January 2005 consist of expand service; improve access and ease of use; increase ridership; and improve financial stability.

Successes consist of expanded hours; expanded service area; redesigned maps and signs; upgraded bus stops and transit center; developed pass programs for employers and students; and increased public visibility.

Using graphs, she showed the steady increase in ridership and the July 2006 through May 2007 evening service customers.

Some challenges include (1) limited evening service; (2) frequency; (3) customer service; (4) schedule accuracy; and (5) expanding service area.

Ideas awaiting implement include (1) increased frequency along high-traffic corridors; (2) expanded passport program; (3) study of routes and schedules; (4) park and ride lots; (5) neighborhood transit hubs; (6) cohesive marking plan; and (7) upgrading technology.

To reach our goals, we need funding. Improvements to the system and increases in service are being held back by limited funds and a simple lack of necessary manpower.

Funding sources (1) lobby for revised federal funding; (2) City Council's continued support for transit improvements and marketing; (3) funding increases to match regional growth; (4) business/community support (passport program); and (5) innovative advertising efforts.

Advertising opportunity - bus wraps (1) estimated potential income - $8,000 per bus per year revenue; (2) generate buzz about buses; and (3) potential showcase for community asset.

Ms. Austin responded to various questions/comments from Council, some being, but are not limited to. is there any dialogue with the County or regional partners on the park and ride idea; update on the Green Building Council wanting to build larger bus stops; do we have a specific person on staff who looks for granting opportunities that support energy efficiencies and fleet efficiency measures; and do we have much success in obtaining grants for transit.

Councilman Freeborn requested additional information on the costs and the return if we did full bus wraps.

Councilman Newman said that as we set ambitious fuel conservation goals, he asked if prior to replacing our bus fleet with the more conventional buses that we analyze the feasibility of purchasing more fuel efficient vehicles.

At the request of Councilwoman Cape, it was the consensus of Council to (1) request an exploration of the park and ride proposal; and (2) ask the Chairs of the Transit Commission and the Energy & Environmental Committee to meet and talk about how they see the inter-connectiveness of the two boards and respond to questions raised by Councilman Newman and Freeborn.

On behalf of City Council, Vice-Mayor Jones thanked Ms. Austin and the Transit Commission members for their hard work.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON WYNNE STREET, AND IDENTIFIED AS THE GRIMES & TEICH PARKING LOT, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR AN ADDITIONAL PARKING AREA FOR THE EXISTING BUSINESS

ORDINANCE NO. 3471 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON WYNNE STREET, AND IDENTIFIED AS THE

GRIMES & TEICH PARKING LOT, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR AN ADDITIONAL PARKING AREA FOR THE EXISTING BUSINESS

Vice-Mayor Jones opened the public hearing at 5:58 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located on Wynne Street, and identified as the Grimes & Teich parking lot, from RS-8 Residential Single-Family High Density District to Central Business District/Conditional Zoning for an additional parking area for the existing business. This public hearing was advertised on May 4 and 11, 2007.

The subject property is located off of College Street immediately east of 535 College Street (on which are located the legal offices of Grimes and Teich, LLP). The property although also abutting Wynne Street (a residential street in the East End community), can currently be accessed off of an existing drive on College Street and relates topographically to College rather than Wynne Street. The parcel to which the petition applies is bounded to the north and west by road rights-of-way for College and Wynne Streets. To the south, there is a single-family home and to the west are the existing law offices and accompanying parking areas. Zoning to the west and north is CBD (Central Business District) and to the south, the zoning is RS8 (Residential Single-Family High Density District). The land to the east is unzoned right-of-way.

The property that is the subject of this conditional zoning request is .15 acres in size. The applicant wishes to rezone this property from RS-8 to Central Business District/Conditional Zoning in order to provide additional parking for the adjacent office building. The existing driveway entrance off of College into the current parking area will provide the ingress and egress for the additional parking area. The creation of twelve (12) parking spaces is shown along with storm drainage provision and landscaping. An alternative compliance request for the street trees is provided in the event that N.C. Dept. of Transportation (NCDOT) denies the application (submitted by the developer) for street plantings in the right-of-way. Staff is supportive of this request and will work with the developer on alternative landscaping in the unlikely even that NCDOT denies the application for encroachment. The applicant is actually proposing more landscaping than is required in the CBD and providing vegetation which should improve the buffer of the neighborhood from College Street.

The proposed parking area is not required to go through Downtown Design Review (DTDR) as it is not in the DTDR core area and is a minor work. The applicant conducted a meeting to inform the residents in the immediate area but had not one in attendance.

At their meeting on March 19, 2007, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission subject to the conditions in the TRC report and the standard conditions listed below. At the meeting, it was agreed that the City's Traffic Engineer would reevaluate the need for a 24 foot minimum drive aisle width. This review has been completed and due to the size and nature of the parking area, he has accepted and approved the proposed 20 foot width.

On April 4, 2007, the Asheville Planning and Zoning Commission unanimously recommended approval of this conditional zoning amendment. There was no public comment on the application.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with most applicable development standards.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The adjoining property to the west along College is developed for office use. The topographic difference between this property and the adjoining residential property, coupled with the plantings proposed by the applicant, should minimize the impact on the adjoining residence.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   As stated previously, some of the abutting property is already developed for office use, including parking. The topographic difference between the subject property and the adjoining residential property, coupled with the plantings proposed by the applicant, should minimize the impact on the adjoining residence.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The property relates topographically to the properties along College Street which contain office buildings and accompanying parking. The addition of a parking area containing twelve (12) spaces will be similar to existing development parking.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   This conditional zoning request complies with the comprehensive planning strategies of:
   a. Identifying appropriate areas for commercial/office uses looking at compatibility with surrounding uses.
   b. Improving landscaping along gateway corridors into the Central Business District

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This office parking area is located on Asheville Transit system Routes 13 and 18 and along a major street. All other technical aspects of this project have or can be met by the applicants.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed use will not increase traffic in the area. No new driveway will be created for this parking area.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides needed parking for an existing business.
- Adds landscaping to buffer the adjoining residential area from College Street and the office development along College.
- Proposes to add street trees along College.

Cons:

- Could be considered to be a business intrusion into the adjoining residential area.

Staff recommends approval subject to the conditions placed on the development by the TRC and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

A representative of the applicant spoke in support of the conditional zoning.

Vice-Mayor Jones closed the public hearing at 6:02 p.m.

Vice-Mayor Jones said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. ____, to conditionally zone property located on Wynne Street, and identified as the Grimes & Teich parking lot, from RS-8 Residential Single-Family High Density District to Central Business District/Conditional Zoning, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits, (noting that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation). This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 357

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 103 N. BEAR CREEK ROAD FROM THE APPROVED COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ADD THE PERMITTED USES ON THE SITE FOR A PRIVATE K-12 SCHOOL

ORDINANCE NO. 3472- ORDINANCE TO AMEND THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 103 N. BEAR CREEK ROAD FROM THE APPROVED COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ADD THE PERMITTED USES ON THE SITE FOR A PRIVATE K-12 SCHOOL USE

Vice-Mayor Jones opened the public hearing at 6:02 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning of property located at 103 N. Bear Creek Road from the approved Commercial Industrial District/Conditional Zoning in order to add the permitted uses on the site for a private K-12 School. This public hearing was advertised on May 4 and 11, 2007.

The subject property (2.28 acres) is located within the City Limits on North Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Access to the property is off of N. Bear Creek Road. Surrounding properties to the north and west are zoned residentially (RS8, RM8, RM16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes construction/contracting/electronics operation is located to the east.

The applicant received rezoning approval, a modification, and final Technical Review Committee (TRC) approval last year for their plans to rezone the property from RM-8 to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home. It is proposed that the single-family home be preserved for residential use and for use in conjunction with the operation of the school or preschool. The original development plan showed, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. The planned use of a temporary educational building on the site (the subject of the modification) has now been omitted from the proposal. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

The applicants are seeking an amendment to their original plans in order to add to the uses permitted on the site, a school serving grades K-12. The site plan has been amended to address this use change but remains virtually unchanged from the previous approval.

At their meeting on March 5, 2007, the reviewed the amendment to the conditional zoning and made a positive recommendation (with conditions) that the request be forwarded to the Planning and Zoning Commission. One of the conditions listed on the report (the need for fire lanes within 150 feet of all buildings) was addressed with the addition of a condition that sprinkler systems be installed in new buildings not within 150 feet of a fire lane and that the plans for these systems be submitted to and approved by the Fire Marshal. Other conditions added by TRC (now shown on the report) were:

- That the existing use of the home for a residence be grandfathered.
- That the proposed species be reexamined with the Planning Staff to make certain that the plants have a reasonable chance of survival.
- That the applicants work with the City's Addressing Coordinator to name the drive and address all buildings in accordance with City requirements.

On April 4, 2007, the Asheville Planning and Zoning Commission unanimously recommended approval of this conditional zoning amendment. There was no public comment on the application.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the**

public health or safety.
The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The proposed site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate licensing professionals on the development of this site for a school and preschool.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The applicant is proposing little grading for the development of the child care and school facilities. The majority of the existing trees on site are proposed to be maintained.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed buildings is in keeping with a residential area. The area has a fairly dense residential population for which the preschool/school would be a convenience.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed development (and phasing) supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Allows for an appropriate nonresidential use in a transition area between residential and commercial/industrial uses.
- Landscape plan indicates the preservation of considerable existing vegetation.

Cons:

- Some might view this as an intrusion into the neighborhood.

Staff recommends approval subject to the conditions placed on the development by the TRC and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Gerald Green, representing the applicant, spoke in support of the amendment to the conditional zoning.

Vice-Mayor Jones closed the public hearing at 6:05 p.m.

Mr. Ken Huck, applicant, responded to Vice-Mayor Jones' question about how many student the school would hold.

Vice-Mayor Jones said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3472, to amend the Conditional Industrial/Conditional Use approval for property located at 103 N. Bear Creek Road, subject to the following conditions: (1) The project shall comply with all the conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits, (noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 361

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON ENKA LAKE ROAD FOR THE PROJECT IDENTIFIED AS BILTMORE LAKE, BLOCKS D2-E, FOR DEVELOPMENT OF 103 RESIDENTIAL UNITS

ORDINANCE NO. 3473 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON ENKA LAKE ROAD FOR THE PROJECT IDENTIFIED AS BILTMORE LAKE, BLOCKS D2-E, FOR DEVELOPMENT OF 103 RESIDENTIAL UNITS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Jones opened the public hearing at 6:07 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located on Enka Lake Road for the project identified as Biltmore Lake, Blocks D2-E, for development of 103 residential units (Attachment to City Exhibit 3 - Aerial Map).

This review concerns a proposed gated 103 unit single-family attached development. The proposed development is classified as a "Planned Community" pursuant to State statutes which allows for a different form of home ownership not commonly considered in Asheville. The community will appear and operate much like a single family neighborhood but without individual lot ownership. Instead, all property beyond the individual structures will be owned and managed by a homeowner's association. This affords the developer more freedom in designing the layout of the community to achieve a comparable number of units while preserving additional open space and reducing infrastructure costs much like the Block D1 development which is currently being constructed. Pursuant to Section 7-5-9(a)(1)(a.)(3.) of the Unified Development Ordinance (UDO), any manufactured housing community, camper/trailer park or other residential development containing more than 50 individual units is reviewed as a Level III Site Plan Review.

The subject site is located off of Enka Lake Road and Orvis Stone Circle west of Asheville in the City's Extraterritorial Jurisdiction (ETJ). The property consists of five lots zoned RM-16 (Residential Multi-Family High Density District) and is comprised of 44.68 acres according to Buncombe County tax records. The subject site is bounded to the north and east by Enka Lake zoned RM-16, to the west by Enka Lake Rd., Hominy Valley elementary school and vacant land zoned INST and RM-16 and to the south by Orvis Stone Circle and the Biltmore Lake Block D1 development zoned RM-16.

The RM-16 zoning district was created to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

Access to the property will be gained from two gated entries (Attachment to City Exhibit 3 - Conceptual Master Plan). The main entrance that will serve Block D2-E is located off of Orvis Stone Circle which was constructed as part of the Block D1 development, and one additional gated access entrance is proposed off of Enka Lake Road. Pursuant to Section 7-5-9(a)(1)(b.) of the UDO, properties within 1,500 feet of each other, under the same ownership and/or developed

by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. The entire infrastructure for Block D1 has been installed and the residential units are currently under construction. Block D1 was originally to consist of 50 units, but because two units would not have met their required setbacks and one unit would have encroached into one of the Block D2-E parcels, the developer included the units as part of this approval.

At their March 19, 2007, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. Subsequently, the Planning and Zoning Commission unanimously approved this project subject to the conditions recommended by staff at their April 4, 2007, meeting.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The development provides a balance between density and the preservation of riparian buffers and open space. The RM-16 zoning district allows for both single-family detached and multi-family dwellings. Because the proposal is for a planned community, the developer is able to cluster the residences around the road infrastructure and preserve the outlining common areas as open space.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed development of 103 residential dwelling units would integrate with the existing Block D1 and surrounding Biltmore Lake residential developments. The area has seen significant growth in the single-family residential market, and would transition well with the surrounding commercial, industrial and institutional elements along the Smokey Park Highway, Sand Hill Rd. and Enka Lake Rd. corridors. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   There are a variety of commercial, institutional and multi-family residential developments in the area that would be consistent with the proposed development. The density of the project is approximately 2.3 dwelling units per acre. The zoning of the site is RM-16, and the project does not require density bonuses or special incentives to build this project. The proposed use is in harmony with the scale, bulk, coverage, density and character of the underlying area. The clustering of the units and the preservation of over 12 acres of

open space on the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of high quality development, pedestrian connectivity between parcels, preservation of open space and riparian buffers supports several goals and objectives as described in both the ***Asheville City Development Plan 2025*** and the ***Strategic Operating Plan*** (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Plans are underway for road widening for Sand Hill Road, the closest connecting street, based on growth projections for the community. The developer must provide an urban level of service for the development and provide detailed guidelines on how requirement will be met. Other facilities are in place to support the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and does not meet the threshold for requiring a traffic impact analysis, nor is it expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The project would allow for significant preservation of open space and continuous riparian buffers along Enka Lake.
- Extensive trails and sidewalks would be provided connecting residents of the new development to the larger community.

Cons:

- Applicant wishes to gate the community and prevent public access to roads and sidewalks.

Staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use permit.

It should be noted that this development is being proposed as an extension of an existing privately maintained and gated community. At Council direction, staff has prepared an ordinance that prohibits gated communities which was recently reviewed and approved by the Planning and Zoning Commission; this amendment is tentatively slated to come before Council by the end of May.

Recent concerns over the impact of gated communities on the city may be best addressed by our appointed and elected officials as a separate policy matter. Staff recommends that the City Council utilize public input concerning this matter and carefully consider whether the conditional use permit should be conditioned to mitigate any gated community concerns.

Mr. Will Bule, representing the applicant, spoke in support of the conditional use permit and specifically requested Council to allow them to proceed with the gated community as this is just an extension of an existing privately maintained gated community (Applicant Exhibit 1).

After rebuttal, Vice-Mayor Jones closed the public hearing at 6:15 p.m.

In response to Councilwoman Cape, Mr. Bule explained the stormwater measures that will be taken.

When Councilwoman Cape asked if the greenways along the lake edge would be open to the public, Mr. Bule explained that in the past when the lake was open to the public vandalism and damage to property occurred. The homeowners association then felt they needed to police the area better and as a result closed the area to public access.

There was a brief discussion initiated by Councilman Freeborn, resulting in City Manager Jackson reinforcing up front conversations with developers who especially build in our extraterritorial jurisdiction area about voluntarily annexing prior to lots being sold.

In response to Councilman Newman, City Attorney Oast said that when people purchase property in close proximity to the existing City limits and because of the level of development in the surrounding area, realtors could advise the potential property owners that the property is, or may be, eligible for annexation.

Councilman Mumpower moved for the adoption of Ordinance No. 3473, granting a conditional use permit for property located property located on Enka Lake Road for the project identified as Biltmore Lake, Blocks D2-E, for development of 103 residential units, subject to the conditions recommended by City staff and subject to the following conditions: (1) The developer shall provide an urban level of public safety service for the development; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER REZONING AN AREA INCLUDING PROPERTIES LOCATED AROUND 1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

ORDINANCE NO. 3474- ORDINANCE TO REZONE AN AREA INCLUDING PROPERTIES LOCATED AROUND 1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

Vice-Mayor Jones opened the public hearing at 6:24 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone an area including properties located around 1200 Bleachery Boulevard from RS-8 Residential Single-Family High Density District to Commercial Business I District. This public hearing was advertised on May 4 and 11, 2007.

open space on the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of high quality development, pedestrian connectivity between parcels, preservation of open space and riparian buffers supports several goals and objectives as described in both the ***Asheville City Development Plan 2025*** and the ***Strategic Operating Plan*** (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Plans are underway for road widening for Sand Hill Road, the closest connecting street, based on growth projections for the community. The developer must provide an urban level of service for the development and provide detailed guidelines on how requirement will be met. Other facilities are in place to support the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and does not meet the threshold for requiring a traffic impact analysis, nor is it expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The project would allow for significant preservation of open space and continuous riparian buffers along Enka Lake.
- Extensive trails and sidewalks would be provided connecting residents of the new development to the larger community.

Cons:

- Applicant wishes to gate the community and prevent public access to roads and sidewalks.

Staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use permit.

It should be noted that this development is being proposed as an extension of an existing privately maintained and gated community. At Council direction, staff has prepared an ordinance that prohibits gated communities which was recently reviewed and approved by the Planning and Zoning Commission; this amendment is tentatively slated to come before Council by the end of May.

Recent concerns over the impact of gated communities on the city may be best addressed by our appointed and elected officials as a separate policy matter. Staff recommends that the City Council utilize public input concerning this matter and carefully consider whether the conditional use permit should be conditioned to mitigate any gated community concerns.

Mr. Will Bule, representing the applicant, spoke in support of the conditional use permit and specifically requested Council to allow them to proceed with the gated community as this is just an extension of an existing privately maintained gated community (Applicant Exhibit 1).

After rebuttal, Vice-Mayor Jones closed the public hearing at 6:15 p.m.

In response to Councilwoman Cape, Mr. Bule explained the stormwater measures that will be taken.

When Councilwoman Cape asked if the greenways along the lake edge would be open to the public, Mr. Bule explained that in the past when the lake was open to the public vandalism and damage to property occurred. The homeowners association then felt they needed to police the area better and as a result closed the area to public access.

There was a brief discussion initiated by Councilman Freeborn, resulting in City Manager Jackson reinforcing up front conversations with developers who especially build in our extraterritorial jurisdiction area about voluntarily annexing prior to lots being sold.

In response to Councilman Newman, City Attorney Oast said that when people purchase property in close proximity to the existing City limits and because of the level of development in the surrounding area, realtors could advise the potential property owners that the property is, or may be, eligible for annexation.

Councilman Mumpower moved for the adoption of Ordinance No. 3473, granting a conditional use permit for property located property located on Enka Lake Road for the project identified as Biltmore Lake, Blocks D2-E, for development of 103 residential units, subject to the conditions recommended by City staff and subject to the following conditions: (1) The developer shall provide an urban level of public safety service for the development; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 365

D. PUBLIC HEARING TO CONSIDER REZONING AN AREA INCLUDING PROPERTIES LOCATED AROUND 1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

ORDINANCE NO. 3474- ORDINANCE TO REZONE AN AREA INCLUDING PROPERTIES LOCATED AROUND 1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

Vice-Mayor Jones opened the public hearing at 6:24 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone an area including properties located around 1200 Bleachery Boulevard from RS-8 Residential Single-Family High Density District to Commercial Business I District. This public hearing was advertised on May 4 and 11, 2007.

The area proposed for rezoning has undergone significant changes in the last five years. The most noteworthy change during this time period is the construction of Bleachery Boulevard, the road which now bisects the area and connects Fairview Road to the Riverbend developments and Swannanoa River Road. Three of the four residences that were in the area have been removed. Fairview Avenue, which used to connect through to Fairview Road via a road called Stevens Street, now dead-ends at a row of bollards, preventing automobile traffic flow between Bleachery Boulevard and the neighborhood to its west.

The overall acreage of the area proposed to rezoned is approximately four acres, but just under one and a half acres of that is privately owned property. This area is currently zoned RS-8, a district which was intended to "establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living."

In the period since this zoning district was assigned, the aforementioned characteristics of this particular area which have been modified have trended away from the previous single-family small-street nature. The new street (Bleachery Boulevard) represents more of a thoroughfare for commercial traffic. There is no direct street connection to the adjacent residentially zoned area. Redevelopment with detached homes has not been pursued.

While this area would not have been well-suited for commercial development five years ago, the additional infrastructure provides new options. The new road is built to accommodate commercial traffic. The area is served by transit route 12, which runs both along Fairview Road and Cedar Street. The applicant is seeking rezoning to Community Business I district, whose intent is "to provide areas for medium-density business and service uses serving several residential neighborhoods. (A) community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access."

The changes that have arrived in this stretch of land suggest that the previous residential zoning may no longer be appropriate, and that a commercial designation like that of Community Business I would encourage a more fitting type of development. It should be noted that the constraints of the lots would prevent large-scale developments, and would require careful design to meet parking and buffering requirements should the rezoning be approved.

At their April 4, 2007, meeting the Planning and Zoning Commission voted unanimously to recommend approval of this request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- Recent changes in the subject area have altered its character away from single-family residential.
- Infrastructure is in place to support commercial use.
- Complies with Comprehensive Plan policies and City Council goals.

Cons

- Designing compliant development for the narrow parcels in this area will be challenging.

Staff is of the opinion that the extensive changes to this area since it was assigned the RS8 zoning district have created conditions that lend themselves to an upzoning to allow mixed use, and therefore recommend approval of the petitioners' request.

Vice-Mayor Jones closed the public hearing at 6:27 p.m.

Mr. Harley Dunn, property owner, and Mr. Esselstyn responded to various questions/comments from Council, some being, but are not limited to: what kinds of activities might go on the properties due to the unique shape of the lots; does staff feel that Bleachery Boulevard is a commercial corridor; does staff have any concern of the proximity to the residences behind the property on the west side; what is the height limit in the Commercial Business I District; why did staff recommend the Commercial Business I District; what type of buffering and landscaping would be required between these properties and the existing residences; and how wide are the lots being proposed to be rezoned.

Councilwoman Cape was concerned about putting a commercial corridor through a residential area and the amount of traffic that would be generated on Bleachery Boulevard, especially without knowing the actual uses on the lots.

Vice-Mayor Jones said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3474, noting that City Council finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilwoman Cape voting "no."

ORDINANCE BOOK NO. 23 - PAGE 371

E. PUBLIC HEARING TO APPROVE THE LEASE/PURCHASE AGREEMENT AND PAYMENT FOR OVERLOOK PARK

RESOLUTION NO. 07-104 - RESOLUTION APPROVING THE LEASE/PURCHASE AGREEMENT AND PAYMENT FOR OVERLOOK PARK

Vice-Mayor Jones opened the public hearing at 6:41 p.m.

City Attorney Oast said that this is the consideration of a resolution authorizing the City to enter into a lease-purchase agreement with The Trust for Public Land for the acquisition of 29.62 acres of land on Beaucatcher Mountain. This public hearing was advertised on May 4, 2007.

On March 20, 2007, Council approved in concept the acquisition of 29.5 acres of land on the west slope of Beaucatcher Mountain. The acquisition is to be facilitated by The Trust For Public Land (TPL), a non-profit land conservancy organization with which the City has worked in the past (Broadway Greenway, Jake Rusher Park). Funds for the purchase are to come from several sources, including grants, private donors, and contributions from the City and Buncombe County at $575,000 apiece. The total purchase price is $2.6 million.

Because only part of the purchase money ($1.4 million) will be available at closing, it is necessary for the remainder of the purchase to be financed. TPL proposes to do this over the course of three years, and therefore proposes a lease-purchase agreement with the City. In this arrangement, TPL would acquire the property, and obligate itself financially to the seller. TPL would then lease the property to the City for a three-year term. The annual lease payments would be approximately equal to the amounts that TPL anticipates receiving – in grants and pledges – for each year, and rather than being paid by the City, would be applied to the annual lease payment, which would then be applied to the balance of the purchase price. The lease payments reflect the "carrying costs" (9.25% interest on unpaid balance) of TPL's purchase contract. He reviewed a table showing the estimated lease payments over this term. At the end of the lease term, the property would be transferred in fee to the City, at the City's option. One of the grants anticipated in year 2 of is a $500,000 grant from the Parks and Recreation Trust Fund

(PARTF); this grant is still in the application phase, and there is no assurance that it will be awarded, although the application will be strong.

The conveyance to TPL, and accordingly, the lease and anticipated conveyance to the City will be subject to appropriate conditions regarding the use of the land as a park, along with some matters of an operational nature, such as the naming of some facilities. Although Buncombe County had previously indicated an interest in participating in the development and operation of the park, discussions have been that the City would operate it.

Although TPL has every expectation that the amounts that it expects to receive in donations and grants will be paid as promised, including the payments by Buncombe County, the possibility exists that shortfalls in anticipated contributions would occur, or that anticipated grants might be less than fully funded. In this event, the City would be legally responsible for any shortfall in the amounts credited to the annual lease payments. TPL has indicated, however, that it has assurances from private donors that these amounts will be covered, and that the City will be covered to the extent of any exposure. In the event of a shortfall that is not covered, the City has the option of not making up the difference, but risks losing the opportunity to acquire the property, and the lease would terminate with no refund of funds paid to that point. In this event, TPL indicates that it will work with the City ensure that the contract is fulfilled.

Pros:
- The City obtains use and ownership of a substantial and significant property
- The City's costs for this acquisition are substantially less than they would be if the City attempted to acquire the property directly on its own.
- Opportunity for cooperation with Buncombe County.

Cons:
- Possibility that the City could be legally responsible for lease payments if funds are not collected as anticipated.
- Incremental administrative costs.
- Additional capital expenditures in out years for development and maintenance of park.

If Council approves of this proposal, adoption of the resolution is recommended.

Vice-Mayor Jones closed the public hearing at 6:45 p.m.

Councilwoman Cape said that it is her understanding that we have commitments from private citizens for the initial $675,000 and should the Parks & Recreation Trust Fund grant not come to us, we have already been guaranteed by two private funders to support that. We have not even gone out to the public to fund raise yet. The private funds you see at this point, have been raised from less than 10 individuals and we are waiting to get this piece finalized before starting the private fund-raising piece to cover the interest for the City, set up a foundation for the development of the park, etc. In a worse case scenario, the TPL is the purchasers of this property and at the end of the three years if all can't work, the City does not have to follow through on this.

Councilman Mumpower explained how he felt this concept has changed since approval on March 20, 2007, and would not be supportive of this action.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-104. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no".

At 6:56 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, Errol Alexis Green, and Asheville Police Department Officers Daryl Fenton, Tim Brake and Anthony Waters. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:15 p.m., Councilman Newman moved to come out of closed session and return to the regular meeting. This motion was seconded by Councilman Freeborn and carried unanimously.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DISPOSE OF AN INTEREST THE CITY HAS IN REAL PROPERTY LOCATED AT 24 GRAIL STREET

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to dispose of the City's interest in real property at 24 Grail Street and the adjoining parcel.

In 1990 the Housing Authority (the City's redevelopment agency) sold a house at 24 Grail Street and an adjoining parcel to Hospitality House of Asheville, subsequently renamed Homeward Bound of Asheville, as a transitional shelter for the homeless. The City also made a $100,000 CDBG grant to Homeward Bound to acquire and renovate the house.

The deed for each property includes a restriction whereby the ownership of the property reverts to the City of Asheville if it ceases to be used as a homeless shelter.

Homeward Bound has operated the properties as a shelter continuously for 17 years. Recently, Homeward Bound decided to focus on assisting the homeless to obtain permanent supportive housing rather than providing temporary shelter. Homeward Bound plans to sell this transitional shelter and use the sales proceeds to expand or replace its "A HOPE" day center, which is no longer large enough for its purpose.

Homeward Bound has found a buyer for the property, but is unable to convey it because of the existence of the deed restrictions. It has requested that the City remove the deed restrictions, in exchange for a commitment by Homeward Bound to use the proceeds of sale to expand or replace its "A HOPE Center." According to the City Attorney's Office, the conveyance of the City's reversionary interest to a non-profit to promote a public purpose is authorized by law.

Pros:

- Directly supports implementation of the City and County's 10-year Plan to End Homelessness.
- Supports expansion of the A HOPE Center, which helps reduce the impact of homelessness on our downtown.
- Continues to support the broad objectives of the original CDBG grant.

Cons:

- The only negative impact is the City surrenders its right to eventually re-possess property worth approximately $225,000 to the CDBG fund.

- The transfer may continue to concentrate homeless population in one area of downtown.

City staff supports the request from Homeward Bound.

On May 8, 2007, City Council referred this matter to the Planning & Economic Development (PED) Committee. On May 9, 2007, the PED Committee reviewed the request from Homeward Bound and made the following recommendation:

That the request from Homeward Bound to remove the reversion requirement with regard to the property at 24 Grail Street be approved to allow Homeward Bound to utilize the proceeds of the sale to expand or replace its A HOPE Center subject to the condition that Homeward Bound work with City staff with regard to expansion of services and/or relocation of the A HOPE Center in order to minimize any negative impact resulting from the concentration of homeless services in one area.

The Housing & Community Development Committee reviewed the request and agreed with the PED Committee's recommendation.

Councilman Freeborn and Davis commented on the continued concentration of homeless individuals in downtown.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-103, subject to the condition that Homeward Bound work with City staff with regard to expansion of services and/or relocation of the A HOPE Center in order to minimize any negative impact resulting from the concentration of homeless services in one area. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 330

VI. NEW BUSINESS:

A. UPDATE ON THE CIVIC CENTER EVENT MANAGEMENT PLAN

Civic Center Director David Pisha said that the purpose of this briefing is to provide an overview of the Asheville Civic Center's event management practices as requested by City Council's Public Safety Committee.

The Asheville Civic Center is dedicated operating the facility according to four key guiding principles:

1. The Asheville Civic Center will provide an enjoyable and safe venue for patrons.
2. The facility will maximize the City of Asheville's financial solvency by operating as efficiently as possible.
3. The venue will serve as a public gathering space with a diverse mix of events and activities.
4. The staff will provide an exceptional level of customer service to both facility patrons and those who rent the venue.

These principles are intended to guide the professional management of every event at the Civic Center and to inform the public and our stakeholders about the standards they can expect regardless of the type or size of event they attend.

Having said that, each event at the Civic Center is unique and has its own operational requirements; therefore, certain aspects of event management, including security, are determined on an event-by-event basis within the framework of industry best practices. When working with a promoter to book an event, we will consider several factors when determining the level of security required including the event's expected ticket sales, the type of seating in the venue, past experience with similar events, industry benchmarks, etc.

During the last few years, the Asheville Civic Center has experienced a steady increase in the number of large, arena events. These events typically require more security due to larger crowds and open seating arrangements. Because of this shift in our event mix, the Asheville Civic Center has looked at other venues for best security practices and implemented a Concert Action Plan to assure our facility exceeds industry standards when it comes to the safety of our patrons.

Based on the results of the Concert Action Plan, the facility has adopted standard practices like prohibiting large bags from all events to enhance the venue's security. The Civic Center has also improved coordination with other city departments and divisions including the Asheville Police Department, the sanitation division and the traffic engineering division to ensure patrons have a safe, enjoyable experience inside and outside of the building.

The report on the Civic Center's event management plan was presented to the Public Safety Committee on April 3, 2007.

Councilman Mumpower requested that when Council is reviewing an item, that the actual report be included in Council's agenda package.

Mr. Pisha responded to Councilman Mumpower's question about what the Civic Center is doing differently now than what it did three months ago.

Councilman Mumpower suggested the Civic Center staff review policies from other cities with the emphasis on if people misbehave by smoking, doing drugs, etc. that they are arrested, told to stop or escorted out. He suggested that in a 4-6 month timeframe that this issue be brought back up again and Council be advised on how we are enforcing the rules in the Civic Center.

Mr. Pisha responded to Councilwoman Cape's question of the action plan for the guiding principles, such as Concessions trying to find ways to expand their menu; Civic Center management staff attending conferences to interact with their peers to find best practices; etc.

Councilwoman Cape suggested a recycling effort at the Civic Center, which could be as simple as placing some recycling containers in the different venues.

After a short discussion of the lack of review of this item by the Civic Center Commission due to a lack of quorum at the Civic Center Commission meeting, City Manager Jackson said that this item will be on the next Commission meeting's agenda.

B. **RESOLUTION NO. 07-105 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE BILTMORE LAKE AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007**

RESOLUTION NO. 07-106- RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE SARDIS ROAD AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007

RESOLUTION NO. 07-107 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE SCHENCK GATEWAY AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007

Urban Planner Julia Cogburn said that this is the consideration of resolutions stating the intent of the City to annex the Biltmore Lake, Sardis Road and Schenck Gateway areas.

The City's policy is to include within its corporate boundaries areas that are urban in nature and meet State of North Carolina qualification requirements. Staff has identified three areas: Biltmore Lake, Sardis Road, and Schenck Gateway with potential for being annexed. Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

Staff has provided two schedules for review by City Council members. Both have the same effective dates. The main differences in the schedule are the date of the Public Information Meeting and the date of the adoption of the Services Plan. Staff provided two schedules due to concern over having the Public Information Meeting during the week of the 4th of July (Schedule #1). If Council wants to proceed under schedule #2, passage of the Resolution of Intent will need to be continued until the 22nd of May. Two resolutions are presented; one resolution for each of the suggested schedules.

The following steps and dates meet the process required by State law:

Suggested Schedule #1

- Council Adoption of Resolution of Intent – 5/15/07
- Council Adoption of Services Plan – 5/22/0
- Public Information Meeting – 7/2/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07
- Effective Date – 12/31/07

Suggested Schedule #2

- Council Considers Resolution of Intent and Schedule – 5/15/07 (Continues Until 5/22/07)
- Council Adoption of Resolution of Intent – 5/22/07
- Council Adoption of Services Plan – 6/12/07
- Public Information Meeting – 7/16/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07
- Effective Date – 12/31/07

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.

Cons:

- Residents of proposed annexation areas may object to such annexation.

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Biltmore Park, Sardis Road, and Schenck Gateway areas.

In response to Councilman Freeborn about area residents interested in annexation but not included in this proposal, Ms. Cogburn explained that there are tightly prescribed requirements per the N.C. Gen. Statutes and those properties would not qualify. In addition, we also try to make our boundaries follow lot lines or actual roadways. She did, however, offer those residents the voluntary annexation option.

Ms. Cogburn said that the video that is used at the public information meeting which (1) describes the area, (2) shows how the area meets the qualifications, (3) describes the services that would be provided, and (4) explains the basic financing element, can be placed on the City's Government Channel. In addition, she feels that information can be placed on the City's website as well.

Councilman Newman hoped that in the near future the City will have some tools that other cities have to make the annexation process a lot healthier process, such as working with developers at the beginning so that when people move into the development, they know they will become part of the City. The annexation process is an issue of fairness of how we pay for services and infrastructures that are critical to the future health of the whole Asheville metro area.

Councilman Mumpower felt that there are legitimate arguments in support and against annexation, however, in his opinion, the negative aspects outweigh the positive arguments.

Councilwoman Cape said that in the annexation conversations, one of the things that helps her understand is the distinction between city and county roles. It's interesting to look at the mandate for what makes a city and what makes a county, and a lot has to do with public safety and the closeness of people living together. It has been determined by the N. C. government that public safety is better enhanced with a municipal structure when people live close together, both through building codes and public safety issues.

Vice-Mayor Jones said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Cape moved for the adoption of Resolution No. 07-105, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 333

Councilman Cape moved for the adoption of Resolution No. 07-106, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 337

Councilman Cape moved for the adoption of Resolution No. 07-107, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 341

C. CONSIDERATION OF AN APPOINTMENT TO THE CIVIL SERVICE BOARD

At the request of Vice-Mayor Jones, Councilman Mumpower moved to continue the consideration of interviews for an appointment to the Civil Service Board until May 22, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

VII. OTHER BUSINESS:

Councilman Mumpower expressed appreciation to the For Our Kids Program volunteers and to the volunteers and sponsors for the Top-A-Stop Program.

Councilman Davis invited the public to a presentation by the N.C. Symphony which will honor all the music in North Carolina on May 25, 2007, at the Thomas Wolfe Auditorium.

Councilwoman Cape noted that May 17, 2007, is Arbor Day and urged the citizens to participate in this event.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Vice-Mayor Jones adjourned the meeting at 8:15 p.m.

CITY CLERK

MAYOR

Tuesday – May 22, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

The Asheville High School Debate Team led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. ASHEVILLE HIGH SCHOOL DEBATE TEAM RECOGNITION

Mayor Bellamy recognized the Debate Coach Keith Pittman, Assistant Debate Coach Larry Burke, and the Asheville High School Debate Team. On behalf of City Council, Mayor Bellamy wished the Team well as they represent North Carolina at the NFL National Championship Debate Championship in June of this year.

II. CONSENT AGENDA:

Councilman Mumpower requested Consent Agenda items "D" and "E" be removed from the Consent Agenda for individual discussions.

Mayor Bellamy requested Consent Agenda Item "F" be removed from the Consent Agenda for individual an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 15, 2007

B. RESOLUTION NO. 07-108- RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX PROPERTY AT 1903 OLD HAYWOOD ROAD (FIRE STATION #10) AND SETTING A PUBLIC HEARING ON JUNE 12, 2007

Summary: The consideration of a resolution stating the intent of the City to annex property at 1903 Old Haywood Road, the site of the new fire station and setting a public hearing on June 12, 2007.

The City of Asheville is completing construction of a new fire station, Fire Station #10, at 1903 Old Haywood Road in West Asheville. The station is scheduled to become operational in July of this year.

This property at 1903 Old Haywood Road (PIN 9618.20-90-5200) is contiguous to the current city limits of the City of Asheville but not located within the corporate boundaries. Part 1 of Article 4A of Chapter 160A of the North Carolina General Statutes authorizes annexation of property owned by a municipality and contiguous to current municipal boundaries.

Under State law, the City must follow a specific process for annexation of such properties that begins with the adoption of a resolution that describes the boundary of the area under consideration, and fixes dates for a public hearing on the question of annexation.

Pros:

- Brings city owned-property into the corporate limits in accordance with state law.

Cons:

- Some property owners in the area may be concerned about annexation of their property.

City staff recommends that City Council adopt the resolution of intent stating the City's intent to annex the property at 1903 Old Haywood Road.

RESOLUTION BOOK NO. 30 - PAGE 345

C. ORDINANCE NO. 3475- BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND BUDGET TO REFLECT UPDATED FISCAL YEAR 2006-07 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the Civic Center Fund budget by $150,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

Due to a higher than expected number of events this year, Civic Center Fund revenues & expenditures are expected to exceed budget by the end of Fiscal Year 2006-07. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the last two months of the current fiscal year, staff is recommending that the Civic Center Fund expenditure budget be increased by $150,000. The additional operating revenue generated by the higher event load will cover the cost of the budget amendment; therefore no additional transfer from the General Fund is required. Staff is estimating that the year-end operating deficit for the Civic Center will be slightly less than the budgeted deficit of $413,340.

PROS:

- Provides sufficient budget authorization for anticipated expenditures in the Civic Center Fund without increasing the General Fund subsidy.

CON:

- None.

City staff recommends City Council approve a budget amendment to increase the Civic Center Fund budget by $150,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

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D. RESOLUTION AUTHORIZING THE CITY MANGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB CLEAN UP

This item was removed from the Consent Agenda for individual discussion.

E. BUDGET AMENDMENT TO RECEIVE THE DEPT. OF JUSTICE FUNDS FOR METHAMPHETAMINE LAB INVESTIGATIONS

This item was removed from the Consent Agenda for individual discussion.

F. RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2007 BELE CHERE FESTIVAL

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 07-109 - RESOLUTION AUTHORIZING THE CITY MANGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB CLEAN UP

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under The Department of Justice, Office of Community Policing Services to assist Asheville Police Department with the purchase of methamphetamine lab investigation equipment, provide for officer training and officer overtime in meth lab clean up and the associated budget amendment in the amount of $172,765.

The City of Asheville has been awarded a grant from Department of Justice Office of Community Oriented Policing Services for the Methamphetamine Program in the amount of $172,765 with no local match. The purpose of the grant program is to fund Methamphetamine projects, allowed under the grant program designed to train officers in proper handling and evidence collection, train the public on cues to meth lab operation, to pay for officer overtime for security of methamphetamine lab clean up, and provide needed equipment for proper response to meth labs.

Pros:

- Will provide the public with needed information on how to spot possible meth lab operation which will enhance public safety.
- Proper officer training will aid in reduction of injure to officers responding to possible meth labs.
- The equipment will increase officer safety in response to possible meth labs.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment purchased.
- Provide overtime pay for officers securing meth lab locations once the grant funds were depleted.

This action complies with Asheville City Council Strategic Plan in the priority area of Community Building - Development strategies for youth and educational programs and Economic Development - Continue commitment to public safety and drug enforcement priorities.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under The Department of Justice, Office of Community Policing Services to assist Asheville Police Department with the purchase of methamphetamine lab investigation equipment, provide for officer training and officer overtime in meth lab clean up and the associated budget amendment in the amount of $172,765.

Police Chief Bill Hogan explained that the primary goal of this grant is to aid in the suppression of the sale, distribution, and use of illegal drugs, with emphasis on methamphetamine. In 2006 there were 5 labs in Buncombe County and 1 lab in Asheville. In 2005 there were 15 labs in Buncombe County and Asheville. In 2004 there were 23 labs in Buncombe County and Asheville. Methamphetamine is less than 5% of our drug cases but it is a growing problem that is being marketed more often in our community. The dramatic decline in small local labs is a result of new legislation restricting the access and sale of pseudophedrine. This reduction is being seen throughout our state and local meth represents 5% or less of our meth cases. Mexican ICE is easier to obtain and better quality. Large scale distributors are primary Hispanic/Latino but local dealers mirror our community. We have arrested dealers that are white, black, and Hispanic/Latino.

Police Chief Hogan responded to various questions from Councilman Mumpower, who would support the motion if we are not sidestepping the intent of the grant as we applied for it.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-109. This motion was seconded by Councilman Freeborn and carried unanimously.

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E. ORDINANCE NO. 3476 - BUDGET AMENDMENT TO RECEIVE THE DEPT. OF JUSTICE FUNDS FOR METHAMPHETAMINE LAB INVESTIGATIONS

Summary: See Consent Agenda "D" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3476. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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F. RESOLUTION NO. 07-110 - RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2007 BELE CHERE FESTIVAL

Summary: The consideration of a resolution providing for the possession and consumption of malt beverages and/or unfortified wine at the 2007 Bele Chere Festival.

The Bele Chere Board has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at this event.

For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 27-28, 2007.

Pros:

- Allows fundraising opportunities for charities.
- Generates economic impact for the community.

- Provides additional quality cultural programming and diversity.

Con:

- Potential for behavioral issues and litter.

The Asheville Parks and Recreation Department is submitting this resolution on behalf of the Bele Chere Board of Directors.

Staff recommends City Council approve a resolution providing for the possession and consumption of malt beverages and/or unfortified wine at the 2007 Bele Chere Festival.

Councilwoman Cape moved for the adoption of Resolution No. 07-110. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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REQUEST TO ADD ITEM TO THE AGENDA

Councilman Mumpower requested to add a short presentation under "Other Business" regarding the confrontation of the open air drug market. He felt that when this issue comes back up in June, it will not allow staff ample opportunity to respond to the issue to allow Council to provide budgetary support.

Councilman Newman looked forward to further deliberations about this issue; however, Council will have other worksessions related to the budget.

Councilman Davis moved to add the short presentation under "Other Business." This motion was seconded by Councilman Mumpower and failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape Councilman Freeborn and Councilman Newman voting "no."

Mayor Bellamy said that anytime during the year, City Council has the opportunity to make budget amendments.

When Councilman Mumpower asked if he would be at liberty of making the presentation under "Informal Discussion and Public Comment," City Attorney Oast said that a Council Member qualifies as a member of the public.

III. PRESENTATIONS & REPORTS:

A. HUB'S COMMUNITY & ECONOMIC DEVELOPMENT REPORT

Mr. Virgil Smith updated City Council on Asheville's HUB Project, which is Asheville and Buncombe County's collaborative, sustainable, intentional community, cultural, and economic development strategy. Without HUB we would not have (1) high speed computing ($1.5M, RENC); (2) First geek-like collaboration for development; (3) 30 business plans for new ventures (CTC); (4) SEO analysis of Clean Energy Cluster in WNC; (5) downtown farmer's market; (6) proposed federal appropriation for clean energy business incubator at A-B Tech; (7) plan for a climate/weather museum attraction; (8) climate emphasis (designation as NOAH community); (9) developing sustainability metrics; and (1) as much networking and synergistic knowledge sharing.

HUB is a national buzz attracting tourists, businesses, creative class, professionals, students and retirees, but it will not be sustained without bold, collaborative action. Asheville's opportunities are in reach, but other communities will not wait for us to seize the initiative - the spotlight is forever shifting. HUB is a mechanism for (1) refocusing our development strategy (a)

community and cultural in addition to economic; (b) hot themes - technology, rejuvenation, creativity; and (c) matches who we - Asheville - area; (2) combining agendas and collaborating among the City, County, business and non-profit; and (3) mobilizing the entire community to achieve a few specific goals - e.g., climate, riverfront, green - and attracting very big dollars from the outside.

Ms. Janice Brumit said we've proven we can collaborate as seen by the number of leaders on board. We have a great vision to better jobs and higher quality of life.

The next steps consist of (1) implement metrics (by August); (a) economic prosperity - jobs, wages, investments; (b) social responsibility - housing, middle class; and (c) environmental stewardship - sustainability; (2) radically expand the number of people involved with HUB, especially by publicizing HUB and expanding the use of its collaborative website; (3) finish plan and staff alliance for implementation; (4) jointly - City, County and Alliance - pursue work plans to implement the HUB vision and plan; and (5) focus collaborative efforts upon 2 or 3 timely and big potential projects, e.g., climate - while maintaining momentum in all programs.

Mr. Smith said what we are asking from City Council is (1) continuation and support of HUB via meeting space and staff time, collaborative participation; (2) coordination of the City's development efforts with HUB clusters, and especially the climate campaign; and (3) coordination with the County in emphasizing key development initiatives.

Councilwoman Cape encouraged Council to support and partner with the HUB, stressing the importance of the climate initiative.

In response to Councilman Davis' request for additional information on the climate initiative, Ms. Brumit explained that Asheville has the largest environmental data base in the world and we are poised to be the real time environmental weather center of the world. The federal government is poised to invest billions, state legislators are interested in development of an experimental climate attraction for school kids (like a planetarium), and UNC-Asheville and A-B Technical College are already into applied visualization. We already have (1) an applied visualization business sector with established NOAA, NASA and international contacts (e.g., Black Box Studio - immersive environments for education and decision support); and (2) applied visualization lab collaboration between UNC-Asheville/NEMAC, RENCI, MAP, Elumenati and Bent Creek Institute (underway in Asheville). She stressed the need for action as there is potential competition from Boulder, Colorado; Oklahoma City, Oklahoma; and Silver Springs, Maryland.

In response to Councilman Mumpower, Mr. Smith said that the preliminary tentative budget is $500,000, with the City's portion being 1/3 ($166,000). Mr. Smith stressed, however, that it's a public/private partnership and we need to work out what the part of the budget will the City take on, what part will the County take on, and what we can raise from local funds, foundations, the state, etc.

Mayor Bellamy thanked Mr. Smith and Ms. Brumit for the update and would look forward to the next report containing specifics on what they would like to accomplish and a budget showing revenues and expenditures.

B. ENVIRONMENTAL PARTNERSHIP WITH WARREN WILSON COLLEGE

Warren Wilson College (WWC) President Sandy Pfeiffer introduced Ms. Margo Flood, Incoming Director of the Environmental Leadership Center, who in turn explained a partnership proposal to the City of Asheville of working together to increase energy efficiencies.

Warren Wilson College and the City of Asheville's respond to the challenge. We must reduce the planet's greenhouse gas emissions 30% to 50% below 1990 levels by 2050. On its

current course, North Carolina is projected to have more than a 113% increase in greenhouse gas emissions from 1990 to 2050. We must work locally to increase energy conservation efforts by (1) inventory greenhouse gas emissions; (2) improve efficiencies; (3) plan reductions; and (4) monitor goals.

We are committed to action as seen by the City of Asheville - (1) US Conference of Mayors "Mayors Climate Protection Agreement;" and (2) International Council for Local Environmental Initiatives (ICLEI). And as seen by Warren Wilson College - (1) Talloires Declaration; and (2) American College and University Presidents Climate Control Agreement. Our shared goals include (1) educate of the public; and (2) increase energy conservation efforts - (a) adopt green-building practices; (b) encourage public transportation; and (c) inventory and monitor emissions.

A partnership makes sense. (1) WWC is fast becoming the leading sustainable campus in the nation. Asheville has national prominence for its quality of life; (2) WWC is a demonstration site for green buildings and energy conservation. Asheville intends to adopt green building practices and an energy conservation plan; and (3) WWC is committed to lead by example. Asheville is in the spotlight and its actions will serve as an example.

Ms. Flood explained how WWC is making progress in the areas of building and energy; transportation; waste; education and milestones.

WWC actions are informed by our greenhouse gas inventory. WWC average annual electricity usage is 4.4 million kWh, costing $400,000. Data shows that even with a 5.1% increase in enrollment and a 1.2% increase in building square footage between the 2003 and 2006 academic years, total electricity consumption at WWC dropped by 4.2%. Building emissions account for over 75% of the air emitted by the College. We offset 100% of our electricity emissions with renewable energy credits.

A few examples of how we can accomplish more as partners is (1) access state-of-the-art research on best practices (a) consultation from WWC regarding LEED-design and certification process; (b) use of WWC as a demo site for state-of-the-art sustainable practices; and (c) development of WWC student and faculty research projects to inform goals and practices; (2) accelerate our progress on climate commitments; (a) development of similar templates for greenhouse gas emissions inventory; and (b) access to modeling tools in WWC GIS lab; and (3) build upon our visibility and develop a national model; (a) creation of web access to partnership plans and accomplishments; and (b) assessment of the value of higher education/city governmental partnership.

The next step will be to (1) formalize partnership; (2) clarify goals; (3) develop work plan; (4) track results; and (5) celebrate success.

Mayor Bellamy asked that City Council tour the WWC campus to look at what energy saving initiatives they already have underway that we might be able to utilize.

After a short discussion of the possibilities of this partnership, Councilman Mumpower moved to ask the Energy & Environment Committee to review this partnership initiative and subject to their approval, that City Council partner with WWC in this initiative. This motion was seconded by Councilwoman Cape and carried unanimously.

C. **RESOLUTION NO. 07-111 RESOLUTION AUTHORIZING CITY COUNCIL TO APPROVE THE ISSUANCE OF THE REQUEST FOR QUALIFICATIONS (RFQ) FOR THE FOLLOWING FOUR CITY-OWNED PROPERTIES: HAYWOOD STREET PROPERTIES AT THE CIVIC CENTER, EAGLE-MARKET STREET PROPERTIES, OFFICE OF ECONOMIC DEVELOPMENT, AND PARK MAINTENANCE PROPERTIES; AND AUTHORIZING CITY STAFF TO**

PROCEED WITH THE DUE DILIGENCE FOR THE FOUR SELECTED RFQ PROPERTIES

Economic Development Director Sam Powers said that this is the consideration of Phase Two of City-owned properties to be included in a Request for Qualifications (RFQ) for interested developers.

In early 2006, City Council directed staff to review existing city owned properties for possible redevelopment to meet Council strategic goals. Staff made a presentation to Council and identified approximately 18 city owned "sites" in the greater downtown area that staff considered potentially suitable for redevelopment. Council approved moving forward with Phase One and issued a Request for Qualifications from developers for four sites. After a successful RFQ process, Council approved a development agreement with Mountain Housing Opportunities to develop Ralph and Choctaw Streets. Old Asheland Avenue has been since reserved by Council for an innovative workforce housing project under consideration for the site. Asheland Avenue did not receive any Statements of Qualification or proposals.

Staff then reviewed the remaining sites in greater detail and in November 2006, presented the results to Council. Council approved moving forward with seven sites. In January 2007, Council approved retaining project management assistance from the firm Real Estate Research Consultants (RERC). RERC has assisted numerous other municipal clients with successful public-private partnerships to redevelop public property.

RERC has conducted a market overview of the Asheville area to determine the best recommended approach for the seven sites. They met with over 20 stakeholder groups in the area, in addition to city staff, and quantified Council member's goals to help prioritize the sites so they reflect highest and best use, maximize residual land values for public purpose, and reflect City Council policy objectives. A recommended Request for Qualifications has been developed and is ready for release. Public comment has been received by City Council at each meeting in Phase One and Phase Two, a public information meeting was conducted in April 2006 on Phase One, and a public information meeting is scheduled prior to the Request for Proposal (RFP) stage of Phase Two. Additionally, in order to help provide information to the public and interested parties, a web page has been activated on the City web site devoted to the RFQ process.

Assuming City Council approves proceeding as recommended, negotiations with the preferred development team for each site is projected to begin in spring 2008.

Pros:
1. Leverages real estate for community benefit.
2. Guide development that meets public goals established by City Council.
3. Potential for facility consolidation to maximize economies of scale.
4. Market appears ready and interested in the recommended sites.
5. Phasing allows planning for maximizing site potential for remaining sites.

Cons:
1. Cost-benefit of relocation of municipal facilities.
2. Individual sites have unique considerations.

Staff recommends that City Council approve issuance of the RFQ for the four properties: Haywood Street properties at the Civic Center, Eagle-Market Street properties, Office of Economic Development, and Park Maintenance properties; and proceed with due diligence for the four selected RFQ properties.

Mr. Matt Taylor, Vice-President and COO of Real Estate Research Consultants, briefed City Council on their qualifications.

The RFQ-RFP process overview is complex, but not complicated - (1) goals and objectives; (2) market opportunities and constraints; (3) RFQ; (4) developer qualifications; (5) public open house; (6) RFPs; (7) evaluate and select developer(s); and (8) negotiate developer agreement(s).

He explained several successful private-public partnership projects.

The benefits for Asheville are (1) leverage real estate for community benefit; (2) no additional cost to taxpayers; (3) property tax base; (4) new jobs; (5) development that meets community goals; and (6) vibrant and sustainable downtown.

The City's goals and objectives are (1) workforce housing; (2) enhanced tax base; (3) smart growth; (4) realistic market opportunities; (5) attract innovative developers; (6) path to redevelopment next 2 to 4 years; (7) focus City efforts to be results-oriented; (8) transparent process; (9) best use of public assets; (10) economically and environmentally sound; (11) potential public space; (12) involve local businesses; (13) support City's Minority Business Plan; (14) cost-benefit of relocating municipal facilities; (15) limit impact on taxpayers; and (16) promote live-work-play downtown.

The market opportunities and constraints consist of (1) moderate, stable growth market; (2) small to mid-scale projects; and (3) limited land available.

Using a chart, he explained the City of Asheville's supportable and relevant market demand information.

He explained the RFQ process of establishing the baseline ability of developer(s) to implement desired project(s) - relevant experience; track record; financial capability; equity sources and lending history; management approach; and litigation history.

The developer qualifications would be reviewed by an evaluation committee (1) composed of City staff and RERC; (2) evaluates developer submittals; © recommends list of pre-qualified development teams for City Council approval; and (4) conducts meetings with developers prior to issuance of RFP.

The public open house would be a forum for the public to obtain information and be an opportunity to share updates.

He explained the RFP process of soliciting "implementation road maps" from pre-qualified developers. RFP responses would consist of detailed, feasible development program; creative planning and design solutions; resources (public and private) pledged to project; detailed project budget, including project "returns;" financial assurances or other performance guarantees; acceptance of development agreement principles; and non-contingent price proposal, if appropriate.

To evaluate and select the developer would consist of (1) capacity to meet City's goals; (2) economic and physical issues; (3) practicality of land use plan; (4) designs, budgets and specifications; (5) credit history and financial capacity; (6) ownership and management; (7) overall business deal; (8) respective roles of public and private parties; and (9) respondent interviews.

The negotiated development agreement(s) would consist of (1) specific plan provisions; (2) design standards; (3) City's obligations; (4) developer's obligations; (5) payment schedule, public/private; (6) takedown schedule, if applicable; (7) inter-local agreements, if applicable; and (8) remedies available to the parties.

Evaluation of City-owned properties included numerous City-owned sites evaluated; narrowed evaluation to 7 sites; and prioritized opportunities for 7 sites as follows.

For the Haywood Street properties at the Civic Center, the acreage is 77 acres; zoning is Central Business District; support uses include an upscale hotel (150 rooms), retail/limited office (10,000 sq. ft.), structured parking; development timeframe is 2-4 years; and priority is 1 - near term.

For the Eagle-Market Street property, the acreage is .31 acres (potential for 41 acres total with adjacent private land - includes the Ellison and McGlohon properties); zoning is Central Business District; supported uses include multi-family residential (potential live-work units) or office condos; development timeframe is 1.5 - 3 years; and priority is 1 - near term.

For the Office of Economic Development (29 Haywood Street), the acreage is .18 acres; zoning is Central Business District; supported uses include multi-family residential with ground floor commercial or office condos; development timeframe is 1.5 - 3 years; and priority is 1 - near term.

For the Park Maintenance properties, the acreage is 3.61 acres; zoning is Community Business I District; supported uses include multi-family residential (115 workforce housing units) with limited commercial; development timeframe is 1.5 - 3 years; and priority is 2 - minor remedy required.

For the Transit Operations Center, the acreage is 3.51 acres; zoning is Institutional; supported uses include multi-family residential (110 workforce housing and market rate units); development timeframe is 3-5 years; and priority is 3 - significant planning required.

For the Parkside property, the acreage is 2.47 acres; zoning is Central Business District; supported uses include office (100,000 - 140,000 sq. ft.), upscale hotel (150 rooms) or residential condos (75-100 premium market units), supporting commercial, structured parking; development timeframe is 5-7 years; and priority is 3 - significant planning required.

For the South Charlotte Street properties, the acreage is 13.79 acres; zoning is Central Business District; supported uses include corporate headquarters (target industry) or educational/training campus and complementing users or multi-family residential (500 market and workforce housing units) and commercial (500,000 sq. ft.); development timeframe is 8-10 years; and priority is 3 - significant planning required.

The recommendations are 1) issue RFQ for these four properties - Haywood Street at Civic Center, Eagle-Market Street, Office of Economic Development, and Park Maintenance properties; and (2) proceed with due diligence for the 4 RFQ properties - (a) property title; (b) boundary survey(s); (c) environmental assessment(s); (d) potential City incentives; (e) draft development agreement principles; and (f) other owner's responsibilities.

In response to Vice-Mayor Jones, Mr. Taylor said that in sending out the RFQ, City Council is not approving any of the supported uses identified that the market would support, but only asking developers to express their interest in the possibility of redeveloping these sites. There are no commitments made on behalf of the City until the RFP stage, and even then, the City has the right to pull out up until the development agreement is actually signed.

Vice-Mayor Jones asked City Manager Jackson how he envisioned this process interfacing with the downtown master planning process. He responded that the four projects we are ready to go to market with conform with the vision. We have had meetings with stakeholders and solicited input. With the subsequent due diligence, that ties right into and will be a component into the downtown master planning, as it specifically relates to these properties. There is one other part to it that will not be a significant part of the due diligence and will not be

part of the downtown master planning and that is our responsibility to do the facility master planning for where we will relocate things, like the Transit Operations Center.

Councilwoman Cape was concerned about how we frame the RFQ's until the master planning process is complete. Our properties should be used for things that enhance our community. She questioned how we can articulate the RFQ better other than just say the site will support an upscale hotel. She just doesn't want to sell our property to the highest bidder and was not supportive of hotel. The properties have more strategic value than just a tax base and she wants to make sure that we steward our land in a way that is beneficial to the community.

Councilman Mumpower didn't think it was fair to put out RFQ's unless we can provide reasonable assurances to the developers that will allow them to do what we are proposing the options are. He supported moving forward, but only with the understanding that we are going to be good partners and try to bring them to life.

Councilman Newman asked for financial information on the cost of building a new Transit Operations Center and the costs associated with the relocation of such a facility. He also asked for more detailed information on what properties the City actually owns around the Civic Center.

In response to Mayor Bellamy, Mr. Taylor explained the timeline for proceeding with Phase Two.

After a brief discussion, Councilman Newman moved to approve the issuance of the RFQ for the Eagle-Market Street properties. This motion was seconded by Councilman Freeborn and carried unanimously.

After a brief discussion, Councilman Mumpower moved to approve the issuance of the RFQ for the Haywood Street properties at the Civic Center, subject to the City functioning as a good partner in this process. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Jones confirmed that being a good partner doesn't mean that the City has to agree to what a developer proposes. The City is not a bad partner if we don't accept a project.

Councilman Freeborn moved to approve the issuance of the RFQ for the Office of Economic Development. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Newman moved to approve the issuance of the RFQ for the Park Maintenance properties. This motion was seconded by Councilwoman Cape and carried unanimously.

In response to Councilman Newman, City Manager Jackson updated Council on the property the City owns behind McCormick Field.

At 7:10 p.m., Mayor Bellamy announced a short recess.

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D. LIVING WAGE PROPOSALS

Assistant City Manager Jeff Richardson said that City staff has been asked to analyze components of a Living Wage Proposal for the City of Asheville.

The analysis has been broken down into four areas:

(1) City of Asheville consider passing a living wage ordinance tied to the city's pay plan which establishes a living wage of $10.86 per hour without health insurance and $9.50 per hour with health insurance.

Benefited Employees: The City currently pays all employees with health insurance benefits a minimum of $9.50 per hour.

Non-Benefited Employees: The City currently employs a significant number of temporary and seasonal staff (especially seasonal employment in Parks/Recreation and Civic Center events management). Based on the job responsibilities, some of these employees do not currently earn $10.86 per hour. In order to increase the hourly rate to $10.86 per hour for all seasonal staff, the budgetary impact would be approximately $420,000 annually.

(2) These wage level increases will be adjusted annually to maintain current Consumer Price Indexing to prevent future erosion of this wage.

The most recent Consumer Price Index data suggests 2.2% inflation for the past twelve month period as of February, 2007. A 2.2% cost-of-living adjustment to the city's pay plan costs approximately $1.27 million annually.

(3) Contract Bidding Process: Payment of a living wage to be considered in the City's contract bidding process. Specifically, City vendors who pay living wage thresholds as outlined above may receive additional consideration in bid award process.

City staff estimates that the City has approximately 2,500 active vendor accounts. In an attempt to discuss this proposal and what impact, if any, this might have on these companies, staff contacted 24 or roughly 1% of the City's active vendors. After speaking with representatives from these companies staff found several significant trends.

In terms of full-time employment all but one employer met or exceeded the full time hourly wage and health care requirement.

Responses to the part-time wage proposal were more diverse. Eight of 24 businesses commented that $10.86 per/hr. is too high of a wage to pay for part-time employees. Four of the 13 respondents that currently hire part-time staff felt that they would not be able to meet the $10.86 requirement. Each of these 4 respondents specialized in a variation of service or labor intensive employment. Companies that specialized in professional services were less affected by the $10.86 wage level.

Given these requirements, when asked if the company would continue to partner with the City, 17 vendors responded YES, 2 responded NO, and 5 gave a no response.

(4) Assessment of how the city would promote vendor understanding and compliance with the Living Wage thresholds if such a program is developed.

City staff has recommended as part of the 2007-08 budget to add a full-time Contract Administrator position, to assist with the process of doing business with the City, to help insure adherence to city ordinances and thresholds, minority business outreach, building construction reporting to the State of N.C., as well as other responsibilities. If this position is approved, marketing and compliance responsibilities associated with verification of vendor compliance to a living wage ordinance, can be incorporated into this position's duties. As part of the vendor certification process, each vendor could be asked to sign an affidavit regarding the living wage ordinance and the city's right to audit payroll records as part of an annual verification process.

City staff is prepared to follow City Council's policy direction on these matters as outlined above.

Mayor Bellamy outlined that public comment would only be heard on the issues of (1) a living wage ordinance for City of Asheville employees; and (2) payment of a living wage to be considered in the City's contract bidding process.

The following individuals spoke in support of a living wage ordinance for City of Asheville employees:

Mr. Tyron Greenlee, representing the Asheville-Buncombe Living Wage Campaign
A representative from the N.C. Council of Churches
Ms. Judy Miller, member of the Beth Ha Tephila Congregation
Ms. Linda Poss, representing the Board of Directors for Children First of Buncombe County
Mr. David Jones, retiree
Mr. Greg Walker-Wilson, CEO of Mountain BizWorks
Rev. Christopher Chiaronmonte
Pastor Spencer Hardaway, representing Rock Hill Missionary Baptist Church, the Baptist Ministers Union and the Interdenominational Ministerial Alliance
Ms. Garcia
Rev. Amy Cantrell
Mr. David Wright, representing residents of housing

Mr. Rick Lutovsky, President of the Asheville Area Chamber of Commerce, said that the matter has been discussed with his Board and they have a concern about the automatic cost of living increase. They hoped that if Council wants to adjust this that each year it be addressed, rather than having an automatic adjustment. When you adjust the bottom, there is a compression factor that occurs with other categories. Relative to this item being part of the criteria for businesses, our businesses had the following questions: (1) does this apply to full-time employees; (2) does this apply to part-time employees; (3) how does the City plan on weighting this criteria; (4) what is the difference between the number of people employed at a company above or below a designated living wage; (5) what will the process be in proving to the City that a living wage is paid; and (6) will the City have to hire new staff to manage this process. In addition, he noted that the City's research shows that 730 companies are in some state of flux as to their ability to do business with the City.

Mr. Tim Peck felt that wages should be based on the value of a person's labor to the employer and not based on a person's need to buy stuff.

Ms. Leesa Kulba said that the City is pretty much already paying a living wage to its employees and this is more of a symbolic token. She said that when the City uses taxpayer's money to pay City employees a living wage, they are taking the money from the people who work at McDonalds, etc. She felt City employees are paid enough.

Councilman Newman is supportive of this proposal as he sees this as a starting point for a larger conversation of what we can do to support working families in the City. Are there other ways we can support the businesses in the community who want to pay their employees a living wage? He hoped we move forward and put our heads together about what we can do to support that in tne community.

Councilman Mumpower said that Council had a formal presentation by advocates and had specifically requested a formal presentation on the other side of the equation. He had even offered to do it himself. Even though it was his understanding the Chamber was going to do that, he didn't feel we have seen the other side. He did say this is about symbolism vs. substance since we are already doing what people are advocating, except for the seasonal and part-time

employees. If we do it for the seasonal and part-time employees, it's $420,000 and that is an expensive symbolism. He has no arguments against helping people, but a lot of arguments about how you do that. Personally he has very little faith in the government's ability to do that and he offered minimum wage as an example. He believes in personal responsibility. Training, education, maturity, skills, work ethics, and other more reliability foundations are ways to a meaningful hopeful future.

Councilwoman Cape moved to establish a living wage of $10.86 per hour without health insurance and $9.50 per hour with health insurance and a 2.2% inflation index, for full-time and part-time employees. This motion died for lack of a second.

Human Resources Director Lisa Roth responded to various questions/comments from Council, some being, but are not limited to: how many employees are seasonal and temporary; what type of positions are seasonal and temporary; what hours does a part-time employee work; when did we start offering health benefits for part-time employees who work over 20 hours on a consistent basis; was there a cost-of-living adjustment in the 2001 budget shortfall year; what is the merit pay plan for this year; what is the average merit increase; and will compression issues will arise.

Councilman Davis said that he has talked to managers of stores and they have a problem with the overall living wage concept. These are good people who contribute to the community in service and in financial contributions. If they had to pay a living wage to all of their employees, it would impact the number of people they could hire. He felt it was incumbent on employers to pay living wages, but if you start singling out employers who can't, then we could put them out of business.

Mayor Bellamy supporting a living wage for full-time and part-time employees, but not the 2.2% automatic inflation index. It is not fiscally sound if we mandate future automatic across the board inflation raises without taking into consideration the entire City's budget at the appropriate time.

After a short discussion, Councilman Freeborn moved to establish a living wage of $10.86 per hour without health insurance and $9.50 per hour with health insurance for full-time and part-time employees. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

When Councilman Mumpower asked what the financial impact would be to establish a living wage of $10.86 per hour without health insurance and $9.50 per hour with health insurance for full-time and part-time employees, Assistant City Manager Richardson said there would be no budgetary impact.

Councilman Freeborn moved to request City staff to report back to Council with a proposal on how to weight payment of a living wage to be considered in the City's contract bidding process. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilwoman Cape said that the Housing & Community Development Committee has a structure in place where we look at weighting projects based on their merits. It sends a message that we do have strategic goals and that if you work towards those strategic goals that it has a merit and it counts. She feels that we could put a line item similar to that into our contracting process.

After a short discussion, Councilman Newman moved to adopt a policy for inflation and ask the City Manager to present that as part of the annual budget. This motion was seconded by Councilwoman Cape and failed on a 3-4 vote, with Vice-Mayor Jones, Councilwoman Cape and

Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Vice-Mayor Jones moved to continue to assess how the City would promote vendor understanding and compliance with the Living Wage thresholds if such a program is developed. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE ASHEVILLE CITY CHARTER TO CHANGE THE MANNER OF ELECTION FROM NON-PARTISAN TO PARTISAN

From staff report: This is the consideration of an ordinance to amend the Asheville City Charter to change the manner of election from non-partisan to partisan. This public hearing was advertised on May 11 and 18, 2007.

At the May 8, 2007, meeting, Council adopted a resolution of intent to amend the Charter to provide for partisan elections, and set the date of the public hearing, which is the next step in the process and is required by statute. No action may be taken on this item sooner than Council's next regular meeting, scheduled for June 12.

At Council's direction, the vote on adoption of the ordinance will be scheduled for June 12, which is the last regular meeting when this action could be taken in time to be effective for the 2007 primary and election.

Mayor Bellamy opened the public hearing at 9:04 p.m.

Councilman Newman felt that local governments are very restrictive in how they run their local governments, but the structure of the local elections is one thing the state has delegated to municipalities. The question before Council is whether Council should involve the political parties or exclude the political parties from participating in the Asheville municipal elections.

The following individuals spoke in support of the current non-partisan elections:

Rev. Christopher Chiaronmonte
Mr. Lavoy Spooner, Chair of Governmental Affairs Task Force for the Asheville Area Chamber of Commerce
Mr. Tim Peck
Ms. Leah Karpen, Asheville resident
Mr. Jim Barton, Asheville resident
Mr. Craig Young, Asheville resident
A Buncombe County resident

Mr. Richard Warner, Asheville resident, spoke in support of changing the municipal elections to partisan elections.

Mayor Bellamy closed the public hearing at 9:25 p.m. and stated that action on this item will be considered on June 12, 2007.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW SIGNS FOR HOMESTAYS IN THE RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT, RS-4

RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 9:25 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to allow signs for homestays in the RS-2 Residential Single-Family Low Density District, the RS-4 Residential Single-Family Medium Density District and the RS-8 Residential Single-Family High Density District. This public hearing was advertised on May 11 and 18, 2007.

This code amendment provides for signs in "homestays" in single family residential zoning districts. City Council felt it might be a good idea to allow signs in order to alert nearby residents to the existence of a homestay use. Such signs were not recommended originally to allow homestays to "blend into" single family neighborhoods.

Section 7-16-1 provides the conditions under which uses by right subject to special requirements can be established. The proposal is to amend the recently-adopted homestay ordinance to allow signs as follows:

- Signage shall be limited to a single sign, not to exceed four square feet, attached to the home.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

On March 7, 2007, the Planning and Zoning Commission recommended denial of the proposed code amendment by a vote of 6-0 due to concerns about encouraging drive-by/walk-up traffic in single family neighborhoods. The draft minutes are as follows: "Scott Shuford presented the wording amendment staff report. Mr. Byers opened the public hearing at 8:04 PM. Barber Melton, representing CAN, indicated prior CAN recommendation for approval included a desire for there to be no signs in order to avoid walk-up/drive-by traffic. Grace Curry requested some form of disclosure about homestay location, arguing for smaller signs, neighbor notice and a City registry of homestays. Mr. Byers closed the public hearing at 8:11 PM. Commission discussion indicated a desire to not allow homestay signs in single family districts and for there to be an official registry of legally-established homestays as a consumer awareness product to combat illegal vacation rentals. Mr. Sizemore moved to recommend denial and requested staff to work on the registry idea. Mr. Jones seconded the motion which carried unanimously (6-0)."

Pro and Con:

- There would be an opportunity for persons to identify homestays in single family districts more readily.

Staff recommends City Council approve an ordinance amending the UDO to allow signs for Homestays in the RS-2, RS-4 and RS-8 zoning district.

Ms. Grace Curry, Asheville resident, urged Council to adopt a registry of legally-established homestays as a system for disclosure of homestay locations. She felt it was important to have the registry's list on the website and also available in hard copy in City Hall. She also felt the registry should be made available to real estate agents who in turn would share it (or maybe obligated to share it) with their clients.

Mr. Jay Quinn, Asheville resident, shared concerns that a sign is not enough to alert nearby residents to the existence of a homestay use. He urged Council to consider a registry that real estate agents could use and other means to make sure that when people come into town to

buy and they do their diligence that we make it as easy as possible for them to find out all the relevant information about their neighborhood.

Mayor Bellamy closed the public hearing at 9:32 p.m.

At the suggestion of Councilman Freeborn, it was the majority of Council's direction to make the registry a layer on MapAsheville and also to have a section that list all the homestays.

After a brief discussion, Councilwoman Cape moved to amend the proposed ordinance to allow a single sign, not to exceed 2.5 sq. ft., attached to the home, with verbiage on said sign be limited to name identification only (without the word "homestay.") This motion was seconded by Councilman Newman.

Councilman Mumpower supported staff's recommendation and not the motion made by Councilwoman Cape. He felt that the 4 sq. ft. sign will be unobtrusive from street level and the language on the sign is micro-managing.

Councilman Davis did not support homestays as a use by right in single-family districts.

The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 2-5 vote, with Councilwoman Cape and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Councilman Mumpower moved to amend the Unified Development Ordinance to allow signs for homestays in the RS-2 Residential Single-Family Low Density District, the RS-4 Residential Single-Family Medium Density District and the RS-8 Residential Single-Family High Density District. This motion was seconded by Councilman Freeborn and failed on a 2-5 vote, with Councilman Freeborn and Councilman Mumpower voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape, Councilman Davis and Councilman Newman voting "no."

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE AMENDING THE STANDARDS FOR TEMPORARY AND ACCESSORY USES AND STRUCTURES

ORDINANCE NO. 3480 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AMENDING THE STANDARDS FOR TEMPORARY AND ACCESSORY USES AND STRUCTURES

Mayor Bellamy opened the public hearing at 9:43 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) amending the standards for temporary and accessory uses and structures. This public hearing was advertised on May 11 and 18, 2007.

In a continued effort to modify and update various sections of the *UDO*, staff has identified the subsections related to *Temporary and Accessory Uses and Structures* as some that warranted re-organization and updating. From a land use perspective, temporary and accessory uses tend to be of a relatively low impact; however, as with other development in the City, the number of permits issued for temporary and accessory uses and structures has increased dramatically and, in an effort to control these uses and accommodate new technology and practices, some new standards have been established. These standards seek to for ensure public health, safety, and welfare as well as discourage perpetual occupation of undeveloped (or underdeveloped) properties for temporary uses by establishing time limitations on an individual event, along with restrictions to the number of events per year. Additionally, little used standards

have been removed or re-located to other relevant sections of the *Ordinance* while other standards remain unchanged or are only slightly modified. Lastly, it is important to note that these standards do not regulate co-sponsored events or those held on City owned properties which are regulated through a separate review and permitting process.

In summary, this ordinance is intended to:

- Replace the existing *Accessory Uses and Structures* Section (Sec. 7-14-1) in its entirety, with a corrected and updated version, including new standards for alternative energy devices.
- Replace the existing *Temporary Uses and Structures* Section (Sec. 7-14-2) in its entirety, with a newly revised and updated version, including a table with defined uses and limitations.
- Replace the existing *Temporary Use Permits* Section (Sec. 7-5-3) in its entirety with a slightly amended version.
- Add several new definitions to Sec. 7-2-5
- Remove standards related to temporary telecommunication towers (little used).
- Re-locate standards for temporary classrooms to Sec. 7-16-2 (Use by Right, Subject to Special Requirements).

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros:

- Provides a format that is easier to read and comprehend.
- Better reflects City adopted goals, objectives, and current practices.
- Encourages development/redevelopment of underutilized properties.
- Establishes standards for new alternative energy devices.

Con:

- Reduces the opportunity for temporary uses on an individual piece of property.

Staff recommends City Council approve an ordinance amending the UDO regarding the standards for temporary and accessory uses and structures.

Mayor Bellamy closed the public hearing at 9:44 p.m.

Councilman Mumpower felt this was another layer of control.

Mr. Shuford responded to questions raised by Councilwoman Cape about whether this ordinance would regulate weddings, community block parties, or containers used when people are renovating their homes.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3480. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

City Attorney Oast said that because of the vote, this ordinance will need to come back for a second reading.

D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 95 SMOKY PARK HIGHWAY, KNOWN AS LOWE'S HOME CENTER, FOR AN ANCILLARY USE IN A RESIDENTIAL DISTRICT FOR THE CONSTRUCTION OF A NEW STORMWATER FACILITY

ORDINANCE NO. 3477 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 95 SMOKY PARK HIGHWAY, KNOWN AS LOWE'S HOME CENTER, FOR AN ANCILLARY USE IN A RESIDENTIAL DISTRICT FOR THE CONSTRUCTION OF A NEW STORMWATER FACILITY

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 9:50 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located at 95 Smoky Park Highway, known as Lowe's Home Center, for an ancillary use in a residential district for the construction of a new stormwater facility.

This project seeks a conditional use permit for an ancillary non-residential use in a residential district. Specifically the request is to place stormwater facilities on a parcel zoned RS-4 for the Lowe's Home Improvement store which is located on the adjacent parcel, zoned Highway Business District.

The subject property is between Smoky Park Highway and Old Haywood Road, adjacent to the Lowe's Home Center at 95 Smoky Park Highway. The project site is zoned RS-4, is currently not developed and has no street frontage. The parcel is currently owned by Lowe's and is 0.95 acres.

The system originally installed on the north side of the Lowe's building site is failing and that location can no longer be used to satisfactorily handle excess stormwater. The applicant is proposing to drain the existing underground detention system, disconnect and remove the outlet pipe and fill in the area with "flowable" fill. This is to occur after the new pond has been constructed on the RS-4 site and the new storm drain pipe has been installed to reroute existing runoff to the new pond. The existing slope in this area will be reinforced per geotechnical recommendations so as not to cause any hazard.

The new facility proposed will be a stormwater detention pond enclosed by a 6' high chain link fence that will follow the upper rim of the pond. One 8' wide swing gate for access is to be located on the eastern edge of the detention pond, closest to the Lowe's building site. The pond's top elevation is proposed to be 15 feet above the bottom elevation and the emergency spillway level is indicated at 2 feet below the rim with 15 feet of rip-rap along the spillway. The volume provided at that spillway level is 139,394 cubic feet. A 2:1 slope characterizes the proposed detention pond.

There is an existing vegetated buffer between the Lowe's building site and the neighboring RS-4 zone, a portion of which will be removed. A new type "D" buffer will surround the lot containing the detention pond and will tie into the existing buffer. The applicant is proposing to buffer with the full 30' width along the northern edge of the parcel and to install reduced buffer of 15' wide through the use of a wooden fence, along the south and west boundaries.

The applicant is still deciding between several options for the temporary location of the excavated material until such time as it can be used to stabilize the slope where the existing stormwater facility is located. One option would involve placing the pile on a neighboring property in the HB zoning district. If this alternative is chosen, the material would be stored on the other property for no longer than 90 days.

The project as proposed appears to satisfy the conditions for ancillary non-residential uses in residential districts, as listed in UDO 7-16-2(d)(11). These conditions relate to use, location, buffering, operation, and occupancy. At their May 2, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the Conditional Use Permit request.

Staff is of the opinion that the passive nature of the proposed use is compatible with the surrounding residentially-zoned properties, all of which currently border the large Lowe's parcel with the principal retail use.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee (TRC) are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use is compatible with the surrounding natural features and topography. Grading will be required, but the site would not have not have been selected if the topography was not appropriate.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed project would be in harmony with these characteristics of the area. This type of feature, not protruding above ground and surrounded by fences and vegetation, would be compatible with almost any semi-urban environment.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
10 pages of the Asheville City Development Plan 2025 are devoted to water quality. The proposed project is designed to replace a failing stormwater facility and provide improved stormwater management relative to the current situation. Engineering Department staff considers the proposed pond a best management practice for stormwater runoff.

The Asheville City Council Goals and Vision statement mentions "Improved air and water quality" as well as addressing "stormwater pollution." The proposed project is designed to improve the stormwater management approach, and hence is in line with the City Council Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Though this ancillary use should not require frequent access to the aforementioned services and facilities, its location next to the high-traffic Lowe's parking lot off of Smokey Park Highway provides such access. In addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. Indeed, after construction has been completed, there should be minimal vehicular traffic related to this use.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- Will represent an improvement over the current failing stormwater system.
- Complies with adopted City plans.
- Will provide additional buffer area between retail, parking and adjacent residential.

Cons

- Small area of RS-4 zoned land could otherwise be used for a home or homes (though potential for housing at this site under this zoning is limited)

Staff feels that the potential benefits of this project are significant, and recommends approval of the Conditional Use Permit, subject to the conditions recommended by staff.

After rebuttal, Mayor Bellamy closed the public hearing at 9:53 p.m.

Vice-Mayor Jones asked for information on how the City is handling getting other properties, that were in compliance at the time of construction, up to compliance if a problem occurs. Stormwater Services Manager Chad Pierce said that there is a procedure in place to address those properties and at the request of Mayor Bellamy, he check to see if Meadows Apartments are in compliance with our ordinance.

Councilman Newman moved for the adoption of Ordinance No. 3477, granting a conditional use permit for property located at 95 Smoky Park Highway, known as Lowe's Home Center, for an ancillary use in a residential district for the construction of a new stormwater facility, subject to the conditions recommended by City staff and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE 378

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

ORDINANCE NO. 3478 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

Mayor Bellamy said that this public hearing was held on February 27, 2007, and remanded back to the Planning & Zoning Commission.

Mayor Bellamy opened the public hearing at 9:58 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance UDO to establish new requirements for use and dimensional nonconformities.

The Planning and Zoning Commission considered this code amendment on February 7, 2007, and recommended approval of this amendment by a vote of 5-0, subject to staff adding a definition of the term "impact" and evaluating whether there was ordinance confusion about the terms "communication tower" and "telecommunication tower." Staff added a definition for "impact" and reviewed ordinance provisions concerning the other two terms, finding that there is indeed sufficient ordinance clarity about the distinctions.

The draft amendment then went on to City Council. The day of the hearing, Council received an email from James Judd, representing CAN, raising five issues below. Council referred the item back to the Commission in order to allow them to take these issues into consideration.

Staff comments on Mr. Judd's italicized comments are highlighted.

1) *There is no defined time for accumulating cost (e.g. no more than 50% of assessed value over a 5 year span). The flood plain ordinance has a 5 year time limit I believe. By the ordinance it appears that a developer could for example do one project a year at 35% of assessed value for as long as they want.* This is a good suggestion and has been accommodated in the draft.

2) *Proposed 7-17-2(b) last sentence should state..."as defined in Section 7-17-1 above" as opposed to "as defined in Section 7-11-1 above".* Good catch, change is made.

3) *Concerned that the cost side of the "50% renovation" equation is not better defined / controlled in the ordinance. Cost is defined in the city rate structure as the greater of the actual or estimated hard (ex. material) and soft (ex. architects) costs combined. When the co-owner of Greenlife publicly states that they have spent over $1 million dollars on architects for their renovation but then state that their renovation cost is $250,000...there is a need for better communication* The Building Safety Department evaluates construction costs using generally accepted cost estimating practices and adjustments if needed.

4) *Concerned with accountability, traceability, and definition drift regarding MIA Appraisal. More than one appraisal is a common requirement in other situations. If cost is a concern, the tax value is always a free option.* Staff does not recommend multiple appraisals. We do not use multiple appraisals for buying or selling properties, for example. MAI appraisers are professional and adhere to industry standards. No change is recommended.

5) *Discontinuation of nonconforming uses. A nonconforming use is allowed to continue unless the use is discontinued for a period of 180 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period. Obtaining permits to maintain the existing use or continuous efforts to market the property for sale or lease for the existing use shall be regarded as substantial good faith efforts.*

Would a cardboard posted sign on the property or a free ad in IWANNA meet the criteria? Is there a time beyond which good faith efforts expire?

Some additional language has been added to address Mr. Judd's concerns.

There has been recent community confusion about how the nonconformities section of the UDO addresses dimensional nonconformities. The community perception is that any renovation amounting to more than 50% of the appraised value of the structure causes full compliance with ALL sections of the UDO. This is incorrect. In Asheville, the "50% rule" applies only to certain site improvements, not to all of them. The code section in question is Section 7-11-2(b)(1) that states, in part, that "{t}he following developments must bring the entire site into *full compliance with the requirements of Article XI* of this chapter" (emphasis added) with one of the listed developments being "{r}enovations with a total cost exceeding 50 percent of the assessed value of the building, according to Buncombe County tax records." The reference to Article XI limits site compliance to only the standards that are covered in that Article which are:

- Parking, loading and access standards
- Landscape and buffering standards
- Open space standards
- Sidewalk requirements

As a consequence, building location, setback, height and other requirements are not required to be complied with in renovations exceeding 50% of appraised value. While it is common for zoning codes to exempt certain features from compliance in cases of significant site improvement, Asheville's UDO is one of the more generous. We have seen situations where virtually the entire structure has been demolished without triggering compliance with anything more than site design requirements.

In response to Council direction, staff has developed the draft ordinance which significantly increases the extent to which "virtual teardowns" must comply with all dimensional requirements but which exempts renovations (see definition below) from compliance with anything other than site design (Article XI) requirements.

Renovation means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

There are two other significant changes in this ordinance from the current situation regarding nonconformities. First, the current provisions require adjoining lots in common ownership on the day that the UDO became effective to be combined to create a conforming or less-nonconforming lot(s). In other words, if there are two adjoining lots that were lawfully created sometime in the past and which have become nonconforming due to code changes and if the lots were owned by the same entity in 1997, they cannot be separately developed. The same two lots owned by different entities in 1997 can be separately developed. The proposed amendment corrects this inequity.

Second, the proposed ordinance creates a new role for the Planning and Zoning Commission. Under current code, a nonconforming use can be replaced by another nonconforming use of equal or lesser intensity using the table provided in Section 7-11-2(d)(10). If the proposed existing or replacement use is not specifically listed, City staff makes the determination of whether replacement can occur. Under the revised ordinance, the Planning and Zoning Commission makes the determination as to whether the unlisted uses are of equal or lesser intensity.

Pros:

- Provides a simpler, cleaner approach to nonconforming uses and dimensional nonconformities.
- Meets the expectations of many in the community about site compliance during renovation.

Cons:

- Will likely result in increased cost of site development.
- Some projects may not be pursued due to expense of compliance.

The Planning and Zoning Commission considered this code amendment on April 4, 2007 and recommended approval of the revised amendment by a vote of 7-0. City staff recommends City Council approve an ordinance amending the UDO to establish new requirements for use and dimensional nonconformities.

Mayor Bellamy closed the public hearing at 9:59 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3478. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 384

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE LANDSCAPE STANDARDS

ORDINANCE NO. 3479 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE LANDSCAPE STANDARDS

Mayor Bellamy said that this public hearing was held on April 10, 2007, and continued on May 8, 2007, to this date.

Mayor Bellamy opened the public hearing at 9:59 p.m.

Assistant Planning & Development Director Shannon Tuch said that City staff presented an amendment draft to the city's current Landscape and Buffering standards (Sec. 7-11-2) at the April 10th hearing. As part of the discussion, it was requested that staff (1) make some minor adjustments to the proposed draft; (2) examine the proposed Alternative Compliance standards for improved clarity and efficacy; and (3) provide some recommendations for requiring landscaping and/or tree preservation as it related to single family subdivision development. Changes identified in the staff memo dated April 10, 2007, have been incorporated and new changes as a result of the discussion on April 10, 2007, are also included in the proposed ordinance before Council.

The minor changes were easily addressed through the latest revised draft and include:

- **Screening of Outdoor Areas** – Current standards and staff's recommendation is that the vegetation is to be placed on the exterior of the fence used to screen outdoor areas such as dumpsters, loading docks, outdoor storage, etc.; this standard remains unchanged from the former draft.
- **Reduced Buffers with Application of a Privacy Fence** – Council concern was taken into consideration and the draft has been amended to require all buffer vegetation to be planted in a minimum 7-foot wide planting strip on the exterior of the fence, facing the abutting property. If the applicant wishes to place this material on the inside of the fence, then a request for alternative compliance would need to be sought.
- **Earthen Berm as an Alternative to Street Buffers** – the former draft required that the berm be covered in "vegetation"; it is staff's recommendation that this receive a very minor amendment to read, "to be completely covered with trees, shrubs, perennials, and/or groundcovers". An earthen berm covered in turf grass would be a more effective buffer than the basic requirement of one shrub for every five linear feet. At a minimum, the street buffer would also contain street trees so requiring more significant plantings may discourage the use of a berm.

<u>Alternative Compliance</u>

The standards for Alternative Compliance were re-examined and were, with minor adjustments, generally felt to be more than adequate. The proposed standards are significantly more bounded and non-discretionary than the current process and are felt to be a great improvement. To add more standards may detract from the goal of providing an appropriate level of flexibility, particularly to those constrained infill situations; to add more process requirements would take more time and resources and should be balanced against the desire to provide an acceptable level of customer service. Staff is proposing that the standards remain as proposed with two minor adjustments which include:

- The 30 day appeal time (as described in Article VI) is identified in more detail.
- A requirement for additional notification be provided should the Planning Director choose to reject the Tree Commission's recommendation.

Staff would like to recommend that the proposed standards be adopted and tested for six months, after which staff will provide a report detailing total cases, nature of requests, efficacy of

standards and notification, and other pertinent information including possible recommendations for revision/amendment.

Tree Preservation/Re-planting

Addressing the concern over the lack of landscape requirements and/or required tree preservation as it related to single family subdivision proved challenging. An examination of other North Carolina municipalities' standards identified a very notable lack of requirements for single family homes and lots (unless located on lands with important aesthetic or environmental values that warrant special protection). In summary, North Carolina lacks the necessary enabling legislation for us to comfortably recommend such requirements on single family lots. A requirement in association with the creation of a multi-family project or a major subdivision may be considered where a proposed development must be reviewed and approved to comply with all applicable standards. In these cases, a specified amount of tree preservation and/or tree replanting may be considered. The proposed Open Space amendment, if adopted, would require open space to be provided for any residential project of eight units or more. In the interest of consistency, tree preservation/re-planting requirements could be considered for those residential projects over eight units or eight lots.

When examining other standards from other states, the most common approach was to require a preservation/replanting area equivalent to 30% of the total site. Staff would like to propose a variation of this standard that would require a preservation/replanting area of 30% where some or all of that 30% may fall on the required open space area(s) and/or property line buffers. When the 30% "tree-save area" exceeds the open space requirement then the balance must be located elsewhere on individual lots. Although enforcement of tree-save areas on private lots may not be possible once the development of the subdivision is completed, staff feels as though this would still provide value and warrants consideration since it provides the opportunity for wooded lots to those homeowners. Understanding the positive effect that mature trees have on property values (for a variety of aesthetic, energy, and environmental reasons), it would be expected that a large majority of those tree-save areas would remain in place.

Lastly, it is important to note that inflexible standards, coupled with a lack of administrative relief, provides opportunity for judicial intervention. Alternative compliance provisions or mitigation options should provide realistic opportunities for development. Staff has proposed a somewhat conservative standard with flexibility offered through the alternative compliance process. Council may also wish to consider a "tree-in-lieu" fee similar to that described in the current Open Space amendment or some other off-site mitigation option (these options are not reflected in the revised draft).

The Chairman of the Asheville Tree Commission spoke in support of the proposed standards.

Mayor Bellamy closed the public hearing at 10:04 p.m.

Councilman Mumpower couldn't support this ordinance in that he felt this is a step towards an elite community.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3479. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

VI. NEW BUSINESS:

A. ENDORSEMENT TO ESTABLISH CITY OF ASHEVILLE OUTDOOR RECREATION FACILITIES AS TOBACCO FREE ZONES

Parks & Recreation Director Roderick Simmons said that this is the consideration of an endorsement to establish City of Asheville outdoor recreation facilities as tobacco free zones thus discouraging the use of tobacco products in public outdoor recreation areas in an effort to eliminate park user's exposure to secondhand smoke.

The Recreation Board recommends Asheville City Council's endorsement to discourage the use of all tobacco products in all City of Asheville outdoor recreation facilities thus establishing tobacco free facilities in conjunction with Project ASSIST Tobacco Prevention Coalition. These facilities include all public park properties such as ball fields, greenways, play areas, picnic shelters, swimming pools, tennis courts, Nature Center, Asheville Municipal Golf Course, Food Lion Skate Park, Aston Tennis Center and Riverside Cemetery.

It is the goal of the Recreation Board and the Parks and Recreation Department to create a healthy environment in all city recreation facilities. By discouraging tobacco use in outdoor recreation areas dramatically reduces the exposure of youth to secondhand smoke thus greatly enhancing a healthy environment at these public outdoor recreation areas.

Project ASSIST along with Teens Against Tobacco Use Asheville High and Question Why Youth Empowerment Center is working locally via the Buncombe County Health Center to reduce tobacco use among youth and adults and to promote public health policies that reduce the public's exposure to second-hand tobacco smoke.

Signs depicting public outdoor recreation facilities as tobacco free zones by discouraging tobacco use will be posted in all City of Asheville public outdoor recreation areas. Project ASSIST will participate in the cost of producing and placing signs in the parks.

Pros:
- Secondhand smoke is a proven cause of cancer, heart disease, stroke, emphysema and asthma in both smokers and non-smokers.
- Secondhand smoke levels in outdoor public places can reach levels as high as those found in indoor facilities.
- Tobacco free parents, coaches and recreational leaders are powerful role models that tobacco use is not part of a healthy lifestyle.
- Studies show that children who are exposed to secondhand smoke are more likely to start smoking as adolescents.

Cons:
- The signs do not prohibit tobacco use but discourage the use of tobacco, thereby making compliance a voluntary act of the park user.
- Cost of sign installation $1500 to $2500. Project ASSIST will contribute to the sign cost.

The Recreation Board recommends City Council to pass a motion to endorse City of Asheville public outdoor recreation facilities as tobacco free zones by discouraging the use of tobacco products in public outdoor recreation areas.

Ms. Colleen Daly, Asheville High School student, spoke in support of the resolution.

Mr. Lee Storrow, Asheville High School student, spoke in support of the resolution, noting that they have obtained over 750 signatures on a petition endorsing this request.

Councilman Freeborn was disgusted with the number of cigarette butts and other smoking items that are picked up by children in our parks.

In response to Vice-Mayor Jones, City Attorney Oast said that at this time we can't legally prohibit smoking in outdoor areas, but only discourage it; however, there are some state laws pending that would allow the City to legally prohibit the use of tobacco products in public outdoor recreation areas and he would advise Council when, and if, that passes.

Councilman Mumpower moved to endorse the City of Asheville public outdoor recreation facilities as tobacco free zones by discouraging the use of tobacco products in public outdoor recreation areas. This motion was seconded by Councilman Freeborn and carried unanimously.

B. RESOLUTION NO. 07-112 - RESOLUTION TO ESTABLISH BOUNDARIES BETWEEN ASHEVILLE AND WOODFIN

City Attorney Oast said that this is the consideration of a boundary adjustment between City of Asheville and Town of Woodfin.

In discussing annexation issues with the Town of Woodfin, the staffs of each municipality identified opportunities to improve service provision and community identification through municipal boundary adjustments. For example, a portion of the University of North Carolina at Asheville is located in Woodfin and a portion of a 19-23 off-ramp is in Asheville but is more logically served by Woodfin. This has been previously discussed with Council as part of our legislative package. Legislation was introduced to address this issue, subject to the two municipalities identifying the location of the boundary.

These adjustments will create a more logical and identifiable boundary between the City of Asheville and the Town of Woodfin. Because of the somewhat unusual fact situation here, legislative action is the most expedient way to accomplish what needs to be done. This resolution will be provided to the legislative for incorporation into the pending bill, and will enable the delegation to move forward with the requested boundary adjustment. A similar method was employed in 1997 to adjust the boundary between Asheville and Biltmore Forest along Hendersonville Road.

Our discussions with Woodfin on this particular issue have led to discussions on the broader topic of other areas that are near our common boundaries. We anticipate coming to Council in the near future with a proposal for an annexation agreement between Asheville and Woodfin. This does not mean that areas covered by the agreement will be annexed, but is a statutorily authorized method for determining which areas—when developed to urban standards--should more logically be considered for inclusion in the corporate limits of one city or the other, and in some cases can slow down the rate of "competitive" annexation.

City staff recommends City Council authorize the Mayor, Attorney and Clerk to execute and transmit a resolution establishing the boundary between City of Asheville and the Town of Woodfin, for inclusion in the pending legislation.

Using a map, City Attorney Oast responded to questions raised by Councilman Mumpower, noting that the boundary adjustment line is a logical service line.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-112. This motion was seconded by Councilwoman Cape and carried unanimously.

C. **RESOLUTION NO. 07-113 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE BILTMORE LAKE AREA**

RESOLUTION NO. 07-114 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE SARDIS ROAD AREA

RESOLUTION NO. 07-115 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE SCHENCK GATEWAY AREA

Urban Planner Julia Cogburn said that this is the consideration of resolutions approving the Annexation Services Plan for the Biltmore Lake Area, Sardis Road Area, and Schenck Gateway Area.

Staff has identified three areas with potential for being annexed: Biltmore Lake Area, Sardis Road Area, and Schenck Gateway Area. Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

The following steps and dates meet the process required by State law:

- Council Adoption of Resolution of Intent – 5/15/07
- Council Adoption of Services Plan – 5/22/07
- Public Information Meeting – 7/02/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07
- Effective Date – 12/31/07

The second step in the annexation process is for the City Council to consider and approve an Annexation Services Plan for the areas to be annexed.

She reviewed the Plan demonstrating how each area proposed for annexation meets the statutory qualifications for annexation and further demonstrates the capability of the City to provide urban services to these areas.

City staff recommends that City Council adopt the resolutions approving the Annexation Services Plan for the Biltmore Lake, Sardis Road and Schenck Gateway Areas.

Ms. Cogburn, along with Urban Planner Blake Esselstyn summarized the Plan for Services as follows:

Biltmore Lake Area - The Biltmore Lake Area is located southwest of the current City limits. The area is predominately developed with single-family residences. The area contains 440 acres and has an estimated population of 768 persons. The revenue summary is as follows for the Biltmore Lake area: Ad valorem taxes - $772,581; state utility taxes - $80,319; sales tax - $263,611; Powell Bill funds - $28,943; fees, charges & permits - $32,302 for a total of $1,177,756. The estimated expenditures total $179,420. The estimated capital expenditures total $974,905.

Sardis Road Area - The Sardis Road Area is located southwest of the current City limits. The area contains a mixture of commercial, residential, institutional and industrial uses. The area

contains 415.8 acres and has an estimated population of 1073. The revenue summary is as follows for the Sardis Road area: Ad valorem taxes - $377,066; state utility taxes - $75,988; sales tax - $128,954; Powell Bill funds - $27,788; fees, charges & permits - $45,130 for a total of $654,928. The estimated expenditures total $115,136. The estimated capital expenditures total $2,334,406.

Schenck Gateway Area - The Schenck Gateway Area is located adjacent to the current City limits (to the south) at the entrance to the Biltmore Park community. The parcel contains a gas station, fast food restaurant, and a convenience store. The area contains 11.0 acres and has an estimated population of 0. The revenue summary is as follows for the Schenck Gateway area: Ad valorem taxes - $21,650; state utility taxes - $2,004; sales tax - $7,420; Powell Bill funds - zero; fees, charges & permits - zero for a total of $31,074. The estimated expenditures total $4,025. The estimated capital expenditures total $4,717.

With regard to the specific departments, Ms. Cogburn and Mr. Esselstyn summarized the following:

Regarding police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department as further described below.

Extending service into the proposed annexation areas will require operational adjustment in two primary areas:

1. Configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service.

2. Adding one (1) additional patrol unit to accommodate the anticipated increase in demand for police services (see information below).

The Biltmore Lake Area will be served by an expansion of the Adam Patrol District.
The Sardis Road Area will be served by an expansion of the Adam Patrol District.
The Schenck Gateway Area will be served by an expansion of the Charlie Patrol District.

Based on the estimated calls for service in the annexation regions, and in an effort to improve response time to critical calls for service, a new patrol beat will be added to the City's Police Department on or before January 1, 2008. This beat will be serviced by one officer 24/7. This addition requires the hiring of five (5) officers and two (2) police vehicles. The cost of hiring a new police officer (total initial cost - $46,735.00) is as follows:

- Salary and benefits	$40,235.00
- Radio	$ 4,000.00
- Weapon	$ 1,000.00
- Uniforms, Equipment, Vest	$ 1,500.00

The cost of a new vehicle with all necessary equipment is $38,000.00.

Regarding fire protection: The Biltmore Lake Area will be primarily served by Stations 10 and 11 with estimated annual calls for service of one hundred and seventy-five (175) to two hundred (200) calls. The Sardis Road Area will also be primarily served by Stations 10 and 11 with estimated calls for service of one hundred (100) to one hundred and twenty-five (125) calls. Schenck Gateway will be primarily served by Stations 4 and 11 with estimated calls for service of twenty-five (25) to fifty (50) calls. When Station 12 is placed into operation the Biltmore Lake and Sardis Road Areas will be primarily served by this station.

The extension of fire protection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.1 to offer existing fire service entities contract opportunities which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the rural fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Regarding solid waste collection: The extension of solid waste collection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.3 to offer existing private service entities contract opportunities which allow for the continued service of annexed areas by existing companies. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated area. The involvement of the existing private companies may require the municipal department to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances may affect its plan for extending solid waste collection services; therefore, this plan incorporates alternative solutions to extending solid waste collection services to annexed areas.

Alternative No. 1 – Extension of Existing City of Asheville Public Works Department – Sanitation Division Services by City Personnel and Equipment with the Payment to Private Companies for Economic Loss

To extend services to the annexation areas, an additional automated truck and a new MEO III position are required by the City of Asheville Public Works Department – Sanitation Division. With this additional truck and associated personnel to operate the truck, all solid waste collection services described as being provided by the City, will be provided on substantially the same basis and in the same manner as described in this plan. Costs associated with the annexation include: the purchase of new rollout containers, increased tipping fees, recycling costs, and potential "economic loss" payments to affected contractors.

Alternative No. 2 – Contract with Existing Private Companies for Curbside Roll-Out Container Service Supplemented by Municipal Specialized Services for Collection of Trash, Yard Waste, Leaves, Dumpster Containers and Recycling

Private companies having an average of fifty (50) or more residential customers, or receiving average monthly revenue from residential customers of $500 or more, within the annexation areas described in this plan, could be offered opportunities to contract for continued service.

Regarding street maintenance services, the City has evaluated the streets in the annexation areas for inclusion in the maintenance program described above. The results of that evaluation are listed below with the names and mileages of streets expected to be included by annexation area. General street conditions for the listed roads are satisfactory, unless otherwise indicated in this plan, and any maintenance issues will be handled as part of the City's routine maintenance funding.

BILTMORE LAKE AREA

Street	Length (feet)	Length (miles)	Average Width (feet)
Orvis Stone Circle	2640	0.5	17
Orvis Stone Circle	544	0.1	17

Water Walker Drive	1584	0.3	22
Minky Court	257	0.05	18
Lake Drive	4224	0.8	19
Perch Fly Court	344	0.07	18
Coves Pheasant Court	330	0.06	18
Greenwells Glory Drive	907	0.17	24
Caddis Court	1322	0.25	24
Gosling Court	230	0.04	18
Wickams Fancy Drive	4224	0.8	24
Kells Blue Court	296	0.06	18
Quill Gordon Court	411	0.08	18
May Fly Court	264	0.05	18
Mountain Drive	3696	0.7	31
Blue Damsel Court	446	0.08	18
Sawyers Pheasant Lane	456	0.09	18
Sawyers Pheasant Lane	553	0.1	18
Fennel Dunn Circle	883	0.17	24
Fennel Dunn Circle	1580	0.3	18
Harrop Dunn Court	838	0.16	18
Sparkle Dunn Court	355	0.07	18
Welsh Partridge Circle	4063	0.77	24
French Partridge Lane	708	0.13	18
Grey Goose Court	194	0.04	18
Hoolet Court	335	0.06	18
Damp Crane Lane	377	0.07	18
Olive Dunn Drive	557	0.11	24
Hillcrest Street	756	0.14	19
Mountain Wasp Drive	969	0.18	24
Ginger Quill Circle	540	0.1	18
Ginger Quill Circle	1278	0.24	18
Kingsmill Court	1042	0.2	18
TOTAL	37,203	7.04	

It is proposed that existing street lights in the Biltmore Lake Area will be taken over by the City. There are thirty-six (36) existing street lights that are scheduled to become the responsibility of the City at an annual cost of $480 per light. The annual cost ($480 per light) for maintaining the existing lights in the Biltmore Lake area is $17,280.

The City has also evaluated the existing sidewalks in the Biltmore Lake Area and has determined that 18,489 linear feet of chip seal sidewalks (non-ADA compliant) at a cost of $739,500.00 would need to be replaced prior to the City taking over the maintenance of these sidewalks. The City has also determined that street repairs are needed in the area (4924 linear feet of streets needing shoulder repair; 245 drains need inverts poured) at a cost of $31,520.00. The cost of these improvements is included in the financing plan found in Section 3 of this Plan for Services with sidewalk replacement costs phased over a ten (10) year period.

SARDIS ROAD AREA

Street	Length (feet)	Length (miles)	Average Width (feet)

West Oakview Road	3696	.7	19
Morse Drive	1248	.23	20
Crowell Farms Drive	2266	.42	22
West Point	1396	.26	19
Slosman Drive	948	.18	22
Silo Drive	314	.05	22
Pole Barn Drive	764	.14	22
East Farm Creek	422	.08	22
West Farm Creek	125	.02	22
Eagles Nest	1219	0.23	22
Country Meadows Road	1721	0.32	22
Brandi Drive	389	0.07	21
Nicolas Drive	428	0.08	21
Baity	481	0.09	21
TOTAL	15,417	2.87	

It is proposed that existing street lights in the Sardis Road Area will be taken over by the City. There are thirty-three (33) existing street lights that are scheduled to become the responsibility of the City at an annual cost of $480 per light. The annual cost ($480.00 per light) for maintaining the existing and proposed lights in the Sardis Road Area is $ 15,840.00.

The City has evaluated the street infrastructure in the Sardis Road Area and has determined that a number of repairs will be needed. The repairs will include: two hundred and seventy (270) square yards of street patching; replacement of one hundred and forty-one (141) improperly constructed storm drains; and the construction of a turnaround on Morse Drive. The cost of these improvements ($57,560.00) is included in the financing plan found in Section 3 of this Plan for Services and phased for replacement to City standards over a ten (10) year period.

SCHENCK GATEWAY AREA

There is no street maintenance that is required in the proposed Schenck Gateway Area and no street lights that will become the responsibility of the City.

Regarding water services: The City of Asheville has evaluated each area being considered for annexation and has determined the following regarding the extension of water service to each of the annexation areas:

1. Biltmore Lake Area: Potable water and fire protection service are available to all parcels in this annexation area on substantially the same level as other parts of the City, as shown on Sheet 2 of 7 of the Plan for Services Drawings. Therefore, no water system improvements are proposed for this area.

2. Sardis Road Area: Potable water and fire protection service are available to most of the parcels in this area on substantially the same level of service as other parts of the City. However, fire protection service needs to be upgraded for all parcels in the vicinity of Morse Drive. As such, approximately, 1,770 linear feet of 6-inch diameter water pipe are proposed to be constructed to bring the service to substantially the same level as other parts of the City. Existing and proposed water system infrastructure is shown on Sheet 4 of 7 of the Plan for Services Drawings.

3. Schenck Gateway Area: Potable water and fire protection service are available to this area on substantially the same level of service as other parts of the City, as shown on

Sheet 6 of 7 of the Plan for Services Drawings. Therefore, no water system improvements are proposed for this area.

The City of Asheville will complete construction of the proposed water system improvements within two (2) years of the effective date of annexation.

Regarding sewer collection services: The City of Asheville has evaluated each area being considered for annexation and has determined the following regarding the extension of sewer service to each of the annexation areas:

1. Biltmore Lake Area: Major sanitary sewer trunk lines and interceptors are currently in place. Sanitary sewer service is available to this annexation area at substantially the same level as other parts of the City, as shown on Sheet 3 of 7 of the Plan for Services Drawings. Therefore, no sanitary sewer system improvements are proposed for this area.

2. Sardis Road Area: Major sanitary sewer trunk lines and interceptors are currently in place for most of the area. However, sanitary sewer service is not available for the upper northwest portion of this area and for all existing parcels in the vicinity of Morse Drive. As such, approximately 6,455 linear feet of 8-inch sanitary sewer is proposed to be constructed to bring the service to substantially the same level as other parts of the City. Existing and proposed sanitary sewer system infrastructure is shown on Sheet 5 of 7 of the Plan for Services Drawings.

3. Schenck Gateway Area: Major sanitary sewer trunk lines and interceptors are currently in place. Sanitary sewer service is available to this annexation area on substantially the same level as other parts of the City, as shown on Sheet 7 of 7 of the Plan for Services Drawings. Therefore, no sanitary sewer system improvements are proposed for this area.

The City of Asheville will complete construction of the proposed sanitary sewer system within two (2) years of the effective date of annexation.

Regarding general government, the City of Asheville is governed by a City Council consisting of a Mayor, Vice-Mayor, and five Councilpersons with general administration responsibilities delegated to a City Manager. Supporting the City Manager are key professionals and department heads specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and recreation and various other municipal activities and functions. The City of Asheville has active minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities in an effort to make Asheville a better community for present and future residents, businesses and property owners. Employees and employee relations are managed by the City Manager. The City of Asheville is an Equal Opportunity Employer. Three well-qualified practicing attorneys provide legal counsel to the City.

In response to Councilman Freeborn, Planning & Development Director Scott Shuford said that he would get a breakdown of what the net increase will be to the taxpayers who are proposed to be annexed.

Councilman Mumpower said that there are arguments in support of forced annexation but the personal barrier for him is that it is forced and he would not support the resolutions.

Regarding public comment, City Attorney Oast said that statutory process set up for public comments is at the public information meeting on July 2, 2007, and the City Council public hearing on July 24, 2007.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution Nos. 07-113, 07-114, and 07-115. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 07-113 - RESOLUTION BOOK NO. 30 - PAGE 356
RESOLUTION NO. 07-114 - RESOLUTION BOOK NO. 30 - PAGE 357
RESOLUTION NO. 07-115 - RESOLUTION BOOK NO. 30 - PAGE 358

D. CONSIDERATION OF AN APPOINTMENT TO THE CIVIL SERVICE BOARD

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Barbara Marlow to serve another two-year term on the Civil Service Board, term to expire May 21, 2009, or until her successor has been appointed.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Mumpower commented on confronting Asheville's open air drug market. He said that on January 16 following intense Council/staff interplay, Councilman Mumpower made a motion to (1) charge our city and police administration to develop in collaboration with community partners a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods. Other members of Council amended that motion to (1) affirm our support for Police Chief Hogan and the men and women of the Asheville Police Department, expressing our full confidence in their dedication to protect the public safety of the citizens and have confidence in their professionalism to achieve that goal; and (2) instruct our City Manager to explore opportunities to create job opportunities and affordable health care and ways to reduce poverty in Asheville's neighborhoods. Councilman Davis and Councilman Mumpower voting against that motion because they felt it watered down the core issue. Since January we have had a couple of presentations by the Police Chief and two or more discussions by Council on this issue. This past week, during our first formal discussions on budgeting our police on our commitment to eliminate the open air drug market in Asheville, discussion was suppressed. That was important because it precluded deliberations on whether staff and Council are upholding or abandoning our earlier mandate on addressing our open air drug market. His concern is that we do not have anything from the City Manager and Police Chief that remotely represents what we have requested - a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods. Without a plan, we cannot have a valid budget. Without a valid budget. we cannot assign accountability. Without accountability, we have little assurance of success. Without success, we continue to fail in our responsibilities for public safety in all Asheville neighborhoods. His request is that we formally request (1) the City Manager and Police Chief to fulfill their mandate by developing a comprehensive plan to eliminate our open air drug market and a reasonable budget devoted to that end; and (2) we re-open deliberations on funding for public safety including the resources required to implement our open air drug market interdiction effort. He ended by saying that in January we dedicated ourselves to eliminating our open air drug market in all Asheville neighborhoods. Council has the power to sidestep this responsibility. We do not have the power to do so without public accountability. We should charge our City and police administration to develop in collaboration with community partners a comprehensive, strategic, and operational plan to eliminate our open air drug market in all Asheville neighborhoods.

A resident of the Biltmore Lake area spoke in opposition of forced annexation of the Biltmore Lake area and urged City Council and/or staff to talk with residents who have requested meetings and who can offer assistance.

Mayor Bellamy invited the public to attend the City's Memorial Day celebration on Monday, May 28, 2007, at 3:00 p.m. at the City-County Plaza.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:12 p.m.

Kristina Lipe
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – June 12, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilman Mumpower requested Consent Agenda Items "C", "E", and "F" be removed from the Consent Agenda for individual votes.

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 22, 2007**

B. **RESOLUTION NO. 07-116 - RESOLUTION REAPPOINTING BARBARA MARLOWE TO THE CIVIL SERVICE BOARD**

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C. **RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH KIMLEY-HORN & ASSOCIATES INC. TO PREPARE FEASIBILITY STUDY FOR A PARKING GARAGE ON RANKIN AVENUE**

This item was removed from the Consent Agenda for an individual vote.

D. **RESOLUTION NO. 07-118- RESOLUTION AUTHORIZING AN INCREASE IN THE DELEGATED AUTHORITY OF THE PURCHASING MANAGER FOR THE DISPOSITION OF SURPLUS PERSONAL PROPERTY**

Summary: The consideration of a resolution authorizing an increase the delegated authority of the Purchasing Manager for the disposal of surplus personal property.

The Purchasing Manager currently has delegated authority for the disposal of surplus personal property under City Council Resolution 85-99.

The NC Legislature enacted S.L. 2005-227 (H1332) effective July 27, 2005 which increased the value of property that may be sold under a delegation of authority as provided in G.S. 160A-266(c) to $30,000. This legislation also provides a broader authority for the use of electronic auctions or other methods of selling property as it becomes surplus as an alternative to

sale by public auction. The law, however, was not automatic and requires the approval of Council to the increased level.

Pros:

- Permits the ongoing disposal of surplus personal property providing a continuing flow of revenue to the City.
- Alleviates the need to store surplus personal property for disposal at an annual public auction.

Con: None.

Staff recommends Council approve a resolution authorizing an increase the delegated authority of the Purchasing Manager for the disposal of surplus personal property.

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E. RESOLUTION AUTHORIZING A LEASE OF REAL PROPERTY AT CHARLOTTE STREET AND CELIA PLACE TO THE PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY

This item was removed from the Consent Agenda for an individual vote.

F. RESOLUTION MODIFYING THE 2007 CITY COUNCIL MEETING SCHEDULE TO DELETE THE JULY 17, 2007, AND THE JULY 31, 2007, MEETINGS

This item was removed from the Consent Agenda for an individual vote.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 07-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH KIMLEY-HORN & ASSOCIATES INC. TO PREPARE FEASIBILITY STUDY FOR A PARKING GARAGE ON RANKIN AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Kimley-Horn in an amount not to exceed $154,100 to prepare a feasibility study for a proposed parking garage on Rankin Avenue.

On November 28, 2006, City Council approved the Downtown Parking Action Plan. Item number seven indicates that we will determine the feasibility of locating a parking garage behind the Civic Center along Rankin Avenue. The City owns the property required to build a garage in this location. Adjacent property owners have expressed an interest in partnering on a potential multi-use facility.

In order to move forward, we need to prepare a feasibility study that addresses issues like the number of spaces needed in the area, ability to construct an adequate size parking lot on the property, financial performa, opportunity for LEED certification and conceptual design.

To this end, staff prepared requests for proposals to secure professional services to perform these tasks. Three firms submitted proposals for this work. Staff has determined that Kimley-Horn and Associates, Inc., is the most qualified to perform this work. The original proposal was estimated at approximately $215,000. Staff has worked with the consultant to reduce this cost to $154,100.

The money for this project will come from the parking enterprise fund.

Pros

- This action will allow us to move forward on providing public parking in downtown.
- The feasibility study will determine the ability to construct a parking garage in this area.
- Money for this project in available in the Parking Enterprise Fund.

Cons:

- While this is a necessary step in the process, it represents a significant investment.

City staff recommends City Council approve the resolution authorizing the City Manager to execute a contract with Kimley-Horn in an amount not to exceed $154,100 to prepare a feasibility study for a proposed parking garage on Rankin Avenue.

Councilman Mumpower said that we spent approximately $1.4 Million to plan to build a parking garage in front of the Civic Center and 10 or so years of staff time. He felt that Council made an ill advised move to walk away from that parking garage, and he is not prepared to see us waste that money with still another effort to build a parking garage beside two existing garages.

City Engineer Cathy Ball responded to questions from Councilwoman Cape regarding the private property considerations.

Councilman Newman moved for the adoption of Resolution No. 07-117. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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E. RESOLUTION NO. 07-119- RESOLUTION AUTHORIZING A LEASE OF REAL PROPERTY AT CHARLOTTE STREET AND CELIA PLACE TO THE PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing a lease of real property at Charlotte Street and Celia Place to the Preservation Society of Asheville and Buncombe County

The City proposes to lease the structure at the corner of Charlotte Street and Celia Place (NW corner) to the Preservation Society for use as the Society's business office. The structure is a 1,158 square foot rock building. It was built by E. W. Grove and used as his company's office during the development of Grove Park. It also housed the Asheville Art Museum for several years, but has been vacant recently.

The proposed term of the lease is 9 years 11 months. The proposed rent is $10.00 per month. In addition, the Lessee proposes to undertake improvements to the structure necessary to bring the structure into compliance with applicable codes. These improvements will be subject

to the City's approval, but will be done at the Lessee's expense, they will become the property of the City upon surrender of the premises.

Because the Preservation Society is a non-profit entity and is carrying out a public purpose, the law permits the Council to authorize the lease subject to a condition limiting its use to a public purpose, and then to publish a notice of its action; the lease cannot be finalized until the 10 days after the notice has run. This is the process being utilized here.

Some Council members may recall that the City previously authorized a lease to the Preservation Society back in 2002. This proposal is substantially the same, except that the rent in the previous proposal was $550 / month.

Council may also recall that this property was previously the subject of a conditional use rezoning back in 2002. However, because the building was never used pursuant to that Conditional Use Permit (CUP), the rezoning and CUP lapsed, and the property has reverted to its previous zoning classification of RS-4. Before the property could be used pursuant to this lease, Council will need to take zoning action to allow the proposed use to occur. This process has been commenced and will be coming before Council in the near future. This will present a further opportunity to regulate the use of the property.

Pros:
- Permits public purpose utilization of a property that has not been used recently, and is not suitable for residential use.
- Provides for City-owned structure to be brought up to applicable code standards.
- The building would become the Lessee's maintenance responsibility.

Cons:
- Rent is below market.
- Introduces a low-impact non-residential use into a residential area.

If Council approves of this proposal, adoption of the resolution is recommended.

In response to Councilwoman Cape, Mr. Jim Coman, President of the Preservation Society, said that the proposed cost for renovations is approximately $125,000. He also noted that they will not make a request to City Council to fund the renovations.

City Attorney Oast said that although he and Mr. Coman have not negotiated this detail, the structure and the immediate grounds will be the Preservation Society's maintenance responsibility.

In response to Councilman Newman, City Attorney Oast said that he could include language in the lease that makes it clear that when the lease has expired, the rent will not be less than market rate.

Councilman Mumpower moved for the adoption of Resolution No. 07-119, with the provision that once the lease has expired, the rent will not be less than market rate. This motion was seconded by Councilwoman Cape and carried unanimously.

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F. RESOLUTION NO. 07-120- RESOLUTION MODIFYING THE 2007 CITY COUNCIL MEETING SCHEDULE TO DELETE THE JULY 17, 2007, AND THE JULY 31, 2007, MEETINGS

Mayor Bellamy responded to Councilman Mumpower's inquiry as to why City Council was canceling the July 17, 2007, meeting.

Councilman Mumpower moved for the adoption of Resolution No. 07-120. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING FOR THE FISCAL YEAR 2007-08 ANNUAL OPERATING BUDGET

Mayor Bellamy opened the public hearing at 5:23 p.m.

Chief Financial Officer Ben Durant said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal 2007/2008 Annual Operating Budget was presented to City Council on May 8, 2007. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 1, 2007, and June 8, 2007. Adoption of the budget ordinance is scheduled for June 19, 2007, at the regularly scheduled City Council meeting.

The Fiscal Year 2007/2008 Annual Operating Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value. All essential City services are maintained, and a number of service enhancements and new initiatives are included in the proposed budget.

A copy of the budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which can not be changed once adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2007/2008 Annual Operating budget and include public input in considerations on the budget.

Mr. Mike Marshall, representing the Asheville Firefighters Association, requested an update on the proposal he presented for a matching 457 to offset inequities that the firefighters now incur as opposed to general employees and in particular the Police Department.

The following individuals urged Council to support renovations at the Reid Community Center:

Mr. Gene Bell
Mr. Al Whitesides
Ms. Jennifer Pickering
Ms. Robin Young
An area resident
Ms. Cora White
Ms. Neidra Wilson
Rev. Spencer Hardaway
Ms. Emily Hancock Myers
Mr. Graham Paul

Ms. Leah Karpan

At 5:55 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Freeborn, Human Resources Director Lisa Roth recommended funding the pay plan and that we provide the same benefit to all employees. She said that currently the firefighters take home 6.25% more in net pay than the rest of the general employees because they do not participate in Social Security and the 6.25% is the employee contribution to Social Security.

After discussion regarding the firefighters' proposal and the majority of Council's urging that the firefighters vote to participate in Social Security (Councilman Davis made, but later rescinded, a motion which Councilman Freeborn seconded to include a 2% match to a 401-A for firefighters), it was the consensus of Council to have a Social Security representative at the meeting on June 19, 2007, in addition to staff providing Council with information from prior worksessions with staff options.

After discussion regarding renovations to the Reid Community Center ($500,000 allocated last year and in 2008-09 fund the renovations with $250,000 and in 2010-11 an additional $100,000 for renovations), it was the consensus of Council to schedule this to come back to Council in July, 2007 with the Parks & Recreation Department's capital improvements, at which time Council requested additional information, some being, to get a plan on what we can use the $500,000 already allocated for; a deferred maintenance plan for all our facilities; information on a bond program to assist with some of these initiatives; how we can give the Raise the Roof at Reid Campaign $300,000 by October, 2007, so they will have a match in order that they not lose a $900,000 grant; and what are we committing to in the long-run in terms of operations.

Mayor Bellamy said that on June 19, 2007, City Council will consider adoption of the budget.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ASHEVILLE RADIO GROUP LOCATED AT 1190 PATTON AVENUE FOR THE CONSTRUCTION OF A TELECOMMUNICATION TOWER

ORDINANCE NO. 3481- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR ASHEVILLE RADIO GROUP LOCATED AT 1190 PATTON AVENUE FOR THE CONSTRUCTION OF A TELECOMMUNICATION TOWER

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:41 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for Asheville Radio Group located at 1190 Patton Avenue for the construction of a telecommunication tower.

The applicant is requesting a Conditional Use Permit for a .56 acre parcel to allow for the installation of a 60-foot lattice self supporting telecommunication tower mounted on a concrete base behind an existing building. The tower's function is to provide a communication link between the radio station and their relay tower on Spivey Mountain in north Buncombe County.

The subject site is located at 1190 Patton Ave. in West Asheville (Attachment to City Exhibit 3 - Aerial Map). The property consists of one lot zoned Highway Business (HB) and is comprised of .56 acres according to Buncombe County tax records. The subject site is bounded to the north by a convenience store and Patton Avenue, to the east by Auto Zone, to the west by an ATM and US Cellular, and to the south by a commercial parking lot used by the radio station and all zoned HB. Pursuant to Section 7-8-16(e) of the Unified Development Ordinance (UDO), telecommunication towers are reviewed as conditional uses.

The site was brought into compliance with UDO landscaping requirements when it underwent an expansion and remodel in June of 2006 (Attachment to City Exhibit 3 - Site, Landscape & Zoning Plan). Because of the existing nature of the building and parking lot, a request for alternative compliance for areas where new landscaping could not be accommodated was requested and approved. The subject site is surrounded by steep slope and dense vegetation along the rear and east side of the property. However, pursuant to the UDO telecommunication towers shall be buffered form adjacent properties with a buffer which at a minimum meets the requirements of a "B" buffer regardless of adjacent zoning district classifications or uses. Therefore, the applicant is requesting that the existing landscaping on and offsite suffice for this requirement in the form of an alternative compliance request due to the proximity of the tower to the existing building and the fact that the tower pad would be located in an existing parking lot. The tower pad area is 64 square feet, will be enclosed by an 8-foot security fence and will not be visible from the road because of its location behind the building. As required by the UDO, the tower is designed to accommodate at least one other user for co-location.

The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare. This is attempted through minimizing the number of access points onto the thoroughfare, encouraging zero-lot line development, and promoting shared parking and access between adjacent businesses. Development which enhances the function of the thoroughfare and is sensitive to the appearance of the corridor is essential within the district. These major corridors are the gateways to Asheville and often define the first image of the city.

As part of the special requirements applied to Conditional Uses in the HB zoning district per Sec. 7-16-2(b)(3), the project must meet a number of conditions for telecommunication towers including those technical conditions addressed in the Technical Review Committee (TRC) staff report. In addition to the technical conditions, the following non-technical standards must also be met:

f. Applicants shall first be encouraged to consider properties owned by the City or Buncombe County before considering private properties.

The applicant researched the possibility of utilizing an existing monopole on city owned property located at 50 Oregon Ave. Documentation was provided that indicates, "A roof top mount would not work because the tree line would block our signal. There is no direct line-of-sight from the roof of the studio building to the monopole because of tree obstruction."

i. No telecommunication facility shall interfere with usual and customary radio and television reception.

The applicant possesses a current FCC license and no interference with other radio or television transmissions is expected.

t.7. Generators may not be used as a primary electrical power source.

Generators will not be used as a primary electrical power source.

t.13. The City Council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on the adjacent properties and uses.

Additional conditions to be proposed as deemed necessary by Council.

u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city.

In order to annually renew this permit the applicant must certify the information described in Sec. 7-16-2(c)(3)(u)1-6.

v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years.

In order to review the permit for an additional five year period, the applicant must submit a renewal request within 60 days prior to the expiration of the initial permit period. A review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five year periods. Additional details of this renewal process are described in Sec. 7-16-2(c)(3)(v).

w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service within one year of the date of approval.

Approval will become null and void after a period of one year, however, the conditional use approval may be extended for a period of 6 months if substantial construction has commenced before the end of the initial year. If construction has not begun before the end of the initial year, re-application for a new conditional use permit would be required.

At their May 7, 2007, meeting the TRC approved this project subject to the conditions in the staff report.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case

pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed tower will be located along a busy commercial corridor and will be sited approximately 75 feet below the adjacent residential neighborhood along Belleair Rd. In addition, the installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The telecommunication tower is proposed to be 60 feet from existing grade - the maximum height of structures allowed in the HB zoning district and the tower pad area will not be visible from the street. The tower structure itself will be most visible from the adjacent commercial corridor where the impact of a tower will be nominal. In addition, no reception interference is expected which could potentially affect other quality of life issues for adjacent or nearby residents.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   As mentioned earlier, the tower pad/installation area is extremely small (64 s.f.) and, by definition, is designed to be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood. The tower would be located in proximity with other poles and objects of significant height including; flagpoles, power poles, light poles, signage and transmission lines.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The Asheville City Development Plan 2025 thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development both through the further stimulation of investment and technology and through the improved quality of life desired by residents and tourists. In addition, the location of the radio station supports the notable smart growth goal of adaptive reuse/infill through the seamless co-operation with an existing site.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed installation is not expected to cause any increase in traffic to the site other than the occasional maintenance visit.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Tower designed for co-location, which eliminates the need for additional towers in the future.
- Facilitates the functionality of a newly established radio station studio.

Cons:

- Tower will be 60 feet tall and visible along Patton Ave.

Staff concurs with the Technical Review recommendation of approval with the conditions outlined in the TRC report, but additionally recommends that the City Council consider a concealed monopole or other architectural design be used in lieu of the proposed lattice style tower (Attachment to City Exhibit 3 - Elevation Plan).

Mr. Randy Cable, Vice-President and General Manager of Asheville Radio Group, explained the importance of this request for this tower. He said the tower will not be used as a broadcast tower but a point to point communication device. The tower will not be lighted. In addition, he felt that a lattice style tower is better than a monopole.

Ms. Diana Love, resident on Mace Avenue, spoke in opposition to the request, mainly for aesthetic reasons.

Councilwoman Cape initiated discussion regarding the elevation of the pole and how it would be seen from surrounding residential properties (City Exhibits 4, 5, 6 and 7).

Regarding the buffering, Councilman Davis questioned if we could condition the lot in the back which adjoins residential property to remain in a vegetative state. Assistant Planning & Development Director Shannon Tuch suggested the following condition "that the property owner pursue a lot combination and include this property with the subject property" or as an alternative we could propose a recombination where a portion of the property is recombined to preserve a buffer area. Mr. Cable said that he would have no problem with that condition.

After rebuttal, Mayor Bellamy closed the public hearing at 6:59 p.m.

Councilman Davis moved for the adoption of Ordinance No. 3481, granting a conditional use permit for Asheville Radio Group located at 1190 Patton Avenue for the construction of a telecommunication tower, to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (3) The structure design, construction materials, and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) No outdoor lighting or lighting attached to structure (lighting is not proposed for tower structure); (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The lot in the back of the building be preserved as a buffer, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Newman.

There was discussion of whether the tower should be a concealed monopole or other architectural design vs. the proposed lattice style tower. Mr. Pennington said that a lattice style

tower might work with so much tree line and vegetation in the rear; however, staff thinks that a monopole will have less visual impact.

Councilman Mumpower moved for a lattice style pole and not a monopole. The motion died for lack of a second.

Councilwoman Cape moved for a concealed monopole style and not a lattice style pole. The motion died for lack of a second.

The original motion made by Councilman Davis and seconded by Councilman Newman carried on a 4-2 vote, with Mayor Bellamy, Vice-Mayor Jones, Councilman Davis and Councilman Newman voting "yes" and Councilman Freeborn and Councilman Mumpower voting "no". Councilwoman Cape abstained from voting because of the dilemma that they have cut down trees in the alternate buffer.

City Attorney Oast noted that Councilwoman Cape cannot abstain from voting for the reasons set forth.

The original motion was re-voted. The original motion made by Councilman Davis and seconded by Councilman Newman carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Jones, Councilman Davis and Councilman Newman voting "yes" and Councilwoman Cape, Councilman Freeborn and Councilman Mumpower voting "no".

City Attorney Oast said that due to the vote, a second reading of Ordinance No. 3481 would be required at the next formal meeting.

ORDINANCE BOOK NO. 23 - PAGE 423

At 7:15 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:30 p.m., Councilman Freeborn moved to come out of closed session and return to the regular meeting. This motion was seconded by Vice-Mayor Jones and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF CONTIGUOUS PROPERTY LOCATED AT 1903 OLD HAYWOOD ROAD

ORDINANCE NO. 3482 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED AT 1903 OLD HAYWOOD ROAD

Mayor Bellamy opened the public hearing at 7:35 p.m. This public hearing was advertised on June 1, 2007.

Urban Planner Julia Cogburn said that this is the public hearing and consideration of an ordinance for the annexation of one lot located at 1903 Old Haywood Road, the site of the new fire station.

The City of Asheville is completing construction of a new fire station, Fire Station #10, at 1903 Old Haywood Road in West Asheville. The station is scheduled to become operational in July of this year.

This property at 1903 Old Haywood Road (PIN 9618.20-90-5200) is contiguous to the current city limits of the City of Asheville but not located within the corporate boundaries. Part 1 of Article 4A of Chapter 160A of the North Carolina General Statutes authorizes annexation of property owned by a municipality and contiguous to current municipal boundaries.

Pursuant to N. C. Gen. Stat. sec 160A-31, a public hearing must be held prior to adopting any ordinance for annexing municipally owned property. If Council decides to proceed with this request, it is proposed that the annexation become effective on June 30, 2007.

Pros:

- Brings City owned-property into the corporate limits in accordance with state law.

Cons:

- Some property owners in the area may be concerned about annexation of their property.

City staff recommends that City Council adopt the ordinance annexing the property at 1903 Old Haywood Road.

Mayor Bellamy closed the public hearing at 7:37 p.m.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3482. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 1

D. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN ALLEYWAY OFF RICHARD STREET

RESOLUTION NO. 07-121 - RESOLUTION CLOSING AN ALLEYWAY OFF RICHARD STREET

Mayor Bellamy opened the public hearing at 7:41 p.m.

Public Works Director Mark Combs said that this is the consideration of a resolution to permanently close an alleyway off Richard Street. This public hearing was advertised on May 18, 25, June 1 and 8, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Joseph R. Bly has requested the City of Asheville permanently close an alleyway off Richard Street that runs between his properties on Richard Street.

Public Works Department staff has researched and determined this alleyway is not maintained by the City. Closure of this alleyway will not deny any of the adjoining property owners' reasonable means of ingress and egress as all adjoining property owners have joined in signing the petition requesting the alleyway to be closed.

We notified all utilities and City departments and have received no objections to the closing. In addition, Parks & Recreation staff does not see the closing affecting any greenways.

Pros:

- The closure allows the property to be used to its maximum potential.

- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the alleyway, staff can find no potential challenges regarding the closure of the alley.

City staff recommends City Council approve a resolution to permanently close an alleyway off Richard Street.

Mayor Bellamy closed the public hearing at 7:42 p.m.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 07-121. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE 364

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CREATING NEW STANDARDS FOR PROHIBITING GATED COMMUNITIES

ORDINANCE NO. 3483 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CREATING NEW STANDARDS FOR PROHIBITING GATED COMMUNITIES

Mayor Bellamy opened the public hearing at 7:43 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of amendments to the Unified Development Ordinance (UDO) to add new standards to Article VIII prohibiting "gated communities" as a Conditional Use. This public hearing was advertised on June 1 and 8, 2007.

Presently, the City of Asheville does not prohibit gated communities and, as a result, has faced some challenges with a number of recent residential projects that propose to restrict access to non-residents, thereby fragmenting the urban fabric and transportation network. The appeal and occurrence of gated communities has been growing steadily particularly in the south and southwest; in an effort to be pro-active and mitigate any potential negative impacts of gated communities, staff is following policy direction to establish standards that would prohibit gated communities.

Reducing or eliminating the opportunity for gated communities is well supported by the Smart Growth Transportation Policies adopted by the City as well as those policies that promote diversity, affordability, walkability, mixed-uses, and public open space.

In March of this year, the Planning & Zoning Commission reviewed a staff report providing options for regulating gated communities as part of a recent amendment dealing primarily with subdivision standards. At that time, the Commission requested that the portion related to gated communities be removed for separate consideration and instructed staff to explore allowing gated communities as a Conditional Use with standards as opposed to a prohibited use. A separate amendment returned in April with recommended standards; a fair amount of discussion and deliberation over those standards occurred which prompted staff to request additional time for refinement to the standards being discussed. Staff again returned with an amendment the following month where the discussion focused on the practical effect of the

restrictive standards; ultimately this resulted in a decision by the Commission to return to the original proposal that prohibited gated communities which was approved 6-1.

In summary, this ordinance is intended to:

1. Amend Article II to include a definition for "Gated community"
2. Amend Article VIII to add "Gated community" to the list of Prohibited Uses for all districts that allow residential development.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros

- Better reflects City adopted goals and objectives.
- Allows greater opportunity for vehicular and pedestrian connectivity.
- Allows greater opportunity for community connectivity and integration.

Cons

- Restricts the ability to develop a private gated community, thereby restricting the opportunity for this housing option.

City staff recommends approve the amendment to the UDO to add new standards to Article VIII prohibiting "gated communities" as a Conditional Use.

Ms. Heather Rayburn explained some research performed by Ms. Grace Curry on gated communities and outlined their pros and cons. She, personally, did not support gated communities.

Rev. Christopher Chiaronmonte spoke against gated communities.

Mayor Bellamy closed the public hearing at 7:51 p.m.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3483. This motion was seconded by Councilman Newman.

Councilwoman Cape was concerned of the unintended consequences to flatly refuse gated communities, e.g. public safety. She moved to amend the main motion that gated communities be a conditional use rather than to restrict them completely, specifying that the gates be used only for vehicular traffic but that they remain open for pedestrians and bike traffic. This amended motion was seconded by Councilman Davis.

Councilman Newman finds the public safety issue compelling and if a conditional use permit process was utilized, he would want to see clear criteria when gated communities would be allowed.

City Attorney Oast said that if Council chooses to allow gated communities as a conditional use, then he suggested that the main motion be continued to allow staff an opportunity to develop conditional use permit criteria and that it be presented to Council at a later date.

Councilman Mumpower felt this effort is an unnecessary control of private property rights. He felt gated communities will build outside the City limits and contribute to sprawl.

The amended motion made by Councilwoman Cape and seconded by Councilman Davis failed on a 2-5 vote, with Councilwoman Cape and Councilman Davis voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn, Councilman Newman and Councilman Mumpower voting "no."

The original motion made by Councilman Freeborn and seconded by Councilman Newman carried on a 5-2 vote, with Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 21 - PAGE 3

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO PARKING, LOADING AND ACCESS STANDARDS

ORDINANCE NO. 3484- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATING PARKING, LOADING AND ACCESS STANDARDS

Mayor Bellamy opened the public hearing at 8:02 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of amendments to the Unified Development Ordinance to add new standards to Article XI to better address more urban forms related to car channelization and sight visibility triangles. This public hearing was advertised on June 1 and 8, 2007.

The standards for sight visibility triangles and car channelization noted in 7-11-1 reflect a suburban standard that was the predominant form when the ordinance was created. Subsequent amendments and additions to the ordinance encouraging an urban form of development where buildings must be constructed along the edge of the right-of-way and where parking structures are encouraged are in conflict with these more suburban standards.

Currently, when a more urban form is proposed and fails to meet the suburban standard in the ordinance, the applicant must pursue a Board of Adjustment (BOA) variance. The Asheville BOA has expressed discomfort with rendering these decisions stating that they feel that these are highly technical issues that should be addressed by professionals through amended standards. Staff has recognized the need for alternative standards for urban forms for some time and has been working towards a restructuring that would remove all existing standards and from the *Ordinance* and place them in the City's *Standards and Specifications Manual* where more technical standards are typically found. In addition, engineering staff have been working to develop some new standards that are proposed to be included in the *Manual* to address these more urban forms that are occurring with more frequency.

With the adoption date of the new *Manual* still some time out and with the research not being complete, staff felt it best to address this matter with a minor amendment in the interim.

This amendment was reviewed by the Planning & Zoning Commission at their May 2, 2007, meeting where the amendment was approved unanimously.

In summary, this ordinance is intended to:

1. Add a new standard for measuring sight visibility triangles for buildings that require or allow 0-foot setbacks, with other measures to be applied if deemed necessary by the City Traffic Engineer.
2. Add a new standard that exempts parking structures from the car channelization standards developed for surface parking lots, requiring that the structure's parking and access design be approved by the City's Traffic Engineer.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros:

- Better reflects City adopted goals and objectives of encouraging a more urban and Smart Growth form – removes conflict with suburban standards.
- Allows for more context appropriate standards for urban vs. suburban developments.
- Removes the need to accommodate these urban form developments with a Board of Adjustment variance.

Cons:

- None identified.

Staff recommends City Council approve the amendment to the Unified Development Ordinance to add new standards for parking, loading and access.

Mayor Bellamy closed the public hearing at 8:05 p.m.

Mayor Bellamy did not support buildings constructed up to the street.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3484. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 24 - PAGE 5

V. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3480 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO TEMPORARY USES

Mayor Bellamy said that this public hearing was held on May 22, 2007.

Assistant Planning & Development Director Shannon Tuch said that City staff presented an amendment to the City's current Temporary and Accessory Uses and Structures (Sec. 7-14-1 and 7-14-2) at the May 22nd hearing. There were a couple questions raised by the Council the night of the hearing; additionally, staff was contacted by Mr. Jim Jenkins of Alpha Storage Containers with additional questions after the hearing. As a result of these inquiries, staff would like to offer the following clarifications:

- This amendment does not establish a process for requiring temporary and accessory use permits; these permits have been required since the Unified Development Ordinance (UDO) was adopted in 1997. This amendment seeks to clarify and make readily available, through the addition of the chart, the time restrictions for different structures and uses.

- Private, non-commercial events on private property are not regulated through this section of the code and do not require a permit of any kind.

- Private, non-commercial events on public property are regulated through the Special Events permit process.

- Block parties are not regulated through this section of the code; this would be considered a private, non-commercial event. If the road is closed, a road closure permit would be required through the Engineering department.

- Storage containers have always required temporary use permits. Time limitations have not changed for non-residential properties; residential properties are proposed to be restricted to no more than 14 days.

- Storage containers in association with a building permit (new construction, renovation, addition, demolition, etc.) do not require a temporary use permit – this is regulated through the building permit. The 14 day time limitation in residential areas does not apply when the container is being used in association with a valid building permit.

- Properties such as large retail sites may have more than one storage container (example of Wal-Mart where 30+ containers are used for seasonal material storage). One permit may be used for all containers.

- Enforcement actions are not proposed to change – staff will follow the same procedures established prior to the adoption of this amendment.

Staff would like to recommend that Council approve the proposed draft amendment with some very minor clarifications as outlined by City staff in Sec. 7-14-2(g).

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Mumpower didn't believe that this represents a simplification of the UDO and would not support the ordinance.

Councilman Freeborn moved to adopt Ordinance No. 3480 on its second and final reading, with the minor clarifications outlined by City staff. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE 411

VI. NEW BUSINESS:

A. ENDORSEMENT OF HEALTH CARE BILLS OF INTEREST TO MISSION HOSPITALS

City Manager Jackson said that at a recent meeting with the Board of Directors of Mission Hospitals, they asked for City Council's endorsement of Senate Bill 1512 "A bill to enact the 'Health North Carolina' program to facilitate the availability of affordable accident and health insurance coverage to small employers, self-employed individuals, and uninsured workers. To create the North Carolina Health Insurance Risk Pool to help meet the health insurance coverage needs of individuals who cannot obtain affordable health insurance because of high-risk health

conditions; and to appropriate funds for the implementation of this act"; and House Bill 265 "An act to establish the North Carolina Health Risk Pool and to appropriate funds."

Council's options are that (1) if Council wants to endorse the bills at this meeting, that they allow City staff to do further research to determine that this is a neutral impact upon us. If endorsed by Council at this meeting, he would not submit endorsement letters for the Mayor to send to our local delegation until that research was completed; or (2) if Council has questions and wants to make sure City staff thoroughly researches this, then he suggested a continuance.

Councilman Mumpower sees how this would assist Mission Hospitals, but would speak against the endorsement as there are a lot of socialistic implications in this effort.

Councilman Davis requested City staff to investigate the pros and cons of the Senate Bill 1512 feature that requires the top 15 health insurers to participate.

Councilman Mumpower moved to continue this matter until June 26, 2006, in order to allow City staff time to thoroughly research the issue to make sure that this is a neutral impact upon us. This motion was seconded by Councilman Davis and carried unanimously.

B. FLOOD MANAGEMENT POLICY DIRECTION

Ms. Mary Leonard White, Chair of the Asheville-Buncombe Flood Damage Reduction Task Force, introduced the Task Force Members.

She said that nine major floods have occurred in the past 100 years. The most serious were in 1916 and 2004, but there have been damaging floods on an average of every 20 years. Building has occurred first along the river because that is the accessible land and the most easily traversed. Census date indicates that there will be an additional 30,000 people in Buncombe County over the next 20 years, putting continued pressure to build along the river in the floodplain.

The mission of the Task Force is to establish a regional approach and long-range plan for flood damage reduction, floodplain protection and watershed management. Base the approach and plan on best management models, which integrate objectives of flood control, transportation, economic development, land use and community planning, recreation and environmental preservation.

Their approach was (1) to gather information from subject matter experts on a broad spectrum of topics including flooding, development, transportation, etc.; (2) analyze strategies to reduce the impacts of future flooding; and (3) analyze current development patterns and the impact on future flooding.

She reviewed with Council the numerous studies which were reviewed.

The lessons learned from the experts were (1) watershed issues are interconnected; (2) proper planning can reduce the severity of flooding; (3) a regional holistic solution is needed; and (4) all development, redevelopment and improvement projects must meet community priorities. Communication and balance are key.

The following are recommendations to reduce flood damage (1) plan and implement physical measures to reduce flooding (a) keep it out, slow it down, get out of the way; (b) act now to save lives, property and money; and (c) plan based on a future regional build-out scenario; (2) education (a) decision-makers; (b) builders and developers; and (c) general public; and (3) communication between and across communities (a) electronic communication from rain and stream gauges widely and easily available; (b) ongoing regional meetings of planning agencies for emergency; and (c) expand flood warning system, especially below North Fork dam.

To plan and implement physical measures to reduce flooding (1) keep it out (a) initiate incentives or requirements to ensure low impact development; (b) stormwater management; and (c) reduction in impervious surface and steep slope development; (2) slow it down (a) retention, reservoir, impoundments; (b) channel and conveyance improvements; and (c) other engineering and structural improvements; and (3) get out of the way (a) "smart" development, both public and private, in flood hazard zone; (b) encourage removal of flood-prone structures; and (c) education and outreach; and (d) emergency response and warning system.

We are all connected by watershed and need to "share the pain" and the solution. For this reason, we need a regional approach. In Swannanoa - more development on hillsides means more adverse impact on the flooding in the valley. In the River District and Biltmore Village - must take an integrated approach to look at all of the issues. At the North Fork Reservoir - must balance between drought and flood management. In Montreat - steep slopes enhance and maximize stormwater runoff and flooding. In Black Mountain - being upstream of Asheville, any decisions on impervious surface have a large impact.

Decisions made throughout the Swannanoa watershed have a direct impact on Biltmore Village and the River District (1) limit the amount of impervious surface; (2) implement steep slope protection measures; (3) facilitate (through tax credits) low impact development that mimics hydrologic cycle; and (4) encourage extensive best management practices to ensure no increased runoff from development.

Floodway issues (1) no new structures in the floodway (a) current regulations allow buildings with a no-rise certificate, but this should not be allowed along the main channel; (b) greenways allowed; and (c) parking lots allowed - this is a water quality issue, not flow constriction; (2) don't constrict channel with bridges, sewer lines, buildings (a) new bridge on US 25 in Biltmore Village should have larger "throat"; (3) purchase key properties in floodway; and (4) better upkeep of floodway (a) keep it cleaned up - debris removal in the floodway in addition to stream channel; and (b) improve conveyance of streams.

Floodplain and flood fringe issues (1) no net fill in the flood fringe (a) minimum buffer (top of bank) on all streams unless a variance is granted (for example, hardship reasons on single family lots) - 100 ft. minimum buffer along Swannanoa and French Broad River; 50 ft. on primary tributaries; 35 ft. on secondary tributaries; (b) proof of no-rise studies; (2) close the 50% improvement rule loophole by using the latest tax valuation of the structure in the floodplain; and (3) cooperate regionally to map future floodplain scenarios (a) base planning and regulation on build out scenarios - the current model will soon be outdated; (b) require a certain amount of open space be set aside for every acre that is developed in the floodplain; (c) reward developers who meet high environmental standards with a higher density development; and (b) ensure that there is balance between flood mitigation and economic development.

Specific recommendations for Swannanoa River through Biltmore Village (1) clear the channel to accommodate the minor, more common rain events and prevent flooding; (2) ensure the new bridge and surrounding area does not impede water flood as much as current bridge; (3) flood proof the buildings located in the floodplain; (4) purchase flood-prone structures; and (5) choose green space and parks over structures in this "choke point" and high flood risk areas.

The Wilma Dykeman Riverway Plan is a model for the balance between protection and development.

Implement Management Plan for North Fork Reservoir (1) Flood Operations Plan (a) operate reservoir to provide flood storage and reduce flood levels; (b) maintain drought response plan; (2) Emergency Action Plan (a) protect the dam and water supply from extreme events; and (3) Advance Flood Warning System (a) notify emergency management and citizens.

Recommendations to reduce flood damage (1) plan and implement physical measures to reduce flooding (a) keep it out, slow it down and get out of the way (b) act now to save lives, property and money in the future; and (c) plan based on a future regional build-out scenario; (2) education (a) decision makers; (b) builders and developers; and (c) general public; and (3) communication between and across communities (a) electronic communication from rain and stream gauges widely and easily available; (b) ongoing regional meetings of planning agencies for emergency; and (c) expand flood warning system, especially below North Fork dam.

In summary (1) working together, we can reduce the impact of flooding "inch by inch"; (2) we are all connected by the watershed and need to "share the pain" and the solution through a regional approach; (3) we must be proactive now (a) projections show County growing by 30,000 people in the next 20 years, putting even more people and property in harm's way; (b) severity of climate change will increase chance of severe flooding in our area; and (c) we cannot continue with current development plan; and (4) there is a cost/benefit - research has shown that for every one dollar that is spent on mitigation approximately four dollars are saved from monies that are eventually spent on correcting damages.

Councilman Mumpower felt that it was important that we not over react to stand alone events. He asked that City staff seek the point of balance. He personally did not believe we have done what needs to be done about clearing out the river and conduit pipes.

Councilman Newman requested more information on what are the different land use policies that we need to be putting in place in Asheville, our extraterritorial jurisdiction area and at a regional level to have a beneficial rather than an adverse effect on the flooding and floodplain equation.

Upon inquiry of Vice-Mayor Jones, Ms. White suggested City Council contact the N.C. Dept. of Transportation and request them to construct the bridge at Biltmore Village to have a wide a span as possible.

Ms. White said that she hoped that one recommendation from Council would be a regional watershed plan and there are efforts underway to find funding for that plan and to get cooperation from the other governmental bodies.

On behalf of City Council, Mayor Bellamy thanked the Task Force for their hard work on this effort. The next step for Council will be that City staff take the information and come back with ordinances, etc. for Council to consider.

C. ORDINANCE NO. 3485- ORDINANCE AMENDING THE CITY CHARTER OF THE CITY OF ASHEVILLE TO PROVIDE THAT PRIMARIES AND ELECTIONS TO THE OFFICES OF MAYOR AND COUNCIL MEMBERS BE CONDUCTED ON A PARTISAN BASIS

City Attorney Oast said that this is the consideration of an ordinance to amend the Charter of the City of Asheville to provide for partisan election

He said that on May 8, 2007, he gave an explanation of the process for amending the City's Charter to provide for partisan elections.

The Resolution of Intent was adopted on May 8, 2007; the public hearing was advertised and held on May 22, 2007. The next step in the process is adoption of the ordinance, scheduled to occur on June 12. Due to legally-prescribed time periods, the ordinance must be adopted on June 12 if it is to be effective for the 2007 primary and election cycle.

If adopted, the ordinance will be advertised and there will be a 30-day window for a petitioned referendum. If a petition drive is successful, the question of partisan elections would

have to be put to a vote of the people, which would delay the effective date of the ordinance past the 2007 election cycle.

After a brief discussion on re-opening the public hearing, Councilman Mumpower moved to re-open the public hearing. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "no."

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3485. This motion was seconded by Vice-Mayor Jones.

Councilman Newman supported the ordinance because (1) political parties are already actively involved in municipal elections; (2) a Council member's basic philosophy has a direct bearing on how they tend to view the issues; and (3) having this process creates a level playing field between both the political parties in the general municipal elections. The most compelling argument against the involvement of political parties in municipal elections is that the State of North Carolina has made it unnecessarily difficult for third party candidates to get on the ballot at all levels of government in North Carolina. He believes there should be rules, but agrees that it is more difficult than it should be. He voiced support for efforts to make it easier for candidates from third parties to run for office at all levels of government.

Vice-Mayor Jones voiced her support for partisan elections noting that research has shown that introducing the political parties in elections will increase voter turnout. She also pointed out that partisan vs. non-partisan election discussion began after the last City Council election.

Councilwoman Cape felt that while it appears on the surface that it penalizes individual candidates, she didn't believe in the long run that it truly does. An independent candidate cannot come in at the last minute and expect to complete on an equal level. In addition, another thing that would help individual candidates would be Instant Runoff Voting, which can only be done in partisan elections.

Councilman Mumpower believed this is about progressive power. Our current system is designed to provide a balance on perspectives and out of 500 cities in North Carolina, only 9 of them have partisan elections.

Councilman Davis did not support the ordinance in that he felt it goes against the very thing that democratic parties are built around and that is inclusiveness.

Councilman Freeborn supported the change to partisan elections in that he felt the voters really do care about the candidate's political party.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 21 - PAGE 71

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of April 27 - May 24, 2007: Bryan Plunkett (Streets), AT&T (Water), Robert Glasgow (Sanitation), Priscilla McDowell (Water), Peggy T. Reid (Water), Susan Lamont (Water), Sarah Folse (Streets) and AT&T (Water).

The following claims were received by the City of Asheville during the period of May 25 - June 8, 2007: Mickey Donathan (Water), Lennie Sparks (Sanitation), Marci King (Transit Services), Global Rental Company (Streets), Progress Energy (Sanitation), Howard Hurwitz (Water) and Timothy Moore (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte challenged anyone running for City Council submit to a drug test.

Ms. Mary Steiner alerted City Council that younger drug dealers are returning back to Pisgah View Apartments.

Mr. Mike Fryer questioned City buses running outside the City limits. In addition he spoke about the number of police officers in the City. Mayor Bellamy instructed City Manager Jackson to contact Mr. Fryer with accurate information.

When Mr. Matt Mittan began speaking of an issue already voted on the agenda (which City Council rules prohibit), he disobeyed the decorum of the Chamber and was escorted out.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, requested for an update in writing regarding Greenlife Grocery on Maxwell Street. Councilman Newman remained hopeful that the ideas discussed with Greenlife will move forward. He questioned what the process would be for setting a timeline to move forward with the other option of traffic calming on Maxwell Street, if Mr. Swann does not proceed with the good faith participation of re-designing the loading dock. After a brief discussion, Mayor Bellamy instructed the City Attorney to update Council next week in a closed session due to Mr. Reid Thompson having filed a lawsuit against the City of Asheville and Greenlife Grocery. Thereafter, an update will be provided to the community in writing.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:35 p.m.

Kesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – June 19, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Councilwoman Robin L. Cape (participating in an Inter-City visit to our Sister City, Saumur, France)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "C", and "D" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 12, 2007

Councilman Davis requested that the minutes be amended to read as follows regarding partisan elections: "Councilman Davis did not support the ordinance in that he felt it goes against the very thing that democratic parties are built around and that is inclusiveness."

B. BUDGET AMENDMENT TO APPROPRIATE N.C. DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH JORDAN JONES & GOULDING FOR THE PROJECT KNOWN AS WATER MASTER PLAN

This item was removed from the Consent Agenda for an individual vote.

D. BUDGET AMENDMENT TO FUND THE LEASE PURCHASE AGREEMENT WITH THE TRUST FOR PUBLIC LAND FOR THE ACQUISITION OF 29.62 ACRES OF LAND ON BEAUCATCHER MOUNTAIN

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the June 12, 2007, minutes as amended. This motion was seconded by Councilman Mumpower and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. ORDINANCE NO. 3486 - BUDGET AMENDMENT TO APPROPRIATE N.C. DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT

Summary: The consideration of a budget amendment, in the amount of $20,576, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected $20,576 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the police (patrol) safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police officers

Con: None noted.

City staff recommends City Council approve a budget amendment in the amount of $20,576 to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

Councilman Mumpower felt that at a time when the national debt is in the trillions of dollars, he felt it was inappropriate to take money from the federal government.

Vice-Mayor Jones moved to adopt Ordinance No. 3486. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 21 - PAGE 9

C. RESOLUTION NO. 07-122- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH JORDAN JONES & GOULDING FOR THE PROJECT KNOWN AS WATER MASTER PLAN

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Jordan Jones & Goulding, in the amount of $550,000, for the project known as Water Master Plan.

This project consists of a professional engineering firm to provide professional services for the preparation of a new Water Master Plan. The last water Master Plan was completed in 1995. Typically water utility master plans are updated every five years.

The Water Resources Department advertised a Request for Qualifications (RFQ) on Thursday, March 15, 2007. Four (4) RFQ's were received from Brown and Caldwell, Hazen and

Sawyer, Jordan Jones & Goulding, and Stearns & Wheler. After a thorough review of the RFQ documents by Water Resources Department staff, Jordan Jones & Goulding was selected based upon professional qualification. Staff negotiated a price of $550,000 for the scope of work for the Master Plan.

This project totaling $550,000 for professional services has been funded in the Water Capital Projects Fund.

Jordan Jones & Goulding has performed several projects of this nature in the past in a satisfactory manner. They are a financially stable company that has been in existence for almost 50 years. Former clients were pleased with their work, and they have one of the largest engineering staffs doing water system modeling and master planning.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

Pros:

- The execution of this contract will allow the City of Asheville Water Resources Department to create a water distribution system model, identify existing water demands and forecast those demands in five-year increments over the planning period, analyze and assess water storage and distribution needs for domestic and fire supply, project population demands for water for a 30-year planning period, develop a GIS-integrated water computerized hydraulic model and map; identify pressure zones and make recommendations for reductions in pressure throughout the system, make recommendations for flow meter installations throughout the system, and identify projects within the system that meet the qualifications of the revenue bond financing, including the Town Mountain Project and Fairview Storage Tank Project which are vital components of the $35 million revenue bond and future pay-as-you-go projects.

- The Master Plan will determine storage requirements for the Town Mountain service area including tank and pump station location which will enable the Patton Mountain tank to be taken out of service and demolished. The Fairview area is the fastest growing part of our system and the Master Plan will address current and future needs and storage capacity required to serve this part of the water system.

- The bid amount of $550,000 for the professional engineering services of the Water Master Plan is equitable and comparable to others in the water industry.

Cons:

- There are no cons to this project. The current master plan is outdated and needs to be updated. Funds area available.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Jordan Jones and Goulding, in the amount of $550,000 for the project known as Water Master Plan.

Water Resources Director David Hanks responded to Councilman Mumpower when he asked how many of the recommendations we followed when the last plan was adopted approximately 12 years ago.

Councilman Mumpower felt that until we resolve our legal issues regarding the Sullivan Acts, he would be hesitant to spend additional moneys on additional plans.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-122. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 365

D. ORDINANCE NO. 3487 - BUDGET AMENDMENT TO FUND THE LEASE PURCHASE AGREEMENT WITH THE TRUST FOR PUBLIC LAND FOR THE ACQUISITION OF 29.62 ACRES OF LAND ON BEAUCATCHER MOUNTAIN

Summary: The consideration of a budget amendment to fund the lease purchase agreement with The Trust for Public Land for the acquisition of 29.62 acres of land on Beaucatcher Mountain.

On March 20, 2007, City Council approved in concept the acquisition of 29.5 acres of land on the west slope of Beaucatcher Mountain. In addition, on May 15, Council approved a resolution authorizing an agreement with The Trust for Public Land to finance acquisition of this land through installment purchase contracts. The budget amendment will provide the necessary legal and technical adjustment to fund the $575,000 that the City has committed to this purchase.

Staff is recommending that the funding for this lease purchase agreement be taken from two sources. In March, City Council approved a budget amendment in the amount of $250,000 to purchase land at the Asheville Regional Airport. Staff has since learned that this land purchase will not take place, thus this $250,000 is available to fund a portion of the $575,000 needed for the Beaucatcher Mountain lease purchase agreement. Staff is recommending that the remaining $325,000 needed for the Beaucatcher Mountain lease purchase agreement be appropriated from fund balance. This appropriation will lower the City's Fiscal Year 2006-07 year-end fund balance to an estimated 31.5%. Based on current revenue and expenditure trends, staff does not believe that this appropriation will have a negative impact on Fiscal Year 2006-07 or Fiscal Year 2007-08 fund balance levels.

PROS:

- Fully funds land purchase agreement agreed to at prior Council meeting.

CONS:

- Will cause a slight decrease in fund balance

City staff recommends City Council approve the budget amendment to fund the lease purchase agreement with The Trust for Public Land for the acquisition of 29.62 acres of land on Beaucatcher Mountain.

Councilman Mumpower felt that changes were made from the original proposal presented and although he believes this is a good purchase, he was uncomfortable in voting in support.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3487. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 11

III. PRESENTATIONS & REPORTS:

A. NEW ASHEVILLE SPEEDWAY MEMORIAL FUNDRAISING KICK-OFF NIGHT OF THUNDER-DOWN ON THE RIVER REUNION

Councilman Davis said that the Asheville City Council, in coordination with Buncombe County Commissioners, has been working in tandem to coordinate fundraising efforts aimed at erecting a Memorial at the City's Carrier Park, in an effort to honor the history of NASCAR and automobile racing at this former racing venue. He showed Council the conceptual design of the Asheville Speedway Memorial, which they hope will be built by the fall of 2007.

With the City Council's support, he has been serving on a local committee, including Commission Chair Nathan Ramsey, and we have been working in an effort to fundraise enough money to build an appropriate NASCAR Memorial sometime later this year at the City's Carrier Park. The committee's first opportunity will be a community kick-off, scheduled for Thursday, June 21, 2007, at Carrier Park. The committee has set a fundraising goal of at least $30,000 for this Memorial with hope to surpass that amount, raising as much as $50,000 over the next several months. Eblen Charities has agreed to receive charitable donations during the entirety of this community fundraising effort, as a pass through agency, with all proceeds going toward construction of the Memorial.

The June 21st New Asheville Speedway, Night of Thunder Down on the River Reunion Night is a collaborative effort from the City, the County, Eblen Charities, and key local NASCAR celebrities to host an event filled with fun excitement, as local NASCAR legends share their memories of what racing has meant to this community. The evening's events include live music and food as well as the following events:

Admission to the event will be $10.00 for adults, $5.00 children under 12 and free for children under 6. Admission will include the event poster with a border for autographs.

5:00 p.m.	NASCAR Legends Welcome: Brad Daugherty and Andy Petree, Masters of Ceremonies.
5:15 p.m.	Autographs and Pictures with NASCAR Legends Driver Car Displays, Driver & Fan Informal
6:30 p.m.	NASCAR Memories: A Panel of Drivers will field questions from fans about race memories. Stories will be shared.
7:30 p.m.	NASCAR Raffle of Racing Memorabilia: Grand Prize Auction: Four Tickets to Bank of America 400
8:00 p.m.	Autograph and Picture Opportunities
9:00 p.m.	Conclusion

The committee has enjoyed tremendous staff support from Jeff Richardson, Jim Orr and Al Kopf.

He noted that the Buncombe County Commissioners will match the City's contribution, but anticipated that amount would be minimal because their goal is to raise the entire amount by public donations.

Councilman Mumpower moved to continue support for this fundraising kick-off and other efforts with all proceeds going to the NASCAR Memorial at Carrier Park. This motion was seconded by Councilman Freeborn and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING A SINGLE LOT LOCATED ON HAYWOOD ROAD FROM RM-8 TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3488 - ORDINANCE REZONING A SINGLE LOT LOCATED ON HAYWOOD ROAD FROM RM-8 TO COMMUNITY BUSINESS II DISTRICT

Mayor Bellamy opened the public hearing at 5:23 p.m.

Urban Planner Alan Glines said that this is the consideration of rezoning a single lot located on Haywood Road from RM-8 Residential Multi-Family Medium Density District to Community Business II District. This public hearing was advertised on June 8 and 15, 2007.

Mr. Glines said that the proposal is to rezone a single parcel from Residential Multifamily-Medium Density (RM-8) to Community Business II (CB II). The parcel is wooded and has a fairly steep natural slope. It appears that the lots were never built on. The only access for the properties is Haywood Road. Properties adjacent to this to the south are commercial uses and are zoned CB II. Across the street the properties are zoned CB II and River and both are currently vacant. The property relates to Haywood Road by access and general orientation. Haywood Road is a busy connecting corridor and commercial uses have expanded from the center of west Asheville out along to the ends of the street over time. As a part of this expansion the single family style structures along the corridor are expected to either convert to commercial uses or the parcels will be redeveloped with new structures for commercial uses. As the corridor redevelops, residentially zoned areas will be provided a property line buffer to shield the commercial uses.

Although unofficial at this time and continuing in the discussion phase, the Haywood Road Corridor Committee is considering a zoning change for properties along Haywood Road. This zoning change is expected to include properties fronting along Haywood Road from the French Broad River and continuing most of the way to Patton Avenue. In general the new zoning district will have design requirements in a similar way to the proposed mixed-use district and is to modified to reflect Haywood Road for height, building scale and residential density.

Because this application is termed a 'straight' rezoning there is no site plan associated with this parcel included with this request.

The residential multi-family medium density district (RM-8) is established to provide areas for medium density residential uses including both multi-family and single family units. A limited list of neighborhood related non-residential uses are also permitted in the district. Residential density is limited to eight units per acre.

The Community Business II district (CB II) is established to provide areas for medium to high density business and service uses for multiple residential neighborhoods. This community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to both pedestrian movement and automobile access. Residential density is limited to sixteen units per acre.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- An infill parcel may be developed
- The Haywood Corridor is primarily a commercial connecting roadway.
- The parcel is a good candidate for small scale mix-use development
- Property line buffers will require landscaping that will protect residential neighbors if the property develops

Cons:

- The site will require grading in a similar way to other properties along Haywood Road

This rezoning request was recommended for approval by a 6-1 vote by the Planning and Zoning Commission. No one spoke at the meeting. Two people called in the days leading up to the meeting to inquire about the request.

The Planning and Zoning Commission at their May 2, 2007, meeting voted 6-1 to recommend approval of the rezoing request because it meets the goals of the comprehensive plan. Staff concurs with this recommendation.

Mayor Bellamy closed the public hearing at 5:27 p.m.

Mr. Glines responded to various questions and/or comments from Council, some being, but are not limited to: what standards will be applied for the stability of the lot; what type development could be built on that shallow site; how close can grading occur to the next door lots; and what types of buffer will be required for a development.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3488. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 13

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH NEW LEVEL III THRESHOLD ADJUSTMENTS

Mayor Bellamy opened the public hearing at 5:37 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish new Level III threshold adjustments. This public hearing was advertised on June 8 and 15, 2007.

This code amendment is in response to direction from City Council to develop an approach that would provide threshold adjustments for certain types of Level III projects that promote City goals and objectives. This amendment would provide for increased review thresholds for developments that promote housing, environmentally-friendly construction, natural resource conservation, community building, and transit goals. In other words, developments which accumulated sufficient point totals under this amendment would receive procedural relief as an incentive to meeting key City of Asheville goals.

The selected categories include items that can be independently verified and enforced prior to issuance of a certificate of occupancy.

Staff is exploring future, general development amendments. These "next steps" are not part of this ordinance and are provided for informational purposes only.

Pros:

- Provides developments that meet certain key City goals with review incentives.
- Streamlines the development review process.

Con:

- Removes Planning and Zoning Commission and City Council review from certain types of developments.

The Planning and Zoning Commission spent considerable time on this ordinance, recommending adjustments to include the listed definitions and a "Community Building" category. The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

On May 2, 2007, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-1 (Mr. Byers was opposed due to not being able to specifically view the several changes before voting). City staff recommends approval of the proposed code amendment.

Ms. Elaine Lite expressed concern about the lack of accountability.

Mayor Bellamy closed the public hearing at 5:42 p.m.

In response to Councilman Newman, Mr. Shuford said that this only applies to projects that are allowed under that zoning district.

Councilman Newman felt we should not apply this in all zoning categories, but only in those areas where we want to focus on intense development. He also questioned how the greenbuilding aspects were chosen and if people really involved in the greenbuilding community had input. He felt that incentizing renewable energy technology in new development projects should be included since it is measurable and can be verified up front.

Mr. Shuford explained how the greenbuilding aspects where chosen noting that there is an opportunity for more discussion.

Councilman Newman also questioned if we are giving incentive points for things that people already have to do, e.g., stormwater, open space preservation, or awarding points for things that are done above and beyond the basic requirements, which is how he felt it should be. Mr. Shuford explained how points would not be awarded for something already required.

Councilman Newman questioned the priority places aspect on the City's website. Mr. Shuford explained that the priority places item is to put areas and properties Council designates into a very market-driven type of situation to encourage development, e.g., Broadway corridor, River areas, Central Business District, individual sites designated in the 2010 Comprehensive Plan, etc. He suggested, with regard to Council's concern about steep slope areas, that we indicate that areas designated as steep slopes are not eligible for consideration under this provision.

Councilman Newman liked a lot of these concepts, but felt the ordinance needed more work.

Mayor Bellamy felt the concept is good; however, it takes out public comment at two levels, since the Planning & Zoning Commission and City Council will not be reviewing the projects. Since we have the Sustainable Energy & Environment Committee in place, she wondered if there should be a policy in place that requires them to review an ordinance of this type. She felt the increased thresholds are too large for our community without more public input. She questioned how the different categories were chosen and how can we tighten them up to make better policy.

Mr. Shuford suggested Council table this action and refer it to the Sustainable Energy & Environment Committee for review and comment, and then it be sent back to the Planning & Zoning Commission for additional review. After that, then it can come back to City Council for consideration.

Mayor Bellamy felt an incentive should be given to those developers who reach out to the community on the front end of a project.

Councilman Mumpower would have to speak against the ordinance because he felt Council gives staff mixed policy guidance. Council asks staff to simplify the UDO, but then tries to exert greater control. He felt this is an example of such.

Councilman Freeborn felt this is a good foundation. He suggested (1) this ordinance be limited to the priority places only; (2) a design charette or a community forum should be required by developers on the front end; and (3) incentives should only be awarded for things that go above and beyond the basic requirements.

Vice-Mayor Jones supported the community involvement at the front end and also the incentives being awarded only for going above and beyond the basic requirements. In simplifying facets of this ordinance, we should take out zoning districts that we know the zoning will trump it.

Vice-Mayor Jones moved to table this action and refer it to the Sustainable Energy & Environment Committee for review and comment, and then it be sent back to the Planning & Zoning Commission for additional review. After that, then it can come back to City Council for consideration. This motion was seconded by Councilman Newman.

Councilman Davis said that this ordinance was reviewed at the Planning & Economic Development Committee (PED) and they had some of the same questions and concerns raised by Council at this meeting. He felt this was a good way to get green goals accomplished, but was concerned about the lack of review.

Councilman Newman questioned if in some cases we should tighten up on some of our standards and in other cases make it easier when projects are doing things that the community wants.

Councilman Davis, at Vice-Mayor Jones' suggestion, made a friendly amendment that the ordinance go back to the PED first and then to Planning & Zoning Commission.

Mayor Bellamy could not support the motion because she feels this is an issue of public trust. Since we have changed the UDO quite a few times recently, we need time to show the public that we can make our ordinances work properly.

When Councilman Freeborn suggested a broad community conversation about development as a whole, Vice-Mayor Jones said that there are a lot of themes in this ordinance from the development forum that was held last May.

Vice-Mayor Jones restated the motion and moved that the ordinance be remanded to the Planning & Economic Development Committee for further review and further input by appropriate committees and public groups and interested parties. This motion was seconded by Councilman Newman and carried on a 4-2 vote with Mayor Bellamy and Councilman Mumpower voting "no."

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR COTTAGE DEVELOPMENTS AS A USE BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS IN CERTAIN RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3489- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR COTTAGE DEVELOPMENTS AS A USE BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS IN CERTAIN RESIDENTIAL ZONING DISTRICTS

Mayor Bellamy opened the public hearing at 6:16 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to provide for cottage developments as a use by right subject to special requirements in certain residential zoning districts. This public hearing was advertised on June 8 and 15, 2007.

This code amendment provides for cottage developments as a use by right subject to special requirements in certain residential zoning districts (RS-8, RM-6, RM-8, and RM-16). Cottage developments are small single family homes clustered around a common open space area, generally at greater density than the underlying zoning would allow for more traditional single family development. The impact of the density increase is offset by the size of the homes. This style of development is becoming more common as an infill development strategy that is compatible with surrounding development.

City Council has expressed interest in allowing cottage developments. This ordinance has been developed to facilitate that direction and is the result of considerable research on how such ordinances have been developed in other jurisdictions. Additionally, the Planning and Zoning Commission spent considerable time on this ordinance, recommending adjustments to maximum floor area, accessory structure provisions, applicable zoning districts, and separation between cottage developments.

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pros:

- Provides infill development opportunities
- Adds new style of housing to local market

Con:

- Increases density

On May 2, 2007, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, supported the concept. He felt Council's appointments to the Planning & Zoning Commission should contain a more well-rounded board of professionals, e.g., planners, architects, etc.

Mayor Bellamy closed the public hearing at 6:26 p.m.

It was the majority of Council's consensus to ask the Boards and Committees Committee to review the board make-up of the Planning & Zoning Commission, with input from Planning staff.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3489. This motion was seconded by Councilman Freeborn and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 16

D. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO APPLY HILLSIDE GRADING REQUIREMENTS TO SINGLE FAMILY AND DUPLEX DEVELOPMENTS**

ORDINANCE NO. 3490 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO APPLY HILLSIDE GRADING REQUIREMENTS TO SINGLE FAMILY AND DUPLEX DEVELOPMENTS

Mayor Bellamy opened the public hearing at 6:28 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to apply hillside grading standards to single family and duplex developments. This public hearing was advertised on June 8 and 15, 2007.

This code amendment has been requested by the City Council to more broadly apply the hillside regulations to single family and duplex uses. This change allows the density and grading requirements to apply to those types of uses.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pro:

- Hillside regulations will be able to be applied to single family and duplex development.

Con:

- Applying hillside regulations to these situations may make it more difficult for such development in hillside situations.

The Planning and Zoning Commission recommended approval of this code amendment on June 6, 2007, by a vote of 4-1. City staff recommends approval of the proposed code amendment.

Mr. Jake Quinn spoke in support of this amendment.

Mayor Bellamy closed the public hearing at 6:30 p.m.

Councilman Mumpower felt this ordinance exerts an unnecessary level of control on private property.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3490. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 20

V. UNFINISHED BUSINESS:

A. **ORDINANCE NO. 3491 - ADOPTION OF THE FISCAL YEAR 2007-08 ANNUAL OPERATING BUDGET**

Mayor Bellamy said that the public hearing on this matter was held on June 12, 2007.

Chief Financial Officer Ben Durant said that this report presents the Fiscal Year 2007/2008 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal Year 2007-08 Annual Operating Budget was formally presented to City Council on May 8, 2007. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 1 and June 8, 2007. City Council conducted a public hearing on the budget on June 12, 2007.

General Fund

The net operating budget presented to City Council on May 8 was set at $129,864,448, including a General Fund appropriation of $89,323,929. The proposed budget presented to Council for adoption tonight includes changes that were made after the proposed budget was published on May 8. Those changes are discussed below:

- At the June 12 budget work session, Council voted to make two fee changes which impacted the General fund revenue budget. The first change that Council endorsed was a 50% reduction in the household recycling fee. This fee reduction, which will save Asheville households $15.78 per year, resulted in a $400,000 reduction in the General Fund revenue budget.

- Council also voted at the June 12 work session to eliminate the maximum fee caps on business privilege licenses for retail, wholesale, and service establishments. This change will produce approximately $75,000 in additional revenue in FY 2007/2008.

- Finally, Council agreed to increase the ABC revenue budget by $100,000 based on updated revenue information provided by the ABC Board.

In summary, the changes endorsed by Council on June 12th left the General Fund budget out of balance by $225,000. To re-balance the General Fund budget, staff is proposing two adjustments:

- Reduce the Manager's Contingency by 50%. This reduction will produce a savings of $100,000.

- Adopt a managed savings program to take advantage of attrition savings opportunities and other possible contract savings. Staff believes it can save an additional $125,000 utilizing a managed savings approach.

The table below summarizes the changes to the proposed budget presented to Council tonight.

Council Action:	**Effect:**
1) Reduced Recycling Fee by 50%	(400,000)
2) Eliminated Privilege License Caps	75,000
3) Adjusted ABC Revenue Estimate	100,000
Total Revenue Reduction	(225,000)

Proposed Reductions to Balance Budget	
1) Reduce Manager's Contingency by 50%	(100,000)
2) Managed Savings Program	(125,000)
Total Expenditure Reduction	(225,000)

Firefighter Retirement Benefit

In addition to the budget changes noted above, Council also directed staff to prepare a funding strategy for a firefighter retirement benefit program in which the City provides a 2 0% match. Human Resources staff estimates that it will take at least 90 to days to implement this new retirement program. With an October 1 estimated start date, a 2.0% City match will require $130,000 in funding for FY 2007-08. It is estimated that full year funding for the program will cost approximately $177,000.

If Council adopts this new firefighter retirement plan, staff is recommending that Council fund the program with additional revenue. In the current proposed FY 2007-08 budget, staff projected tax base growth of 3.0% for next fiscal year. The City's tax base has grown by an average of 3.4% over the last ten fiscal years. Based on this growth rate average and continued strong building permit activity, staff is recommending that we adjust the projected tax base growth upward to 3.3%. This small adjustment in the FY 2007-08 property tax revenue projections will produce the necessary revenue to fund the firefighter retirement plan while not adversely impact the General Fund.

Outside Agencies

Outside Agency funding is presented in accordance with the Revenue & Finance Committee's recommendations and is included in the budget presented tonight for adoption.

Parking Fund

Council also directed staff to reduce the fees in the Parking Fund for surface lots and on-street permit parking by $5.00 each. This fee reduction will lower the Parking Fund revenues by an estimated $20,000. To offset this reduction and keep the Parking Fund balanced, staff will reduce the amount set aside for future parking deck construction by $20,000.

Other Fees & Charges

In addition to the parking fee reductions and the changes to the household recycling fee and the business privilege license fee that Council has agreed to implement, the Revenue & Finance Committee also made recommendations on various other changes to the fees & charges schedule based on requests submitted by staff during the budget process. These proposed changes were presented to Council at the May 22 work session. Council did not take action on these recommendations at that May 22 work session; thus, they are *not* included in the budget presented tonight for adoption. Council, however, may elect to review these recommendations and provide direction along with adoption of the budget.

Staff requests that Council review the FY 2007-08 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Vice-Mayor Jones believes this budget is incredibly strong. It commits to a significant investment in our infrastructure particularly water, an unprecedented increase in public safety for

our entire community, basic community priorities such as sidewalks and downtown cleanliness, and a long-standing benefit issue for our firefighters of a 2% match to a 401-A. In addition, it offers some tax and fee relief for families that live in Asheville. She sees the genesis of this budget coming out of the community forum in January, following by subsequent Council retreats culminating in this document. This is a produce of hours and hours of Council deliberation.

Vice-Mayor Jones moved for the adoption of the Fiscal Year 2007-08 Annual Operating Budget to include the changes outlined above. This motion was seconded by Councilman Freeborn.

Councilman Newman was proud of the commitment to begin looking at energy challenges facing our community in promoting sustainable energy conservation in the City organization; the downtown planning process; increase of funds for law enforcement; and providing some relief to Asheville taxpayers.

Councilman Mumpower felt Council should have further deliberation on the issue of firefighters. He agreed that they have a legitimate concern, however, he questioned if the 2% match into a 401-A is fair consideration. He had hoped for a permanent fix as he felt this will be an on-going budget consideration in future years when the firefighters will request Council to raise the 2%.

Councilman Freeborn felt that input from the community forums and retreat represent this budget. We have funding for better planning and enforcement relating to the Unified Development Ordinance; continued increase in funding for our transit system; significant increase in funding for the Police Department; funding for a Downtown Master Plan; funding to revise our Greenway Master Plan; funding to look at our Parks & Recreation Master Plan; and addressing a retirement inequity for our firefighters. He did urge the firefighters, however, to vote for Social Security because in the long-run it would be a much better system.

Councilman Mumpower felt the Council deserves credit for capital improvements efforts and for maintaining our savings account at a significant level; however, he would have to vote against the motion. He felt (1) this budget has thrown money and personnel at our drug problem without accountability and established goals that would ensure it's success; (2) we are setting up our firefighters to be pitted against Council in the future and isolating them from the rest of the City employees; (3) appropriating a quarter of a million dollars to non-profits who should solicit tax free donations; and (4) this budget includes a token tax decrease as a screen for the real issue of some of our policies and methodologies which result in the expenditure of substantial funds for things he personally disagrees with - things that represent a distraction from the essential issues, such as public safety and going after our open air drug market.

Mayor Bellamy recognized Chief Financial Officer Ben Durant and Budget Director Tony McDowell for their willingness to work hard for this Council. For the second year now, City staff has gone a great job in tightening their belt under the leadership of City Manager Jackson, with cost-saving measures. Council heard a detailed analysis from City staff of how can we re-focus and re-prioritize what we are doing as a City to make sure that we have cost-cutting measures in place to better serve the public. She explained the issue of the inequity with the firefighters. She said that most people who have a job contribute 6.2% into Social Security and your employer matches that 6.2%. But in North Carolina (particularly Asheville) our firefighters have the opportunity to opt out and they do not contribute to Social Security. Council was tasked with the question of how do we make that equitable as far as other City employees who get that 6.2% for their retirement. Since 1999 when she was elected to City Council, being equitable to our firefighters was always an issue. This year for the first time our firefighters have put something on the table that they and Council agree with. She's not sure this is the best solution; however, she will support the motion

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 22

B. SECOND READING OF ORDINANCE NO. 3481 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR ASHEVILLE RADIO GROUP LOCATED AT 1190 PATTON AVENUE FOR THE CONSTRUCTION OF A TELECOMMUNICATION TOWER

Mayor Bellamy said that the public hearing on this matter was held on June 12, 2007.

Vice-Mayor Jones moved to adopt on the second and final reading Ordinance No. 3481. This motion was seconded by Councilman Davis carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 411

C. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to May 8, 2007, at which time the public hearing was closed. The action was continued until June 12, 2007, in order for Council to review specific data.

Planning & Development Director Scott Shuford said that this ordinance returns to Council's agenda at the June 19 meeting. The conversation following the June 12 worksession and Steep Slope discussion item indicated some Council interest in potentially continuing this item to July 10, owing to Council members' travel commitments in late June. Should Council still find the July date to be preferable, staff is prepared for the change in schedule. The Open Space and Retaining Wall Unified Development Ordinance amendments, which had been scheduled to accompany this item, could be kept as scheduled or continued to the later date as well.

Staff's hope is that the June 12 worksession discussion served to provide additional clarification regarding the elevation and slope thresholds, as well as the proposed single-family home site and subdivision design changes. Staff has added the visualization presentation to the City web site, as the Mayor requested.

Councilman Freeborn moved to continue this matter until July 10, 2007. This motion was seconded by Councilman Mumpower and carried unanimously.

D. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE OPEN SPACE STANDARDS

ORDINANCE NO. 3492- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE OPEN SPACE STANDARDS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to May 8, 2007. However, due to the length of the May 8 meeting, this public hearing was continued until this date.

Planning & Development Director Scott Shuford said that this code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan (SOP) related to the Natural and Built Environment. The SOP proposes enhanced recreational facilities, especially greenways, as well as a fee-in-lieu program. The Unified Development Ordinance (UDO) currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern. The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pro:

- Creates a simpler, more flexible set of open space regulations.

Con:

- Some projects may not be pursued due to expense of compliance.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville revising the open space requirements. The Planning and Zoning Commission recommends approval of the proposed code amendment by a unanimous vote (6-0).

Mayor Bellamy closed the public hearing at 6:57 p.m.

Councilman Newman questioned what responsibility would a developer have if their property was in the Greenway Master Plan. Mr. Shuford said that if they get a density bonus to build, they are required to give the property necessary for the greenway.

At 7:00 p.m., Mayor Bellamy announced a moment of silence for the nine firefighters who lost their lives battling a furniture warehouse fire in Charleston, South Carolina.

Councilman Mumpower felt that instead of simplifying the UDO this amendment adds to our difficulties and he would not support the amendment.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3492. This motion was seconded by Vice-Mayor Jones and carried on a 4-2, with Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 31

D. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CREATING RETAINING WALL REQUIREMENTS

ORDINANCE NO. 3493 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CREATING RETAINING WALL REQUIREMENTS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to May 8, 2007. However, due to the length of the May 8 meeting, this public hearing was continued until this date.

Planning & Development Director Scott Shuford said that since the steep slopes and ridgetop ordinance will result in the increased construction of retaining walls to minimize grading and land disturbance, a separate ordinance regulating retaining walls has been developed in concert with that ordinance, although the retaining wall requirements will apply to a broader range of circumstances than just steep slope and ridgetop situations.

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pro:

- Provides a mechanism to address the impacts of retaining walls.

Con:

- Will likely add to the cost of retaining walls.

Staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville creating retaining wall requirements. The Planning and Zoning Commission recommends approval of the proposed code amendment by a unanimous vote (7-0).

Mr. Joe Bassett recommended language that limits the total height of retaining walls.

Mr. Joe Quinn also recommended language that limits the height of retaining walls. He also noted that the screenings and coverings for retaining walls are insignificant.

Mayor Bellamy closed the public hearing at 7:08 p.m.

There was a brief discussion about limiting the height of retaining walls. Mr. Shuford explained that we cannot anticipate what engineering circumstances might occur that would result in a wall in excess of whatever height Council would approve. He suggested if Council is going to place a height limit that Council exempt public works projects, whether they be highway projects, projects necessary to support roads, etc. He noted that developers and engineers would prefer wider road corridors so they wouldn't have to put in retaining walls because they are expensive and would only be a last resort.

Councilman Mumpower spoke against the amendment in that we are continuing to add complexity, costs and controls.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3493 and instructed City staff to review the question of a height limit for retaining walls. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

VI. NEW BUSINESS:

A. CONSIDERATION OF APPOINTMENTS TO THE BOARD OF ADJUSTMENT, THE CIVIC CENTER COMMISSION, THE GREENWAY COMMISSION, THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION, THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE AND URTV, INC.

It was the consensus of City Council to instruct the City Clerk to arrange the following interviews for an Alternate vacancy on the Board of Adjustment: Eric Zetterholm, Carolyn Burton and Kristy Carter.

Councilman Davis moved to instruct the City Clerk to prepare the property paperwork to reappoint John Broadbooks to the Civic Center Commission. This motion was seconded by Mayor Bellamy and carried unanimously. In addition, it was the consensus of City Council to instruct the City Clerk to readvertise for the vacancy on the Civic Center Commission in order to have diversity on said Commission.

It was the consensus of City Council to instruct the City Clerk to arrange the following interviews for vacancies for the Greenway Commission: Thomas Mesk and Christopher Gilbert.

After a brief discussion of the Asheville-Buncombe Historic Resources Commission make-up and whether it complies with our ordinance, Councilman Mumpower moved to instruct the City Clerk to prepare the proper paperwork to reappoint Marsha Shortell, Todd Williams and Susanne Jones to the Historic Resources Commission. This motion was seconded by Mayor Bellamy and carried unanimously. Vice-Mayor Jones requested the City Clerk contact the Buncombe County Clerk to update their appointments on said Commission.

Councilman Mumpower moved to instruct the City Clerk to prepare the proper paperwork to reappoint Mark Wilson and Sandra Bradbury to the URTV Inc. Board of Directors. This motion was seconded by Councilman Davis and carried unanimously.

VII. OTHER BUSINESS:

Legislative Matters

City Attorney Oast said that the Asheville City School Board's attorney has included the City of Asheville in legislation that would facilitate the sale of real property pursuant to the police and fire / school teacher housing assistance program that the City is currently exploring. The legislator who is sponsoring this bill has requested the Council formally request inclusion of the City on this legislation.

Also, the School Board's attorney has contacted him requesting that the City take a position opposing legislation (HB 1284) that would have the effect of extending the statute of limitations for certain claims arising out of construction contracts. The actual limitations period of two years would not be changed, but the time of its accrual would be changed from the date of the occurrence to the date of substantial completion of construction. On major construction projects this could be a difference of over a year. The problem this presents for school boards and other local governments is that claims could be made long after a project is completed and the budget for it is closed out.

Councilman Mumpower would vote against any action in that it is a last minute addition to the agenda.

Vice-Mayor Jones moved for Council to request inclusion in the bill to facilitate the sale of real property, and that Council authorize City staff to contact our local delegation to express our concern about HB 1284. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Charlie Hume spoke in opposition to changing to a partisan election without allowing the public to vote on the issue. He urged Council to be mindful of costs incurred until after the petition to remain non-partisan is found valid or invalid.

Mr. Mike Fryar spoke against partisan elections and felt it is the people's vote.

Mr. Gillian Kerns felt that if Council is going to have partisan elections, he hoped the City would move to the direction of both district and at large representation. He felt Council should have allowed the people to vote on this.

Closed Session

At 7:45 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe, Reid Thompson and Greenlife Grocery. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 9:35 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:35 p.m.

Keisha Lipe
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – June 26, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Vice-Mayor Diana Hollis Jones and Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilman Mumpower moved to continue approval of the minutes of the June 19, 2007, meeting until July 10, 2007. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Councilman Mumpower, Consent Agenda Items "G," "H," "I," and "J" were removed from the Consent Agenda for individual votes.

At the request of Councilman Freeborn, Consent Agenda Item "K" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 19, 2007

This item was continued until July 10, 2007.

B. RESOLUTION NO. 07-123- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK CROSSING

Summary: The consideration of a resolution authorizing the City Manager to sign a change order for Hobson Construction Company for the Hominy Creek Crossing, in the amount of $160,000.00, and the associated budget amendment.

A bid was received and awarded to Hobson Construction Company in the amount of $224,300.00 to install a new 24-inch waterline under Hominy Creek at Brevard Road. During the installation of the new waterline, Hobson Construction encountered rock that would require blasting in order to proceed with the project. The NCDOT would not allow blasting for this project due to the proximity of the I-40 and Brevard Road bridges, thus requiring the waterline to be moved outside the blasting zone. Hobson Construction would be required to install 840 additional linear feet of 24" ductile iron pipe, 40 additional linear feet of paving, and other associated costs for an additional cost of $160,000.00. The total project cost is $384,300.00.

These plans have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended the change in project scope.

Pros:

- This project will enhance water flow and pressure on Brevard Road from I-40 to I-26 including fire flow requirements for new commercial businesses along this corridor.
- This water line will enable future system looping to supply water to the western part of the Buncombe County.

Con:

- The additional cost was not programmed for this project. Funds are being reprogrammed primarily from other end of year projects that were held when this stream crossing issue became known, including purchase of flow meters which will be addressed in a future fiscal year.

City staff recommends City Council approve a resolution authorizing the City Manager to sign a change order for Hobson Construction Company for the Hominy Creek Crossing, in the amount of $160,000.00, and the associated budget amendment.

RESOLUTION BOOK NO. 30 - PAGE 346

C. ORDINANCE NO. 3494 - BUDGET AMENDMENT FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK CROSSING PROJECT

Summary: See Consent Agenda "B" above.

ORDINANCE BOOK NO. 24 - PAGE 39

D. RESOLUTION NO. 07-124- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. (F.I.R.S.T.)

Summary: The consideration of a resolution authorizing the City Manager to enter into a temporary services agreement with the City of Asheville and Forsyth Initiative for Residential self-help treatment, Inc. (F.I.R.S.T.).

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T. staff for the past three years with excellent results.

Benefits to contracting with F.I.R.S.T., Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all F.I.R.S.T. personnel requested enabling operations to be fully productive at all times.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into a temporary services agreement with the City of Asheville and Forsyth Initiative for Residential self-help treatment, Inc. (F.I.R.S.T.).

RESOLUTION BOOK NO. 30 - PAGE 367

E. RESOLUTION NO. 07-125 - RESOLUTION FIXING THE DATE OF A PUBLIC HEARING ON JULY 10, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 2345 HENDERSONVILLE ROAD

Summary: Sywall Properties, L.P. has petitioned the City of Asheville for the annexation of one lot located at 2345 Hendersonville Road in South Buncombe County containing a total of approximately one (1) acre. The area is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be July 31st of 2007.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Staff recommends City Council approve a resolution fixing the date of a public hearing on July 10, 2007, for voluntary annexation of property located at 2345 Hendersonville Road.

RESOLUTION BOOK NO. 30 - PAGE 368

F. RESOLUTION NO. 07-126- RESOLUTION APPOINTING RODERICK SIMMONS TO THE BOARD OF DIRECTORS OF PINE PROPERTIES INC.

RESOLUTION BOOK NO. 30 - PAGE 369

G. BUDGET AMENDMENT FOR THE FINAL PAYMENT OF A GRANT FROM THE STATE OF NORTH CAROLINA FOR THE WESTERN NORTH CAROLINA NATURE CENTER

This item was removed from the Consent Agenda for an individual vote.

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO PROFESSIONAL SERVICE CONTRACTS WITH MCGILL ASSOCIATES; CAMP, DRESSER AND MCKEE; CAVANAUGH & ASSOCIATES; AND BROWN AND CALDWELL FOR THE PROJECTS KNOWN AS WATER REVENUE BOND PROJECTS

This item was removed from the Consent Agenda for an individual vote.

I. BUDGET AMENDMENT FOR WATER REVENUE BOND PROJECTS

This item was removed from the Consent Agenda for an individual vote.

J. RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE THE WATER RESOURCES FUND FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE IMPROVEMENT OF THE CITY'S WATER SYSTEM FROM THE PROCEEDS OF TAX EXEMPT BONDS TO BE ISSUED IN FISCAL YEAR 2008

This item was removed from the Consent Agenda for an individual vote.

K. BUDGET AMENDMENT TO SUPPORT THE INCURRED COST ASSOCIATED WITH THE PARKING LOT AND ENVIRONMENTAL SAFEGUARDS IN THE DISC GOLF COURSE AT RICHMOND HILL PARK, WHICH WILL COMPLETE PHASE I OF THIS PROJECT

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Newman and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. ORDINANCE NO. 3495 - BUDGET AMENDMENT FOR THE FINAL PAYMENT OF A GRANT FROM THE STATE OF NORTH CAROLINA FOR THE WESTERN NORTH CAROLINA NATURE CENTER

Summary: The consideration of a budget amendment in the amount of $28,220 for the final payment of a grant from the State of North Carolina, Department of Environment and Natural Resources, via the Grassroots Science Museums Collaborative for the Western North Carolina Nature Center.

Grant contract number Q07032 for $112,000 was entered into by the Nature Center with grant funds held by the Friends of the Nature Center to support general operating and program cost at the Nature Center during FY 2006-2007. To date during the contract period, funds have been held and managed by the Friends of the Nature Center, a non-profit organization.

It is recommended to bring grant management at the Nature Center into full compliance with the City of Asheville grant management and administration procedures beginning with the final grant payment of the current fiscal year.

$15,138 of the final grant payment will be used to support program cost for the upcoming Beauty of Butterflies Exhibit. The balance will be applied to the cost to purchase software to support cash collection procedures to account for Nature Center admissions and reconcile attendance records to daily cash collection.

Pros:

- Provide funds to support program cost of the Beauty of the Butterflies Exhibit.

- Provide funds to purchase attendance and cash tracking software to enhance cash collection management and accountability.

Cons:
- None

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $28,220 to increase the Nature Center budget for Beauty of Butterflies programming cost, and to purchase attendance and cash tracking software.

Councilman Mumpower was not able to support the acceptance of $15,000 in state tax dollars to apply to the "Beauty of the Butterflies" exhibit at the Nature Center in that we have continued difficulties in taking care of our essential issues.

In response to Councilman Davis, Parks & Recreation Director Roderick Simmons said that this is money allocated from the state and if we don't accept it, we will have to fund it through our operating budget.

Mayor Bellamy noted that the Friends of the Nature Center had applied for the grant while the Nature Center was under the control of Buncombe County. Now the City has oversight over the Nature Center.

Councilman Freeborn moved for the adoption of Ordinance No. 3495. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 42

H. RESOLUTION NO. 07-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO PROFESSIONAL SERVICE CONTRACTS WITH MCGILL ASSOCIATES; CAMP, DRESSER AND MCKEE; CAVANAUGH & ASSOCIATES; AND BROWN AND CALDWELL FOR THE PROJECTS KNOWN AS WATER REVENUE BOND PROJECTS

Summary: The consideration of a resolution authorizing the City Manager to enter into Professional Service Contracts with McGill Associates; Camp, Dresser and McKee; Cavanaugh and Associates; and Brown and Caldwell in the amount totaling $4,898,686 for the projects known as Water Revenue Bond Projects, and associated budget amendment.

The Water Resources Department requested through a request for qualifications (RFQ) professional engineering services for design and bidding of various water infrastructure projects for a $40 million water revenue bond. Approximately 40 RFQ's were sent out to local and regional engineering firms and posted on the City and State web sites for proposal solicitations.

The Water Resources Department requires a professional engineering firm to handle the project management, design and bid phase of the water infrastructure revenue bond projects. The RFQ's were broken out in to four (4) separate projects based upon project scope and location. Projects include water line replacement, storage tank and pump station replacements and installations throughout the water system, including Town Mountain service area, Fairview area, Central Business District, Tunnel Road, Hendersonville Road, West Asheville Neighborhood upgrades, removal of large lines on top of tunnel, Clayton Road to Brevard Road, and installation of propane or natural gas back up power at pump stations. Engineering firms will design construction projects and request construction bids for the projects. This design and bid cost is required for the North Carolina Local Government Commission prior to request and issuance of revenue bonds.

Staff reviewed qualifications for each project and selected the following engineering firms:

- Project One: McGill and Associates – negotiated cost $1,011,450.00 plus 10 % contingency $101,145 = $1,112,595
- Project Two: Camp, Dresser, & McKee – negotiated cost $1,606,000 plus 10 % contingency $160,600 = $1,766,600
- Project Three: Cavanaugh and Associates – negotiated cost $751,075 plus 10 % contingency $75,107 = $826,183
- Project Four: Brown & Caldwell – negotiated cost $1,084,825 plus 10 % contingency $104,482 = $1,193,308

Total cost is not to exceed $4,898,686 which is not allocated in the current FY 2006/07 budget and must come from the water appropriated fund balance.

PROS:

- These revenue bond projects will enhance the water system and improve customer reliability, fire protection, and ensure we continue to meet all federal and state mandated clean water regulations.
- These funds can be reimbursed from the water revenue bonds to the water fund.

CON: Requires funds to be reallocated from the Water Appropriated Fund Balance.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into Professional Service Contracts with McGill Associates; Camp, Dresser and McKee; Cavanaugh and Associates; and Brown and Caldwell in the amount totaling $4,898,686 for the projects known as Water Revenue Bond Project, and associated budget amendment.

Councilman Mumpower's position is that we should not be pursuing primary capital water system improvement projects involving revenue bonds prior to resolution of our legal issues with the City and County.

Mayor Bellamy felt that these are needed improvements to all areas of the City, including the Town Mountain service area, Fairview area, Central Business District, Tunnel Road, Hendersonville Road, and West Asheville.

Councilman Freeborn moved for the adoption of Resolution No. 07-127. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 370

I. ORDINANCE NO. 3496 - BUDGET AMENDMENT FOR WATER REVENUE BOND PROJECTS

Summary: See Consent Agenda "H" above.

Councilman Freeborn moved for the adoption of Ordinance No. 3496. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 44

J. **RESOLUTION NO. 07-128- RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE THE WATER RESOURCES FUND FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE IMPROVEMENT OF THE CITY'S WATER SYSTEM FROM THE PROCEEDS OF TAX EXEMPT BONDS TO BE ISSUED IN FISCAL YEAR 2008**

Summary: See Consent Agenda "H" above.

Councilman Freeborn moved for the adoption of Resolution No. 07-128. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 371

K. **ORDINANCE NO. 3497 - BUDGET AMENDMENT TO SUPPORT THE INCURRED COST ASSOCIATED WITH THE PARKING LOT AND ENVIRONMENTAL SAFEGUARDS IN THE DISC GOLF COURSE AT RICHMOND HILL PARK, WHICH WILL COMPLETE PHASE I OF THIS PROJECT**

Summary: The consideration of a budget amendment in the amount of $111,500 to support the incurred cost associated with the parking lot and environmental safeguards in the disc golf course at Richmond Hill Park, which will complete Phase I of this project.

Richmond Hill Park construction began in 2006 to develop an 18-hole disc golf course, parking area and driveway. Funds for construction were appropriated at intervals beginning in 2004 for project start up, and again in 2006 for funds to support clean up of sedimentation run off at the construction site, and to further support construction cost of the park features. The total project budget appropriated to date is $244,300. The chart below provides detail on the current budget and expenditures to date.

	Budget	Actuals
Revenue		
Transfer from General Fund	215,000	215,000
Timber Sales	29,300	29,300
Total	**244,300**	**244,300**
Expenditures		
Construction	134,827	133,450
Professional Services	37,900	37,296
Departmental Supplies	70,267	66,848
Other	1,306	1,305
Total	**244,300**	**238,899**
Rev. over Expenses		**5,401**

The current phase of work is virtually complete although the amount of available funds has not kept up with actual construction cost. $111,500 is needed to pay outstanding expenses associated with the parking lot and environmental safeguards in the disc golf course. Upon review by the Finance Department, staff recommends appropriating the additional $111,500 needed to complete the current phase of this project from fund balance.

Pro:

- Funds will be available in the Richmond Hill Park budget to support existing project cost.

Con:
- The City of Asheville will spend $111,500 for the construction of Richmond Hill Park beyond the current capital improvement budget.

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of $111,500 to support the incurred cost associated with the parking lot and environmental safeguards in the disc golf course at Richmond Hill Park, which will complete Phase I of this project.

In response to Councilman Freeborn, City Manager Jackson said the total amount that has been spent on this project to date is $238,000, not including this budget amendment request of $111,500. He said the estimated project costs and construction requirements in the field were higher than anticipated.

Councilman Freeborn felt that the approximately $350,000 spent on this project was one of the worst decisions the City has made in terms of parks and recreation facilities over the last 10 years. That money could have gone to fix up community centers, pool repairs, etc. He expressed his dissatisfaction on how the project was handled.

In response to Councilman Newman, City Manager Jackson said that City staff has nearly completed a report to Council concerning questions raised, when environmental violations occurred, regarding contract obligations with the National Guard.

In response to Councilman Mumpower, Superintendent of Parks Jim Orr explained what lead to the increase in funds.

When Councilman Mumpower asked if there will be some method for compensation by the National Guard if the City has had to pay for something resulting from their delay, City Attorney Oast said that there will be a method for that, but they have not reached a point of settlement yet.

Councilman Mumpower moved for the adoption of Ordinance No. 3497. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 24 - PAGE 46

III. PRESENTATIONS & REPORTS:

A. N.C. DEPT. OF TRANSPORTATION I-26 CONNECTOR PRESENTATION

Mr. Alan Thornburg was pleased to be able to update City Council on the I-26 Connector project. This is a regional project and will greatly benefit the City of Asheville. We have unprecedented public collaboration for project design alternatives. The Asheville Design Center (ADC) has worked with the N.C. Dept. of Transportation (NCDOT) to supply some details of their design so that a preliminary analysis of the ADC alignment might be conducted. The NCDOT staff and members of our legislative delegation and the N.C. Secretary of Transportation has come to Asheville to review the ADC alternative and generally supported a feasibility review of this plan. As a result, the NCDOT design engineers as well as two private consulting firms have reviewed the ADC proposal and are grateful for the opportunity to bring the results of their review before City Council.

Ms. Debbie Barber, NCDOT Director of Pre-Construction, presented City Council with the I-26 Connector project status (Transportation Improvement Project No. I-2513). The purpose of the presentation is to explain the transportation decision-making process; show where we are

now and the remaining steps in the process; and present the Federal Highway Administration's (FHWA) role in the process.

The goal of the transportation decision-making process is to ensure transportation improvement meets the need in the least environmentally damaging practical way. Using a flowchart, she explained how the process is very complex. Some of the agencies involved in this project include the Federal Highway Administration, the US Army Corps of Engineers, US Fish and Wildlife Service, US Environmental Protection Agency, NC DENR Division of Water Quality, NC Wildlife Resources Commission, NC Division of Cultural Resources, National Park Service, Tennessee Valley Authority, Eastern Bank of Cherokee Indians and Metropolitan Planning Organization. The must have the Federal Highway Administration (FHWA) approval of the draft and the final EIS prior to purchasing any right-of-way needed for the project. In addition, towards the end of the project, they need approval for the issuance of environmental permits. She pointed out that the project is somewhat dependent upon others and not in total control of the NCDOT.

Using the flow-chart, she showed Council where we are in the decision-making process (completing the draft of the Environmental Impact Statement (EIS)), again noting the areas where there is partial control by others, total control by others, and total control by NCDOT.

She said their target to complete the draft EIS by this fall. After they complete the draft they will hold a public hearing (probably towards the end of this year) and then they come to milestone of selecting a preferred alternative. We are targeting that timeframe to be early 2008. We are on schedule and the entire project is currently funded for right-of-way acquisition and construction. The right-of-way acquisition will start as early as Fiscal Year 2009 and construction starts as early as Fiscal Year 2012.

Mr. Don Volker, Assistant Division Administrator for the FHWA in Raleigh, explained that the role of the FHWA in this project. They work in a federally assisted state administered partnership. In other words, they provide the funds and the program is administered by the NCDOT. The FHWA does not select, design, build, maintain or operate highways or highway projects. Those are all done by the NCDOT. The FHWA just makes sure that if they want federal highway funds for a project that all the federal rules and regulations are followed. The National System of Interstate and Defense Highways is the most important in the United States. The highways of this system must be designed in keeping with their importance as the backbone of the nation's highway systems. To this end, they must be designed to ensure safety, permanence, utility, and flexibility to provide for the predicted growth in traffic.

He said that there are many design standards that the NCDOT must follow: lane width; shoulder width; normal cross slope; horizontal curvature; super-elevation; tangent grade; vertical curvature; vertical clearance; stopping sight distance; bridge width; horizontal clearance; structural capacity; and design speed. He said that they do not ask the NCDOT to spend tax-payer dollars to develop alternatives that we know will not meet these standards. Their review to date indicates that the design standards cannot be met with the Asheville Design Center (ADC) alternative.

Mr. Charlie Flow, Manager of Design for TGS Engineers, reviewed the ADC Alternative. On May 7, 2007, the NCDOT received conceptual alignment of ADC alternative. General engineering assumptions were needed that would allow the alternative to be evaluated in the most favorable manner. NCDOT directed TGS Engineering to provide and evaluate functional design of the ADC alternative alignment. Several steps in engineering and design were needed to evaluate the ADC alternative.

He explained in detail the design issues for the ADC's alternative alignment of (1) clearances (a) shoulders; and (b) over and under streets and railroads; (2) horizontal alignment (a) curvature; and (b) spirals; and (3) vertical alignment (a) grades; (b) vertical curves; and (c) super-elevation.

He explained in detail the environmental concerns, which consist of (1) historic property impacts - Montford/Riverside Cemetery; (2) stream and wetlands impacts - Smith Mill Creek; (3) air and noise impacts - Montford area; and (4) construction impacts - temporary detours.

Operational issues consist of (1) I-240 Eastbound Exit ramp to Patton Avenue (Plan vs. Model). If yes, that would equal relocations. If no, that would equal weave concerns at Exit East of French Broad River; (2) I-240 Eastbound Entrance loop from Patton Avenue. Including I-26 Northbound traffic would equal a short weave. Without I-26 Northbound traffic would equal (a) routes Patton Avenue Eastbound traffic to the east side of the French Broad River and adds 2 left turns; (b) increases Eastbound traffic on Smoky Park Bridges; and (c) short entrance ramp to US 19-23-70; (3) I-240 Westbound Exit loop to Patton Avenue - Short ramp would equal queue storage concerns. Including I-26 Southbound traffic would equal (a) short available weaving distance and (b) more traffic making a longer queue. Without I-26 Southbound traffic would equal (a) routes to east side of the French Broad River; and (b) increase to Westbound traffic on Smoky Park Bridges; (4) I-240 Westbound Exit to Hill Street - Short ramp would equal storage concerns. The longer ramp yields a shorter weave created by Montford entrance; (5) I-240 Westbound Entrance from Hill Street - Short ramp would equal sight distance concerns. The longer ramp creates a shorter weave across US 19-23-70 to I-240; and (6) Hill Street Corridor - Storage concerns.

The following are updated construction costs for Alternate 2 - $144,300,000; Alternate 3 - $199,300,000; Alternate 4 - $313,200,000; Alternate 5 - $249,900,000; and ADC Alternate (which does not include Riverside/Railroad relocation) - $260,000,000.

Ms. Barber said that we have done a review of the ADC alternative and we did try to make it work. Unfortunately, as Mr. Flow presented, we found design, operational and environmental concerns. Based on our review, we are not recommending that the alternative be carried forward for further study in the draft EIS. We will, however, as part of the draft EIS document our review of the ADC alternative. Therefore, the NCDOT is recommending to move forward to complete the draft EIS and in moving forward we would like to continue to work closely with the City, the Metropolitan Planning Organization, the ADC and the aesthetics committee with a goal of selecting an alternative that would have the least impact possible and provide a safe and efficient transportation facility for this area.

When Councilman Mumpower asked if there are any components of the ADC alternative that might be incorporated into some of the other design alternatives, Mr. Flow said there may be but they have not gone into a deep evaluation yet but as the design develops input will be sought by many groups.

When Councilman Mumpower asked about a trademark bridge, Ms. Barber said that they would want to work with the City and identify a funding source for that. Mr. Thornburg also noted that they do plan to look at design alternatives in terms of aesthetics for the existing bridge and the new bridge(s) that go across the French Broad River. They are aware that this is important not only to the City of Asheville but to Western North Carolina that this project needs to reflect Western North Carolina. He imagined they will look at increased partnership between the state, federal, city and private entities.

In response to Councilman Newman, Mr. Flow said that the updated cost estimates of the alternatives do not include right-of-way costs, only construction costs.

Councilman Newman said that the basic design concepts developed by the ADC means a great deal to the community for a lot of reasons, e.g., how it fits into the community, the economic development opportunities for Asheville, and for our overall growth management strategy. However, no one wants to support an alternative that has flaws that cannot meet the

minimum design issues of the FHWA. He asked Mr. Flow, as a registered engineer, if he is telling us that the basic design concepts developed by the ADC cannot be made to work.

Mr. Flow was not prepared to say that, but they have used the same minimum federal criteria that was used for the other alternatives on the ADC alternative. One thing that will happen is by the time they spread the project out enough to get the grades and separations they need, etc., it's going to begin to look like some of the other alternatives. It will spread out. You won't get that tight, concise footprint and meet the design criteria. While it does have appeal for small compact, we can't meet the design standards that small and compact and as it grows, it starts to look like Alternate 4.

Councilman Newman asked if it would be possible to find an engineering solution to the double-decker bridge concept and still meet the standards. Mr. Flow responded that it will be a very difficult to get through the historic district, Riverside, railroad and the landfill. The skew of the project will change and again, it will start to look like Alternate 4.

Councilman Freeborn said that we have the bulk of the community excited about this project (ADC alternative) in a positive manner. He understands the engineering concerns, but with today's technology and innovations in the industry, he hoped that we could find some way to bridge the ADC alternative with the other alternatives. He supported giving the ADC some resources to get a product everyone will feel good about.

Mayor Bellamy asked when the NCDOT will fix the I-26/I-40 interchange. Mr. Thornburg responded that all the funding is not in place for that but they should know this year if they can overcome the funding hurdles. He understands that it is a priority for the community. Mayor Bellamy stressed the need to let the community know as soon as possible what they can expect as far as improvements to that intersection.

Mayor Bellamy said that we are having issues of getting people from north and downtown Asheville to south Asheville. She asked if we could expand Sweeten Creek Road from 2 lanes to 4 lanes to Airport Road. She noted that the project is on the future Transportation Improvement Plan but funding is not available. She asked if it was possible to consider that as part of some improvements to our roadway system. Mr. Thornburg responded that Councilman Newman, member of the Metropolitan Planning Organization, has brought that issue to their attention and they are looking at how to prioritize that.

Mayor Bellamy noted that there is no access to the Emma District in the NCDOT alternatives. Mr. Ken Burleson from TGS Engineering, said that improvements to the access to the Emma area is a separate NCDOT project and they did not take that into consideration nor did they do a cost analysis for it. He did note that they will not be deleting any access that currently exists.

Mayor Bellamy said that the ADC put forward an alternative that could more our community forward. Asheville relies heavily on its beauty to survive and the NCDOT alternatives put forward are not supportive of that. We would like a trademark bridge recognizing that tourism is a big industry for our community. Having a highway through our community is huge and although she appreciates the work of the NCDOT, it's the Asheville citizens that have to live with it after it is built. She also asked that the I-26/I-40 interchange project and the Sweeten Creek Road widening project be designed in a way that will compliment our community. She doesn't want to stop any progress being made, but wants the projects to be attractive and completed in a timely manner. She felt that if those critical issues are handled correctly, that will give other engineering professionals the opportunity to look at the potential problems with the ADC alternative to see if the issues can be worked out.

Councilman Davis fully supported the trademark bridge for Asheville and hoped there is an opportunity for partnership with the City, County and region to have that built.

Mr. Alan McGuinn, representing the ADC, said that they would like the opportunity to study the NCDOT's concerns because it sounds like the ADC Alternative is doable with more engineering. He addressed some of the concerns regarding the grades and weaving; clearance issue; costs; stacking distance; and the ADC alternative looking like Alternative 4. He was encouraged that the NCDOT spent a lot of time and effort in this review because it showed that a lot of their concepts do work.

Councilman Mumpower asked if any of the solutions presented by Mr. McGuinn had merit for the NCDOT to reassess the ADC Alternative. Mr. Flow said that the ADC Alternative doesn't have sufficient advantages above the other alternatives to stop the process and carry it forward as a detail design. He was not saying that elements couldn't be incorporated in the final design, though.

Ms. Barber reiterated that we have to address the design, environmental and operational concerns in order to get the FHWA criteria to be met. When we try to achieve the design criteria, it spreads the project out and it almost goes back to Alternative 4. She said that based on the review, the NCDOT recommends that we proceed with the draft EIS and not carry forward the ADC as a further detailed study. They will document the ADC Alternative in the draft EIS but not carry it forward as an alternative that would be potentially selected.

Mr. Volker said that the NCDOT people said that based on the work done so far, they would have a very difficult time meeting the 13 controlling design criteria with the ADC Alternative. With limited federal funds that go to North Carolina, he was sure that the NCDOT would not want to continue to spend money on an alternative that cannot meet the minimum design criteria set by the FHWA.

Councilman Newman felt that the ADC Alternative has significant potential benefits and he didn't want to give up on the design or parts of it. He wished that Council would have talked about this earlier and had gotten additional engineering expertise. He suggested Council look at the idea of investing resources to the ADC so that they can hire professional engineers to look at the specific concerns outlined by the NCDOT to see if there is a way to meet the federal minimum design guidelines and so as not to lose the positive benefits of the ADC design.

Mr. Thomburg stated that the people who have reviewed the ADC Alternative are all well respected and trained professionals who have come to this conclusion.

Mr. Jeff Welsner, planner with URS which is one of the two private companies that helped with the plan adoption and preliminary design information, said that their engineers looked at the ADC Alternative as well. They quickly found out how complex the project was. His firm's engineers discovered that it would be very difficult to meet all the design standards. He said some of the standards are very difficult and complex to overcome.

Councilman Freeborn felt the community has put forth their design choice and we need to fully explore that. He was willing to support putting additional resources in to hire a professional engineer to explore the concerns outlined by NCDOT and look for solutions since Asheville is going to be the biggest municipality that will be affected by this project.

In response to Mayor Bellamy, Mr. Weisner said that their contract with the NC DOT is approximately $235,000 to assist with the completion of the draft EIS.

In response to Mayor Bellamy, Mr. Burleson said that TGS Engineer's contract with the NC DOT has been supplemented many times and is approximately $2 Million, but he has been working on this project for 12 years. He would hate to see the project delayed for another 3 or more years because the ADC Alternative has so many flaws.

Mayor Bellamy asked Mr. Thornburg if they would consider the ADC Alternative as part of the draft EIS if Council is willing to spend between $235,000 to $2 Million to look for solutions. Mr. Thornburg responded that for the last 7 years, 4 Alternatives were evaluated for the draft EIS. He explained that this is not an insignificant process. He couldn't predict the time and financial impact that would be added to add the ADC Alternative because the process would have to start close to the beginning again. The delay would be significant along with significant inflationary costs on the project as well.

Mr. Derek Weaver, with the project development branch of NCDOT, said that they were hoping to select a preferred alternative in January and they cannot select a preferred alternative if there is another alternative present without evaluating that alternative at the same level of detail and design that the other 4 alternatives received. If another alternative is brought forward, there has to be enough time for us to evaluate that and the project will be delayed. They will, however, look at all alternates, but they have looked at the ADC Alternative, evaluated it to a point where they felt it's not worth moving forward. They evaluated Alternative 1 and decided that was not worth carrying forward as well. At this point, he believed the NCDOT will continue forward to complete the draft EIS and if another alternative is brought forward at the hearing after the draft is complete, it can be considered in the final EIS. That may delay their schedule, but it doesn't mean it can't be done.

Councilman Newman wondered if we could ask our staff to bring us some information about investing resources to have some engineers work with the ADC and to provide any other feedback to them or Council about the concerns raised. He has heard some interest expressed by the County Commissioners about that same idea, so if we move in that direction, that is something that we could ask them to participate with us on.

Mayor Bellamy was concerned that if Asheville invested resources into a plan there is no guarantee that the plan would move forward. She wondered if we should send people to Raleigh and lobby NCDOT to make sure what is built keeps the sensitive nature of the area and that the aesthetics are included. Realistically we need to work with the Aesthetics Committee to make sure the project blends in with the City of Asheville. She would have to make sure that any investment will be used and the product is actually honored.

Councilman Newman supported giving our City Manager direction to bring back a couple of different options for Council to look at in terms of investing some resources to the ADC to see if we can solve some of these problems. There are two members of Council not at this meeting and because this is such an important issue perhaps we should discuss this at the next meeting.

Mr. McGuinn said that they believe the engineering evaluation costs to correct some of the concerns would be in the range of $50-70,000 and would love to see if the ADC could participate as well, in addition to the City and County. He would hate to see the City made a hasty decision without fully investigating the concerns, however, did didn't want to slow down the process.

Councilman Mumpower is not supportive of more delays and additional costs.

Mayor Bellamy said that when a Council member asks for additional information, we normally adhere to it.

Councilman Davis understands that the NCDOT has identified flaws with the ADC Alternative and he didn't hear that they have a real willingness to wait for us to determine if solutions could be found to meet the federal minimum design standards. He felt we are just spinning our wheels.

Councilman Mumpower asked if the information presented by the NCDOT contains all the information the ADC needs to address the flaws in their plan. Mr. Flow said that their

timeframe was one month to do a high level overview to look for large flaws. To say that they have given Council every design problem would be ridiculous. They have not had that level of time to do that and it will take time.

Mayor Bellamy said that Councilman Newman has requested additional information from our City Manager.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A RESOLUTION TO AMEND THE CITY'S 2007 CONSOLIDATED ACTION PLAN TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.

RESOLUTION NO. 07-129- RESOLUTION AMENDING THE CITY'S 2007 CONSOLIDATED ACTION PLAN TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.

ORDINANCE NO. 3498 - BUDGET AMENDMENT TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.

Mayor Bellamy opened the public hearing at 7:06 p.m.

Community Development Analyst Angie Cullen said that this is the consideration of a resolution and budget amendment to amend the City's 2007 Consolidated Action Plan to provide for a Community Development Block Grant (CDBG) to World Changers Inc. This public hearing was advertised on June 15 and 22, 2007.

World Changers, Inc. is a national, faith-based, non-profit organization which organizes summer youth missions to carry out community projects around the nation. They will bring about 400 youth to Asheville the week of July 8-14. Among other assignments they will work on two projects in the West Riverside Weed & Seed area: they will make repairs to about 13 homes in the Burton Street neighborhood and also renovate vacant units at Pisgah View Apartments for re-leasing. The homes in need of repair in the Burton Street area were identified by the neighborhood association and are primarily homes of the elderly. Repairs will run the gamut from new roofs to fixing leaking faucets. World Changers has asked the City to fund the cost of materials for the Burton Street homes at an estimated cost of about $1,600 per home. The Housing Authority will provide materials for Pisgah View.

A public hearing is required before approval of this amendment to the City's Annual Action Plan. Hearing notices were published on June 15 and June 22, 2007.

Staff has identified two sources of additional CDBG program income which can be used to fund this project: (1) approximately $10,000 from a rent increase on City-owned property on Biltmore Avenue, and (2) $11,165 in deposits released from escrow on completed sales of City-owned property.

Pros:

- Contributes significantly to the Weed and Seed initiative
- Has enthusiastic neighborhood support
- World Changers has long experience in managing this type of project.

Cons:

- World Changers uses only outside volunteers, not local youth.

Staff recommends City Council approve a resolution to amend the City's 2007 Consolidated Action Plan to provide for a CDBG in the amount of $21,165 to World Changers, Inc. and the associated budget amendment.

Ms. Annie Davidson, member of the Burton Street community, supported these actions.

Mayor Bellamy closed the public hearing at 7:11 p.m.

Councilman Mumpower felt the City should not be taking money from our federal government with our huge national debt, however, since we have already received the money we need to be thoughtful on how we spend it.

Councilman Davis hoped that we might consider this as a model on a local level using local youth to carry out local projects.

Mayor Bellamy said that we are working with Biltmore Baptist, a local church, to help coordinate this effort.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-129, to amend the City's 2007 Consolidated Action Plan to provide for a CDBG to World Changers Inc. in an amount not to exceed $31,000. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 374

Councilman Freeborn moved for the adoption of Ordinance No. 3498. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 48

B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 341 ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3499 - ORDINANCE TO INITIALLY ZONE 341 ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 7:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone 341 Rockwood Road to Highway Business District. This public hearing was advertised on June 15 and 22, 2007.

The City of Asheville has recently completed (effective April 30, 2007) the voluntary annexation of a 1.93 acre tract located on Rockwood Road in South Buncombe County. A restaurant building is close to completion on the property. The parcel was zoned Employment under Limestone Township zoning in Buncombe County.

Other properties in the Airport Road/Rockwood Road area that are within the City's jurisdiction are zoned Highway Business. Staff proposes, at the request of the property owner, the same zoning for this parcel. At their meeting on May 2, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Con:

- Some might be concerned with additional HB zoning in the area.

Based on the above findings and the analyses provided in the report, staff finds this request to be reasonable. At their meeting on May 2, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council.

Mayor Bellamy closed the public hearing at 7:18 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3499 and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 21 - PAGE 50

At 7:18 p.m., Mayor Bellamy announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE STORMWATER EROSION CONTROL ORDINANCE

Mayor Bellamy opened the public hearing at 7:26 p.m.

Stormwater Services Manager Chad Pierce said that this is the consideration of an ordinance amending the Unified Development Ordinance "UDO" relating to revisions to the stormwater erosion control ordinance. This public hearing was advertised on June 15 and 22, 2007.

As part of the Environmental Protection Agency's Federal Stormwater Regulations, the City of Asheville is required to meet six minimum measures in efforts to improve water quality from stormwater runoff. These measures include public education, public involvement, illicit discharge regulations, construction site and post-construction site measures and good housekeeping measures. In order to be incompliance with the Federal regulations, the City of Asheville must revise the Stormwater and Erosion Control Ordinance in the Unified Development Ordinance.

In an effort to make the ordinance more consistent and user-friendly, we recommend combining the Stormwater Ordinance and Erosion Control Ordinance into one ordinance.

A stakeholders group was formed called the Watershed Policy Committee to review and evaluate the proposed ordinance. Several members were invited to participate in this process. Due to scheduling conflicts not all members were able to attend. The active group consisted of the following people:

- Barber Melton — Coalition of Asheville Neighborhoods
- Starr Silvis — NC DENR

• David Herbert	Property Owner
• Jeff Van Hartesfeld	Crowfields Condominiums
• John Broadbrooks	Landscape Architect
• Jeff Slosman	Manufactures Association
• Bruce Tompkins	Biltmore Village
• Hartwell Carson	RiverLink
• Mike Goodson	Buncombe County

The group reviewed thirteen decision points and made recommendations for each. The group had full consensus on all issues with the exception of buffers. The group was equally split on the required width of the buffers.

At the June 6, 2007, Planning and Zoning Commission Meeting, the Commission approved the recommended changes, with a recommended buffer width of 50 feet on all jurisdictional waters.

Staff met with the Council of Independent Business Owners on June 8, 2007, the Coalition of Asheville Neighborhoods on June 11 and a joint group of the North Carolina Home Builders Association and the Asheville Board of Realtors on June 21, 2007.

Pros:

- The implementation of these regulations will improve water quality.
- The Stormwater and Erosion Control Ordinances have been consolidated. This should make the ordinance more user-friendly.
- These changes meet the goals and objectives of the 2025 plan.
- The City of Asheville will be in compliance with the Federal Stormwater Mandate and the North Carolina Sediment and Erosion Control Law.

Pro and Con:

- Ordinance provides for increased fines and penalties.

Con:

- In some cases, these changes will increase development costs.

Staff recommends that the City Council review and take public comment on the Stormwater and Erosion Control Ordinance and continue the public hearing on this item to July 24, 2007.

Mr. Pierce said that the NPDES Phase II requirements are that the City of Asheville must revise its stormwater and erosion control ordinances and adopt an illicit discharge ordinance by July 1, 2007, to comply with federal and state regulations. The NPDES Phase II goals are to improve water quality by reducing amount of pollution that is transported to our streams by stormwater run-off.

He said this ordinance meets the 2025 City Development Plan.

City staff teamed with consultants to research and analyze concepts from State's Minimum Model Ordinance, other communities ordinances and existing City ordinances as a baseline for comparisons. The staff and consultant team qualified each concept by using goals from the City's 2025 plan and a working knowledge of development issues in Asheville's mountainous terrain. The team compiled 13 decision elements, which were not adequately addressed in the State's minimum requirements or the City's current ordinance. These items are

critical for future protection of public safety, quality of life, environmental resources and sustainable development.

A stakeholders group, called the Watershed Policy Committee, was formed to review each of the 13 critical decision elements and make recommendations. Several members were invited to participate in this process; however, due to scheduling conflicts not all members were able to attend. The active group consisted of the following people: Barber Melton (Coalition of Asheville Neighborhoods), Bruce Tompkins, Co-Chair (Biltmore Village), David Herbert (Kenilworth Community), Hartwell Carson (RiverLink), Jeff Slosman (Manufactures Association), Jeff Van Hartesveldt (Crowfields Condominiums), John Broadbooks (Landscape Architect), Mike Goodson (Buncombe County) and Starr Silvis (Division of Water Quality).

He reviewed the stakeholder decision elements as follows:

Item 1 - Aquatic Buffers.
Stakeholder recommendations:

- Zone A - No land disturbance or impervious surface allowed, unless hardship is proven.
- Zone B - Allow impervious pedestrian and non-motorized vehicle paths and trails, utilities and maximum of a 10% encroachment for all other construction. Land disturbance within Zone B is limited to the construction of the allowances.
- For redevelopment, requirements for aquatic buffers must be met, only if project qualifies as a substantial improvement. For projects qualifying as substantial improvements, if the required aquatic buffer has been encroached and/or disturbed it must be re-established.
- For redevelopment projects that do not qualify as a substantial improvement. Staff shall research and determine if incentives for re-establishing aquatic buffers, such as credits for stormwater utility fees, can be applied. However, the scope of this process is outside this ordinance revision.

Mr. Pierce then reviewed the minimum aquatic buffer width recommended options.

Item 2 - Constructed Slopes.
Stakeholder recommendations:
Definitions

- Define constructed severe slopes as a constructed slope with a grade of 50% (2:1) or greater.
- Define constructed moderate slopes as a constructed slope with a grade of 25% (4:1) but less than 50%.

Certification of Slopes

- Require design, inspection and stability certificate by NC registered professional engineer with geotechnical expertise for constructed severe slopes greater than 8' in height. Stability certificates shall verify slopes compaction and ability to maintain soil and vegetation.
- Request that NC registered professional engineer with geotechnical expertise provide periodic inspections and compaction reports for all constructed severe slopes within existing or future public rights-of-way.

Slope Setback Requirements

- Require setback from existing adjacent property and right-of-way lines for retaining walls and constructed moderate and severe slopes as indicated in a picture which will be set forth. The constructed moderate and severe slopes shall include those created for the construction of retaining walls. The setback shall be measured from and applied for both the head and the toe of the slope.
- For slopes with a maximum height of 5' or less the setback shall be equal to the height of the slope.
- For sloes greater than 5' in height with a grade of 45 degrees, (1:1) or less the setback shall be 5'.

- For slopes greater than 5' in height with a grade greater than 45 degrees, (1:1) the setback will increase based on height and grade.
- Slope setback exemption: Where requirement will present a hardship, the required setback may be reduced if a subsurface exploration analysis of the area is completed by a NC registered professional engineer with geotechnical expertise and it is determined that a reduction in the setback will not cause greater risk of damage to adjacent public and private properties.

Item 3 - Requirements for Land Disturbances Allowances
Stakeholder recommendations:

- Security for re-vegetation - For all property, disturbance limits may exceed 1 acre, only if construction bond or letter of credit is provided. Bond shall be sufficient to re-vegetate proposed disturbed area and must be valid for 1 year from the issuance of the permit and if land disturbing activity exceeds one year in time, the bond or letter of credit must be updated.
- Maximum limits of disturbance at one time
    - Require grading on all property with 15% or greater natural average slope to be limited to disturbing 5 acres or less at a time
    - For a development, an increase in the limits of disturbance allowed at one time may be granted by the Stormwater Administrator if it can be demonstrated that public benefit is provided.
- Requirements for developments that have total allowable disturbance restrictions
    - Prior to final inspection approval for any phase of grading for developments with restrictions on total amount of disturbance, require "stamped" as-built drawings of disturbed areas to verify compliance.
    - Require deed restrictions for allowable disturbance areas within hillside and ridge top subdivisions.

Item 4 - Ground Cover
Stakeholder recommendations:

- Sufficient permanent or temporary ground cover must be provided within 14 calendar days of completion of approved construction activity.

Item 5 - Borrow and Waste Areas
Stakeholder recommendations:

- Require borrow/waste calculations for all developments with 10,000 s.f. or greater land disturbance and require proof of approved borrow/waste site prior to issuance of permit, if site is not excluded by mining or landfill act.

Item 6 - Design Storms for Erosion Control
Stakeholder recommendations:

- Require erosion control measures to be designed for 10-year storm event as per existing ordinance
- Allowance for staff to require erosion control measures for sites or specific measures on a site to be designed for 25-year storm if deemed necessary due to critical downstream areas, areas identified within watershed master plans and time of year construction.

Item 7 - Application and Exemptions for Stormwater Management
Stakeholder recommendations:

- Require application of the stormwater management ordinance to development and redevelopment that: cumulatively disturbs one acre or more; and/or
    - Will have 50% or more total impervious surface on a parcel, independent of disturbance amount, excluding 1-2 family home structures.
    - For redevelopment, only the addition of impervious and/or built upon area shall comply with the stormwater ordinance

- An exemption shall be granted for redevelopment with disturbance less than 1 acre, if reduction in impervious surface on parcel is achieved.

Item 8 - Post-Construction Stormwater Quality Control
Stakeholder recommendations:
Peak Flow Reduction
- Require PEAK FLOW control (retention) to pre-development rates for the 2-year, 24-hour and the 10-year, 24-hour storm and pass the 50-year, 24-hour storm event, per existing ordinance
- Allow Stormwater Administrator to require control to pre-development rates for the 25-year, 24-hour storm if by using existing watershed engineering analysis it is determined that downstream systems would fail due to the additional peak flows from the 25-year, 24-hour storm event.

Volume Reduction
- Require VOLUME control: extended detention, 24-hour to 120-hour drawdown, for the 2-year, 24-hour storm to protect downstream channels.
- Allow Stormwater Administrator to require volume control up to the 25-year, 6-hour storm if by using existing watershed engineering analysis it is determined that downstream systems would fail due to the additional flows from the 25-year, 6-hour storm event.

Exemptions
- Stormwater peak and volume control may not be required if the applicant can demonstrate through engineering analysis that the proposed development has no negative impact on downstream property, infrastructure and natural systems. The Stormwater Administrator will determine if requirements for stormwater peak and volume control are waived.

Item 9 - Post-Construction Stormwater Quality Control for Low Density Development
Stakeholder recommendations:
- Require same requirements as for high density developments.
- Provide incentives for low impact development projects with other tools

Item 10 - Post-Construction Stormwater Quality Control for High Density Development
Stakeholder recommendations:
- Require structural stormwater systems for the control and treatment of the first 1" of rainfall on the developed site.
- Require a runoff volume drawdown 24 - 120 hours.
- Discharge the storage volume at a rate less than or equal to the pre-development rate.
- Require average annual TSS removal of 85%.

Item 11 - Regional Stormwater Management Facilities
Stakeholder recommendations:
- Do not allow provisions for development to provide fee in lieu of constructing on-site stormwater management systems for regional systems.

Item 12 - Maintenance and Inspection Requirements
Stakeholder recommendations:
Maintenance and inspection for erosion control requirements
- Require that for sites with 10,000 s.f. of disturbance or greater a during construction contract with a licensed professional for erosion and sediment control plan compliance checks be in place prior to issuance of permits.
- Licensed professional shall perform weekly inspections and file reports for all sites regulated by steep slope standards and bi-weekly for all other sites.

Maintenance and inspection for stormwater compliance

- Require a during construction contract with person of equivalent licensure to that of designer for stormwater plan compliance for sites requiring a stormwater drainage system, prior to issuance of permit.
- The licensed professional shall perform weekly inspections and file repots for all sites regulated by steep slope standards and bi-weekly for all other sites and must inspect all stormwater control systems as installed. Installation of all BMPs must be inspected.
- Require record drawings to be recorded and clearly identified all stormwater control systems, which must also be indicated on the inspection and maintenance agreement.
- Require that all stormwater control systems be located outside of public rights-of-way unless public benefit can be proven and Stormwater Administrator approves.

Item 13 - Enforcement
Stakeholder recommendations:
- Adopt penalty schedule.

Mr. Mark Hunt, Vice-Chair of the Asheville Greenway Commission, said the Greenway Commission endorses the recommendation as outlined in Option 2 - the 30 plus 20 foot buffer in all cases; (2) request that greenways be specifically allowed in B buffer zone without condition; (3) ordinance should allow for hardship exceptions to be made and ask council indicate support for greenways be generally allowed as an exception; (4) ordinance should be clear how such hardship exceptions would be allowed and who would have the authority to grant those.

Mr. Joe Ferikes, a major stakeholder along the French Broad River, was concerned about the aquatic buffer requirements. He said that people along the River area are already highly regulated by State and FEMA regulations and they don't need another level of regulation regarding aquatic buffers. Since the new FEMA maps will be out soon, he suggested Council wait on this portion of the ordinance.

Mr. Alan Shepherd, owner of property on the River, urged Council to wait until the FEMA maps are out because they will tell people where they cannot build.

Ms. Patti Beaver, representing the Council of Independent Business Owners, requested this matter be continued in order to give Council and staff further opportunity to study the full impact of some of the items that do go above and beyond the federal mandates, especially in the buffer areas.

Mr. Joe Bassett supported the revisions to the ordinance.

In response to Mayor Bellamy, City Engineer Cathy Ball said that we anticipate receiving the draft FEMA maps in the July or August timeframe.

Councilman Newman suggested maybe having larger buffer areas that are more environmentally sensitive in areas where we don't want to foster intense development, but in areas where we want to encourage intense quality infill development, to have different standards.

Councilman Mumpower requested information on the number of abuses we have encountered using the standards of development in the past ten years.

In response to Councilman Freeborn, Ms. Ball said that the FEMA maps relate to flooding and these buffers relate to water quality.

Councilman Davis hoped that we will consider what effect these new regulations will have on secondary streams and lakes.

Mayor Bellamy felt it was important to look at impacts on tributaries and creeks. She suggested reviewing the regulations in those areas where the topography and grade is higher, e.g., having two silt fences instead of one silt fence. She also questioned how we will deal with failures other than fines. She suggested a meeting be held specifically in the French Broad River area, including the River District Design Review Committee and property owners to explain in detail the maps and how their properties are impacted so they are clear on what they can do with their property. Also, when staff comes back to Council, she requested some maps to show the buffer areas, etc. She also said it was important that the existing ponds that we have in place are kept clean from trash and litter.

Councilman Newman questioned if there was a mechanism to disclose chronic violators for public awareness.

Councilman Freeborn moved to continue this public hearing until July 24, 2007. This motion was seconded by Councilman Davis and carried unanimously.

V. UNFINISHED BUSINESS:

A. HEALTH CARE BILLS OF INTEREST TO MISSION HOSPITALS

City Manager Jackson said that Mission Hospitals has asked for Council to vote in support of Healthcare Bills 265 and 1512.

Mr. John Ferguson of The Ferguson Employee Benefits Agency provided Council with an analysis of House Bill 265 - A proposal to establish a high risk pool to provide health insurance to those currently unable to access coverage due to health conditions - as follows:

The problem:

- **15.6% of NC population is without health insurance (1.3 million residents).**
- Health expenses are the leading cause of bankruptcy in the US.

The current system:

- Medicaid and NC Health Choice are two programs designed to help this population, but most of the uninsured do not qualify for either program. Sadly, many that do qualify are not enrolled.
- The majority of uninsured pay for physician and drug claims out of their own pocket, or avoid treatment altogether due to the cost. They are generally unable to pay large hospital claims, but still receive the care. The cost of hospital claims for the uninsured is **spread out among those with insurance in the form of inflated charges.** Most estimates are in the 10% range (of all healthcare dollars), but some claim it to be as high as 33%.

The cost of the current system to the City of Asheville:

- Using the generally accepted estimate of 10%, and assuming the claims for The City of Asheville for 2007 approximate the estimate of $6,082,531, The City's claims will be inflated by **$608,253** due to this problem.
- The cost is inflated by the lack of preventive and well care received by this population. They generally get care only when the condition has reached the point of a hospitalization. Earlier and lower cost care could have prevented the higher cost claim.

The proposed solution (house bill 265):

- Provides coverage at **premiums equal to 175% of standard rated premiums** for high risk individuals who can prove they were unable to access affordable coverage through private insurance. Even this coverage would be cost prohibitive to many. The majority of the uninsured are not high risks and would not be participants in this program. 57% of those without coverage are between the ages of 18 and 34 and either assume they will be healthy and take the risk to save the premium, or are not yet in an employment situation that provides access to coverage.
- **Would address only a small portion of the uninsured population, about 8,000 of the 1.3 million NC uninsured.**
- Would cost $40,000,000 to $66,000,000 in 2008.
- **Would be funded by:**
  a. **A tax** on insurance premiums to be paid by
     -insurers
     -TPA's (Third Party Administrators)
     -excess loss insurers
     Note: If added to the TPA tax, means that self funded employers would be taxed twice (hopefully corrected in final bill).

     Tax would be as follows:
     -$ .70 per month per employee in 2008 and 2009
     -$1.00 per month per employee in 2010
     -$1.30 per month per employee in 2011
     -$1.70 per month per employee in 2012
     -$2.00 per month per employee in 2013
  b. A minimal federal contribution
  c. Premiums paid by the high risk participants

Cost of proposal to the City of Asheville:

- Because the program proposes to cover only a small portion of the uninsured (albeit the higher risk uninsured), the impact on reducing hospital write offs of unpaid claims will be negligible and even that would be wholly dependent on the hospital actually passing on that savings.
- Assuming the final bill corrects the double taxation of self funded plans that appears to be unintentionally written into the current bill, and assuming no savings from reduced hospital charges, the annual cost to the City of Asheville would be as follows:
  -2008: 1,230 x $. 70 x 12 = **$10,332**
  -2009: 1,230 x $. 70 x 12 = $10,332
  -2010: 1,230 x $1.00 x 12 = $14,760
  -2011: 1,230 x $1.30 x 12 = $19,188
  -2012: 1,230 x $1.70 x 12 = $25,092
  -2013: 1,230 x $2.00 x 12 = $29,520
- The above reflects the cost of the program as currently written and designed to address only a small portion of the problem. **What if future legislation expanded this program to attempt to include all uninsured high risks?** Assuming statistical norms, 10% or 130,000 of the 1.3 million uninsured in NC have chronic conditions that would elevate them to the category of "high risk". The cost to the City of Asheville to expand the program to cover all of them would become significant:
  -2008: 1,230 x $11.37 x 12 = **$167,821**
  -2009: 1,230 x $11.37 x 12 = $167,821
  -2010: 1,230 x $16.25 x 12 = $239,850
  -2011: 1,230 x $21.12 x 12 = $311,731
  -2012: 1,230 x $27.62 x 12 = $407,671
  -2013: 1,230 x $32.50 x 12 = $479,700

  At this level of expense, the question of whether or not the providers pass on the savings becomes quite critical. In theory our claims are inflated by approximately 10% (**$608,253**

In 2007) to cover the claims the providers have to write off due to uninsured high risk patients. If charges are reduced by this amount to reflect the fact that the uninsured high risks are now insured, the above costs of the program make more sense. **This theory is dependent upon the providers passing on that savings.**

Probability of passage:

- Similar to legislation already in place in 33 other states.
- Similar bill passed last year by a vote of 95 to 10, but was not brought up by the senate before adjournment.
- Must be reconciled with senate version, but **eventual passage is probable**.

Impact on future legislation:

- Both proponents and opponents alike state that this is only a first step, and is designed to address only a small portion of the problem. Opponents fear it will lead to a universal health structure. Some proponents hope that it will indeed lead us down the universal healthcare path, but many legislators support the bill based purely upon the impact on the current situation for high risk individuals.

Impact on the City of Asheville:

- The cost is minimal relative to the overall cost of the COA plan, but the ROI is even lower. The program would cost the COA $10,332 in 2008 grading up to $29,520 in 2013. In theory, that cost would be offset by reduced hospital charges since the hospital would write off fewer losses due to fewer uninsured high risk patients, but there is no guarantee this would occur, and it cannot be expected.

Impact on the overall cost of healthcare:

- The bill is not likely to have any impact on the overall cost of healthcare. Some proponents are claiming that the cost of healthcare in NC could remain flat or even be reduced if this bill passes and is expanded. Any impact would come from high risk patients who now have coverage getting preventive and well care that they would not have gotten without the coverage, thus avoiding a higher claim later on. However, while this strategy has proven very effective for individuals and even groups (The Asheville Project), it cannot be expected to reduce the overall cost of healthcare to the population as a whole. For example, if the hospital purchases a new piece of new technologically advanced but expensive equipment, the cost of that equipment must be passed on to those who fund healthcare (patients, employers, government, etc.). If half as many patients use the equipment because they are getting better preventive care and well care, it does not reduce the cost of the equipment, and the hospital must simply double the charge for those who do use the equipment.

Impact on high risk individuals:

- It is with individuals, specifically high risk individuals not covered by a pooled insurance plan, that the bill can have its greatest impact. The theory of insurance is that the healthy support the sick and risk is spread among the population as a whole. This system is not working for far too many high risk individuals. The bill could cap premium expense for such individuals at 175% of similar coverage for healthy individuals. Some high risk individuals currently pay as much as 700% or cannot get the coverage at all.

Mayor Bellamy said that is Council endorses House Bill 265, she would write a letter to Mission Hospitals stating that if the House Bill passes, as we go forward, we would hope that the Hospital would reduce their charges because of fewer less uninsured patients.

Councilman Freeborn moved to endorse House Bill 265. This motion died for a lack of a second.

Mayor Bellamy said that Senate Bill 1512 - An act to enact the "Healthy NC" program to facilitate the availability of affordable accident and health insurance coverage to small employers, self employed individuals, and uninsured workers; to create the North Carolina health insurance risk pool to help meet the health insurance coverage needs of individuals who cannot obtain affordable health insurance because of high risk health conditions and to appropriate funds for the implementation of this act - failed to meet the May 24 deadline and will no longer receive consideration during the 2007 Session.

Councilman Newman said that he didn't feel he had the expertise on this matter to weigh in.

Mayor Bellamy felt it was important to update City Council about health care/health insurance coverage issues. She said that in August or September she would set aside a worksession for this update.

VI. NEW BUSINESS:

A. RESOLUTION ADDRESSING THE INCORPORATION OF THE TOWN OF LEICESTER

Planning & Development Director Scott Shuford said that this is the consideration of a resolution addressing the incorporation of the Town of Leicester.

Citizens in the Leicester area of Buncombe County have petitioned the State Legislature to incorporate approximately 67.6 square miles of property containing about 16,800 residents and traversed by Highway 63, northwest of Asheville. The area proposed for incorporation constitutes the entire township of Leicester, as it currently exists. By contrast, the City of Asheville has an incorporated area of approximately 44 square miles and a population of 73,000 residents. The approximate respective densities are 250 (Leicester) and 1700 (Asheville) persons per square mile.

According to the petition filed with the State, the Town proposes a tax rate of .05 cents per $100 valuation, which is the minimum required by statute. This is in addition to the fire district tax (10-12 cents, depending on district) that is already assessed. This additional tax is anticipated to generate approximately $200,000 in revenue. Four services are proposed to be provided by the Town:

- Fire protection through a contract with the rural fire districts that currently serve the area (there are four such districts).
- Police protection through a contract with the county sheriff department (2 additional deputies).
- A street lighting program.
- Planning services (continuation of Buncombe County zoning).

Under the proposed Charter of the Town of Leicester, a five-member Town Council will be created and will operate under the council-manager form of government.

Legal and Process Issues: Under the North Carolina Constitution, municipal incorporation requires an act of the legislature. Petitions for incorporation are filed with the Joint Legislative Commission on Municipal Incorporation. Upon receiving the petition, the Commission undertakes a "Phase 1" review, which is simply to determine the sufficiency of the petition, which must contain certain information. There follows a "Phase 2" review, which focuses on whether the area meets the criteria for incorporation (density, degree of development; but a lower threshold than for annexation), and whether the services promised can actually be delivered.

During this process, the incorporating municipality must notify all other cities in the county or counties wherein it is located, and must notify any city of 50,000 or more that is within 5 miles ("proximity test"). In the case of Leicester, Asheville is within 5 miles and has been notified. Under the law, if a petition is insufficient (Phase 1), it may not be processed; if the criteria are not met (Phase 2), the Commission must make a "negative recommendation" to the General Assembly. Similarly, if there is a city that meets the proximity test that does not express its approval of the proposed incorporation (part of Phase 2), the Commission may not make a positive recommendation. In the event of a negative recommendation, the Commission may hold a public hearing and may, in certain circumstances, require a referendum (presumably of the affected area). Even if the Commission makes a negative recommendation, the legislature may still incorporate. However, if there is a city of 50,000 or more within 5 miles, incorporation requires a three-fifths vote of the General Assembly, whether or not that city approves of the proposed incorporation.

Residents of the proposed area of incorporation for Leicester have submitted their petition and satisfied the basic Phase 1 requirements. The Legislative Commission is waiting on Asheville to express its position on this incorporation before moving forward with the incorporation process.

Staff Comments:

A. Purposes of incorporation. The most obvious comment about this incorporation effort is that it appears to be primarily a "defensive" one, initiated to stop possible annexation by Asheville and the Town of Woodfin, rather than to create an urban area of enhanced public services. This is apparent from the proposed list of services which, with the exception of street lighting, are merely continuation of existing County and rural fire district services. Also, the density of the area exhibits much more of a rural character than is appropriate for the urban recognition that comes with being a town.

B. Conflicts with Asheville and other municipalities. Due to significant topographic and service delivery issues, the City of Asheville's annexations in this area have been slower than they have been in the south and west. A small portion of the proposed Town of Leicester overlaps with the City's extraterritorial jurisdiction area (ETJ) and with the area included in the City's resolution of consideration for annexation. Also of concern is that part of the proposed Town of Leicester would overlap part of the area that is of interest to the Town of Woodfin, and has been the subject of our annexation agreement discussions with Woodfin officials. Finally, Council should bear in mind that this incorporation would create a "town" that would be the sixth largest in N.C. in terms of land area, but only the 49th largest in population. The recent incorporation of Mills River also created a large town (the second largest in WNC in area) but it is only 1/3 the area of the proposed Town of Leicester; Mills River has approximately 6,150 residents (about 280 persons per square mile). Another fact of interest, the proposed size of the Town of Leicester is roughly the same as our nation's capital (Washington, DC, is about 68 square miles). Leicester's population is about 2.8% of DC's 581,500.

C. Service delivery issues. Even with the addition of 2 deputies, it is difficult to see how the proposed Town of Leicester could enjoy an enhanced level of service from incorporation over what it already has; the services it proposes to provide are primarily continuations of current arrangements. The sheer size of the proposed town represents a considerable obstacle to efficient and effective delivery of municipal services.

D. Planning and zoning issues. The Town of Leicester would remain subject to Buncombe County zoning. Under the recently-adopted Buncombe County zoning ordinance, the majority of the area is zoned OU (Open Use). The uses permitted in this classification are, as its title indicates, essentially unlimited, except for a few prohibited uses. There is a cluster of more specifically zoned property in the extreme southeastern corner of the area, where it begins to take on a more urban character. From a land use planning perspective, it would appear to make more

sense for the incorporation to be concentrated in a much smaller area, generally centering on the Highway 63 and Alexander Road / Old Newfound Road intersections. This location exhibits a more "urban" development pattern than the remainder of the proposed area of incorporation; it is already known and accepted as the "town center" of Leicester. The incorporation of this area would allow the "town center" of Leicester to be established now and perhaps expanded at a later date, while also allowing a more comprehensive planning program to be developed that would address the concerns of Asheville (and potentially Woodfin) about the scale of the proposed incorporation and the ultimate land use pattern. Additionally, such an approach would allow the Town of Woodfin to be consulted about the desired land use pattern and service delivery on its border with the Town of Leicester in much the same way as has occurred during the Asheville's negotiations with Woodfin regarding the proposed annexation agreement.

E. Financial Impact: The financial impact to the City of Asheville would be a loss of $20,000 in sales tax revenue.

For the reasons noted above, staff does not recommend adoption of the resolution, but could support a resolution for incorporation of a smaller area.

Mr. Randy Teague, Interim Council member for the Town of Leicester, explained their strong interest to incorporate began two years ago. The main reasons for their request for incorporation is (1) to elect people from their own community to govern their own town; (2) to benefit from the monies we are not receiving currently because we are unincorporated; (3) to build and/or improve community facilities for our town; and (4) to maintain the unique character of Leicester area including enacting ordinances to protect our way of life. He reviewed the staff report outlined by Mr. Shuford and countered staff's comments with reasons they want to incorporate.

Rev. Christopher Chiaronmonte said the City of Asheville should be willing to give up their power and become a metropolis.

Ms. Leesa Kulba felt that this will only cost the City $20,000 and felt it was a good investment to let people be self-determinating.

Mr. Joe Bassett felt the City isn't losing much, but the County may be losing.

Councilman Freeborn felt this issue should be left up between Leicester and the General Assembly.

Councilman Newman was open to the idea of the incorporation of Swannanoa and Leicester. However, we have to look at the future growth of our community and how we can work together. We have to be concerned about all the areas around the city becoming incorporated and boxing the city in. Most urban growth that occurs around Asheville should be incorporated in the urban area. If areas around Asheville incorporate, in the long run it could be damaging the economic health of Asheville and damaging Asheville's economic health is not in anyone's best interest that lives in Buncombe County. He could not support the resolution endorsing incorporation and wondered if Asheville and our neighbors in Buncombe County could set up a community process to look at these together and determine what would be the natural boundaries of these new communities, and come up with a vision for the future.

Mayor Bellamy said that those conversations have begun with the incorporated municipalities.

Councilman Mumpower felt that Leicester residents are afraid of policies and behaviors coming out of Asheville and want to preserve things and control their own future. He would support their effort as he did when Mills River came to Asheville requesting their support for incorporation.

Councilman Mumpower moved to adopt the resolution approving the effort of the Township of Leicester to obtain a greater degree of governance and control over its future through incorporation. This motion died for lack of a second.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke in opposition of partisan elections.

Because City Council wished to re-open positive communication with Mr. Teague regarding the Town of Leicester incorporation, at the suggestion of Councilman Davis, Mayor Bellamy said that she would write a letter to Mr. Teague and the General Assembly formally responding to the resolution request and inviting Mr. Teague back to another meeting in order to not only comment on the proposal put forward but to talk about a process in general how we can work together. She stressed the importance of communication.

Mayor Bellamy explained City Council's public comment rules.

City Attorney Oast responded to Councilman Mumpower regarding the public comment period. It was City Attorney Oast's opinion that in view of our Charter, our public comment rules are reasonable.

Ms. Kyle Ross spoke to Council about dishonesty in the Asheville Police Department. She presented City Clerk Lipe with three documents which allegedly supports her allegations. Mayor Bellamy said that we will follow-up on her concerns.

Councilman Freeborn requested that in the near future an item be placed on the agenda regarding traffic calming measures relating to Greenlife Grocery on Maxwell Street.

Depending on the City Attorney's review, Councilman Mumpower requested that an item be placed on Council's July 10, 2007, agenda for Council to conduct a vote on supporting a city-wide referendum on the partisan election issue.

When Mayor Bellamy reminded Council of the process in place for requesting items to be placed on the agenda, Councilman Mumpower said that he would follow-up on his request with an e-mail.

Councilman Mumpower thanked Asheville Homebuilders for their work on building some Top-A-Stops. They completed the 15 they had committed to. That brings us up to 30 Top-A-Stops. He urged people who would like to see a Top-A-Stop on their streets, to get together 2-3 volunteers and they can make that happen. In addition, Top-A-Stops will be seen on major highways in Asheville soon. We aiming for another 25 on top of the 30 we already have.

Closed Session

At 9:05 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn.

When Councilman Mumpower discovered that the closed session is on the same topic as last week, he withdrew his motion. He said that Council made a commitment to conduct water negotiations in open session. He understands that the County Commissioners and State legislators have not been receptive to this and that we are pursuing other options in closed session. He feels like that is a violation of our earlier commitment and he is not willing to discuss water issues behind closed doors.

Mayor Bellamy said that she has made repeated efforts for our County Commissioners to meet as a body with the City Council but was unsuccessful, except with Chairman Ramsey who said he would meet anytime. Our State delegation was willing to meet as well, and she did everything she could as Mayor to make that happen but it didn't happen. For the greater good of the community who said they wanted the water issue resolved, she said that she would meet with whatever Commissioner anytime. Council elected her and Councilman Newman to represent City Council in any meetings that would happen and as such we have been willing to meet anywhere at anytime to address the issue to get the issue closed. She has tried to do everything she could to bring this to the forefront as far as open door meetings, but she can't control other elected officials. She believes the citizens of Asheville want this issue resolved and she will work toward that end.

At 9:06 p.m., Councilman Davis moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried on a 4-1 vote, with Councilman Mumpower voting "no".

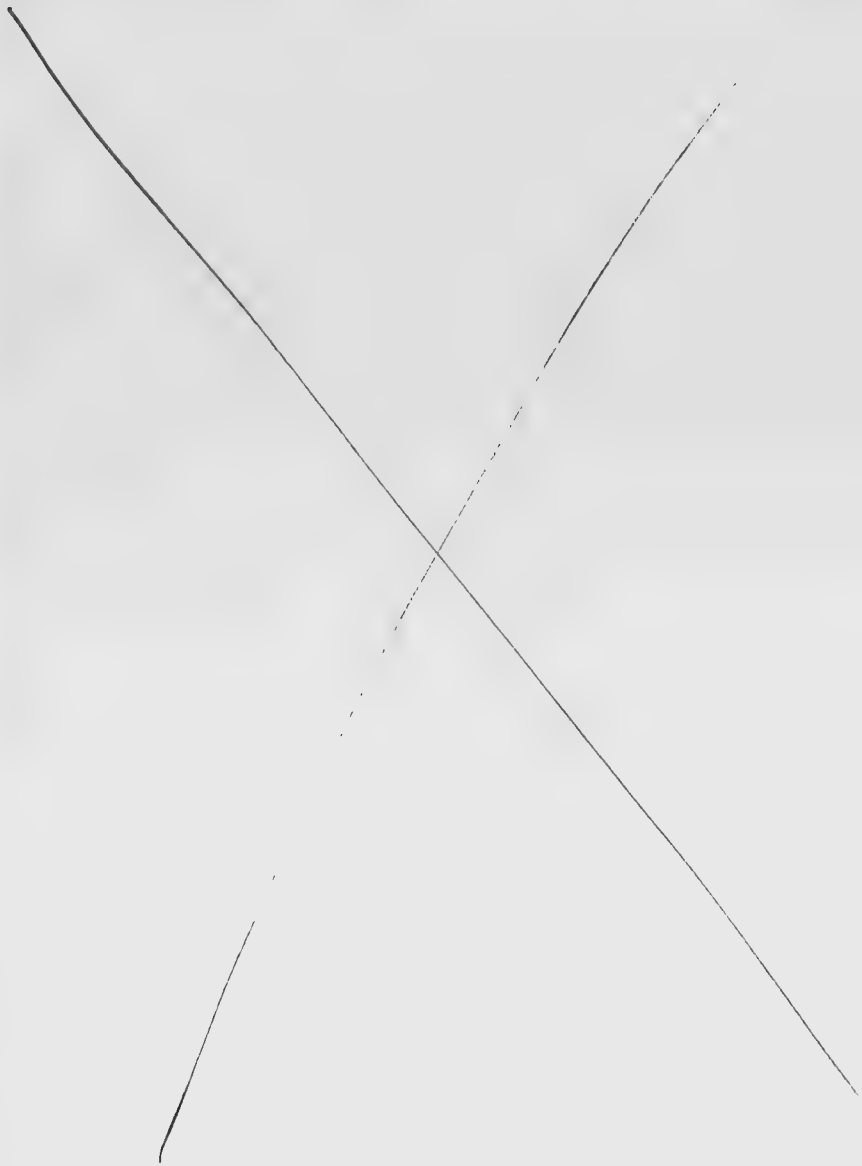
At 10:45 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:45 p.m.

Kenna Lipe
CITY CLERK

MAYOR



Tuesday – July 10, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE'S SISTER CITY VALLADOLID, MEXICO

Mayor Bellamy acknowledged the new Asheville Sister City of Valladolid, Mexico. President of the Asheville Sister Cities Charles Worley and former President of the Asheville Sister Cities Carroll Hughes spoke about the importance of Sister Cities and gave thanks to City Council for their support. Mayor Bellamy accepted their certificate of friendship and presented them with a token of friendship as well.

B. BOARDWALKS OVER THE WETLANDS AT CARRIER PARK

Mr. Bob Shepherd, Chairman of RiverLink Inc., presented City Council with a check in the amount of $39,000, for the boardwalks over the wetlands at Carrier Park.

On behalf of City Council, Mayor Bellamy thanked RiverLink for their donations.

II. CONSENT AGENDA:

Councilman Mumpower requested that Consent Agenda Item "G" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 19, 2007, AND THE REGULAR MEETING HELD ON JUNE 26, 2007

B. RESOLUTION NO. 07-130- RESOLUTION REAPPOINTING MARK WILSON AND SANDRA BRADBURY AS MEMBERS TO THE URTV INC. BOARD OF DIRECTORS

Summary: On June 19, 2007, it was the consensus of City Council to reappoint Mark Wilson and Sandra Bradbury to each serve an additional two-year term as members to the URTV Inc. Board of Directors, terms to expire June 30, 2009, or until their successors have been appointed.

C. RESOLUTION NO. 07-131 - RESOLUTION REAPPOINTING JOHN BROADBOOKS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION

Summary: On June 19, 2007, it was the consensus of City Council to reappoint John Broadbooks to serve an additional three-year term as a member of the Civic Center Commission, term to expire June 30, 2010, or until his successor is appointed.

RESOLUTION BOOK NO. 30 - PAGE 376

D. RESOLUTION NO. 07-132- RESOLUTION REAPPOINTING MARSHA SHORTELL, TODD WILLIAMS AND SUSANNE JONES AS MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: On June 19, 2007, it was the consensus of City Council to reappoint Marsha Shortell, Todd Williams and Susanne Jones to each serve an additional three-year term, terms to expire July 1, 2010, or until their successors have been appointed.

RESOLUTION BOOK NO. 30 - PAGE 377

E. RESOLUTION NO. 07-133 - RESOLUTION REAPPOINTING LEE MCELRATH AS AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

Summary: On January 16, 2007, it was the consensus of City Council to reappoint Lee McElrath, as an Alternate member, to serve an additional three year term, term to expire January 21, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 - PAGE 378

F. ORDINANCE NO. 3500 - BUDGET AMENDMENT TO TRANSFER FUNDS AND REIMBURSE PALACE SPORTS FOR INSTALLING NEW SEATING AT MCCORMICK FIELD

Summary: The consideration of a budget amendment, in the amount of $35,000, for capital improvements at McCormick Field.

In Fiscal Year 2006/07, the Parks and Recreation Department received $35,000 from Palace Sports (owners of the Asheville Tourists) as part of their yearly contract with the City of Asheville. Since this payment was not budgeted for, consequently, it went directly into fund balance. This budget amendment would allow those funds to be transferred into the McCormick Field budget to reimburse Palace Sports for new seating, per a letter dated December 7, 2006.

Pros:

- Provide funds to meet contractual obligations.

Cons:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $35,000, to increase the McCormick Field budget to cover capital expenditures to fulfill yearly contractual obligations.

ORDINANCE BOOK NO. 24 - PAGE 53

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL

SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. RESOLUTION NO. 07-134- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 19, 2007, the City approved the budget for Fiscal Year 2007-2008 and in that budget approved $121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2007, through June 30, 2008.

Pro:
- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Con:
- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

Councilman Mumpower said that Buncombe County has historically provided animal control services to all County residents (which include City residents) and for the County to take away that service, without a compensating variable, is double taxation.

Mayor Bellamy said that the City briefly talked with the County about our dissatisfaction and County representatives said that they have stepped away from providing those services to all municipalities in Buncombe County.

In response to Councilwoman Cape, City Attorney Oast said that a county is authorized, but not required, to provide animal shelter services to a city.

In response to Mayor Bellamy, Assistant City Manager Jeff Richardson said that if the City doesn't authorize this agreement with Buncombe County, the City would either have to

contract with someone else to provide those services or build their own animal shelter for animals that are captured within the City.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-134. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. COMMUNITY FORUM ON HOMELESSNESS SUMMARY REPORT

Assistant to the City Manager Lauren Bradley said that the purpose of this report is to provide a summary and analysis of community input collected on the issue of homelessness in Asheville. Feedback was collected at a community forum hosted by Asheville City Council on May 29, 2007. The City also collected written comments from the public after the forum. In addition, staff has collected data from an observational survey conducted in Pritchard Park the week of June 25. Based on this information, the following report includes staff recommendations for the Pritchard Park Committee as well as areas for further analysis or consideration.

Community input revealed concerns about three areas into which the following analysis is divided: the maintenance and aesthetics of Pritchard Park, homelessness, and downtown social issues.

Student MPA Intern Nick Dula from the UNC-Chapel Hill and Student MPA Intern Josh Hallingse from Appalachian State University summarized the following information:

Pritchard Park

Three common themes related to Pritchard Park surfaced from the community input: park maintenance, park operations/programming and park design/amenities. Analysis for each area is included below.

A. Pritchard Park Maintenance

The City has started implementing measures to address deferred maintenance in Pritchard Park followed by steps to maintain it at appropriate levels. The City has started or completed maintenance items including replacing mulch, repairing the ornamental fountains, pressure washing concrete areas, cleaning or replacing damaged infrastructure, repairing trash receptacles and installing cigarette urns. The balance of this work will be complete no later than mid-July. The park will be pressure washed again after Bele Chere. A City crew will empty trash receptacles, remove litter, rake mulch and take care of routine maintenance items every morning, seven days a week. Crews will conduct inspections on the park's fountains, pumps and electrical once per week.

B. Park Operations and Programming

The most common community suggestion for Pritchard Park operations was an "adopt-a-park" or "park ambassador" program. Park ambassador programs have been used as a way to monitor and manage activities in high use parks while also adding enhanced coordination of park programming during peak hours. The City of Asheville has similar services at other facilities like Azalea Park, Carrier Park, Memorial Stadium, ball fields, etc. Staff recommends additional staff analysis into this suggestion if City Council is interested in exploring a "park ambassador" for Pritchard Park.

C. Pritchard Park Design Considerations

Design modifications that may improve the existing park entail policy decisions that are worthy of additional public input and City Council consideration. Staff has developed the following list of suggested considerations for Pritchard Park improvements:

Landscape
- Add more plant material for density
- Plant different palette of plant material
- Plant materials with more mature sizes
- Add more boulders to keep public from fountains
- Add low metal barrier to perimeter flower beds

Fence
- Install ornamental fence to prohibit access to plants

Pathway
- Replace walkway with concrete/aggregate rock

Benches, trash receptacles and bike rack
- Add brick pads to area underneath all of above

Cigarette urns
- Purchase urns for placement in the park

Regulatory Signs
- Purchase signs for placement in the park

Irrigation
- Install irrigation system to maintain landscaping

It is staff's recommendation that the role of the Pritchard Park Committee be to review and refine the proposed design modifications by working with staff from the Parks and Recreation Department. Once the committee develops a proposal for design considerations, it would be tasked with hosting community input sessions on proposed design modifications. After the plan is modified to reflect community input, it would be presented to City Council for consideration. Staff will develop a revised committee charter and timeline if Council supports this role for the committee.

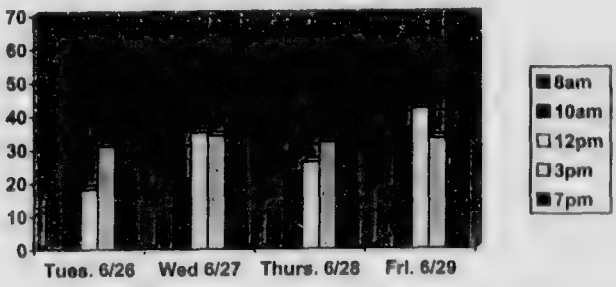
Pritchard Park Observational Survey - The purpose of the Pritchard Park Observational Survey was visit the park on regular intervals throughout the day to record any patterns of usage or park conditions.

The observational survey was conducted over the course of four days. The survey entailed 1-2 person(s) going to the park to record how many people are in the park along with notes about other activity (i.e., park cleanliness, park uses, police presence, park maintenance, etc.).

At the beginning of each observation, staff noted four key observations: date, time, weather, and park occupancy. Each site visit lasted between 15-30 minutes and typically occurred at the following times: 8 a.m., 10 a.m., noon, 3 p.m. and one observation in the evening, generally around 7 p.m.

Park Patterns Observed During Survey:

Park Usage - Prior to 8 a.m., the park is unused and empty. Between 8-8:30 a.m., the park experiences an influx of an average of 14 individuals. Throughout the course of the day, the number of people in the park steadily increases with peak usage in the afternoon and evening hours. The number of people in the park during peak hours ranges between 30-40 individuals. Of the four days, Friday experienced the most park usage, with the greatest number of park users on Friday evening.



There are two main sections of the park that experience the most amount of use: the upper wall adjacent to College St. and the chessboard area located at the corner of Patton Ave. and Haywood St. Most individuals took advantage of the shady areas provided at these two locations.

Most individuals who patron the park typically stay for extended periods of time (1 hour+). Most of the regular users of the park were adult men with few women and children seen on a daily basis.

The Friday night drum circle draws the largest crowd and the most diversity.

Park Cleanliness - Litter was a significant issue noted on all occasions, particularly cigarette butts. Large items such as aluminum cans or newspapers were for the most part absent. Vegetation (shrubs, trees, flowers) was well groomed, and the water features were operating as designed. One of the two water fountains was out of service. An employee from Parks and Recreation Department was observed providing maintenance services during two site visits.

Public Safety - A police presence was observed during 8 out of the 16 visits, or 50% of the time. Several social issues and ordinance violations were observed, particularly sleeping on park benches, panhandling, public urination, intoxicated and disruptive behavior and swearing.

Other Notes - Observers were stopped by tourists to ask for direction on several occasions.

Conclusions:

- People tend to gather on the walls in the shaded sections of the park.
- The permanent board games seem to be a big draw to the park.
- Most individuals use the park for extended amounts of time. Very few simply use the park for 30 minutes or less.
- Cigarette butts and small pieces of paper constitute the largest share of litter.
- Police patrols were observed.
- Unpaved walking portions of the park seem to create lots of dust.
- A fairly large number of citizens in wheelchairs use the park on a regular basis.
- Many people walk through the park to get to another destination.

Summary of Recommendations for Pritchard Park:

- Develop a plan and funding options for staff presence and enhanced programming in Pritchard Park, including an option for an ambassador or monitor during peak usage hours.

- Re-engage the Pritchard Park Committee to evaluate long-term Pritchard Park design modifications with community input and staff recommendations.

- Continue target law enforcement efforts in the Pritchard Park area with an emphasis on panhandling, trespassing, intoxicated and disruptive behavior and other related violations.

Homelessness

Three common themes also emerged in the area of homelessness: improving access to existing support services, medical and mental health care and affordable housing. The most common suggestions related to support services dealt with increasing access to daytime services and enhancing coordination among existing service providers. Access to affordable housing options was also cited as a barrier to ending homelessness.

Currently, the City of Asheville supports efforts to end chronic homelessness through the Asheville-Buncombe Homeless Initiative, which is the community collaboration implementing the 10 Year Plan to End Chronic Homelessness. The major focus of the effort is the end of chronic homelessness through the Housing First model, which seeks to place individuals in permanent, supportive housing. In Fiscal Year 2006-07, Asheville contributed $30,000 from Community Development Block Grant (CDBG) to support this effort, and the same allocation has been budgeted for Fiscal Year 2007-08. In addition, the City Council approved a $20,000 allocation to Homeward Bound/A-HOPE Day Center through this year's Outside Agency process.

Based on the community's input, staff recommends Council schedule a specific review of the city's efforts targeted at addressing homelessness. Staff would present information about the structure of the Homeless Initiative and the 10 Year Plan to End Chronic Homelessness, staffing and resources dedicated to the program and related performance measures.

The executive summary of the May 29, 2007, Community Forum on Homelessness is as follows:

On Tuesday, May 29, 2007, the City of Asheville held a community forum on homelessness at the First Presbyterian Church of Asheville. The assembly opened with a presentation on the history of Pritchard Park by city staff member Alan Glines followed by an update on the 10 Year Plan to End Homelessness by coordinator Amy Sawyer.

Citizens then broke into six small focus groups to reach consensus on two key questions:

1) What support services are needed in our community to help people who experience homelessness or are at risk of becoming homeless?
2) What type of community programming would you like to see in Pritchard Park?

Each focus group recorded its input and presented their overall findings in a wrap-up assembly. After the forum, the City continued to receive written comments from the public until June 11, 2007. The following is a summary of the information collected at the forum as well as the complete input from every focus group and subsequent written comments.

The following categorizes the top three answers from every focus group according to each question.

Question 1: Answers to the first question generally fell into one of three categories: increasing/enhancing existing support services, improving access to medical and mental health care, and increasing the stock of or access to affordable housing.

- **Increasing/enhancing existing support services:** All five groups included an item that related to increasing or improving existing services. These responses included increasing the availability of services, ensuring stable funding for programs and enhancing coordination among existing service providers. Specific recommendations for more day facilities, including public restrooms and laundry facilities, were also included. Some responses focused on procedures at shelters (i.e., allowing families to stay together as opposed to separating men and women) and increasing access to case managers that could help connect housing and support services for clients.

- **Improving access to medical and mental health care:** Four out of five groups included a recommendation related to medical care, mental health services and/or substance abuse treatment. The recommendations all addressed either the affordability, access to or quality of these services. Improving mental health services with an emphasis on adequate public funding for such services was the most common response.

- **Increasing the stock of and/or access to affordable housing:** Three out of five groups included the need for more affordable housing or enhanced access to affordable housing options. The Griffin Apartments were cited as a successful model.

Question 2: Answers to the have also been divided into three broad categories of recommendations: park maintenance and operations, park programming, and park amenities.

- **Park maintenance and operations:** Most answers to the second question dealt with park maintenance and operations. Four out of five groups included a recommendation to implement an "adopt-a-park" or "park ambassador" program. The purposes cited for these programs included improved park maintenance, planning, information sharing and public safety. Other items included better park maintenance and cleaning through improvements like paved walkways.

- **Park programming:** Three out of five groups addressed park programming with an emphasis on diverse and welcoming events. Specific programming recommendations include art shows, markets, movies, etc.

- **Park design and amenities:** Three out of five groups included the need for access to public restrooms and water fountains at the park.

As of June 11, 2007, the City of Asheville had received 15 written comments. The most common themes of the correspondence are listed below:

- **Using ordinances, rules or guidelines to prohibit certain activities in Pritchard Park:** Nine citizens recommended that the city should prohibit certain activities or behaviors in the park. Out of the suggested prohibited activities, public feeding and other "social services" were the most common. Others included littering, foul language, sleeping on benches, and drunk and disorderly conduct. Enforcement of these ordinances was also commonly emphasized in these responses.

- **Increasing park programming:** Six citizens advocated for increased programming of small events in the park including art shows, acoustic music, community lectures, movies and informational kiosks.

- **Making the park welcoming for all citizens:** Four citizens indicated the park was not welcoming to residents, visitors, and surrounding businesses.

- **Improving park maintenance:** Three citizens recommended enhanced park maintenance including sanitation services, pressure washing and landscaping.

- **Increased capacity for daytime homeless support services:** Three citizens recommended increasing the availability of daytime support services for the homeless. Two citizens included A-HOPE as a model for daytime services that needed to be expanded or replicated.

Summary of Recommendations on Homelessness:

- Schedule City Council review of the structure, staffing, programs and performance measures of the Asheville-Buncombe Homeless Initiative and the 10 Year Plan to End Chronic Homelessness.

- Conduct inter-city visit to Chattanooga, Tennessee, to review homeless service campus model (proposed date of July 17, 2007).

Downtown Social Issues

During the public input process, a number of downtown social issues were included with feedback on Pritchard Park and homelessness. Among the most commonly cited were public drunkenness, feeding in Pritchard Park, disruptive behavior in the park and litter. Through staff contact with the Asheville Area Chamber of Commerce/Tourism Development Authority, concerns about downtown panhandling have also been raised.

From July 1, 2006, to June 15, 2007, Asheville police officers made 3 felony arrests, 39 misdemeanor arrests, and 2 traffic arrests at Pritchard Park. Additionally, officers issued 113 citations for misdemeanor offenses (i.e., panhandling, trespassing, intoxicated and disruptive behavior, possession of marijuana, etc.), 12 traffic citations, and 2 infraction citations (i.e., parking citations) in the park.

In addition to the district officers assigned to Pritchard Park area, police presence in the downtown business district is supplemented by downtown augment. A permanent assignment in the augment schedule is the Pritchard Park area. Officers have a presence in the Pritchard Park area on a daily basis from noon until 11 p.m. This area also includes the businesses along Haywood Street, College Street and Patton Avenue near Pritchard Park. Officers patrol the area on foot and are responsible for making contact with business owners as well as patrolling Pritchard Park.

With these resources, officers are in Pritchard Park or at close proximity to the Pritchard Park at least once an hour everyday.

In March 2007, City Council received a report from the Downtown Commission outlining a review of the Downtown Social Issues Task Force recommendations. Several items that received Council direction in March are moving forward, including a pilot program for graffiti removal and the Spare Change for Real Change initiative. Other recommendations are in the process of additional staff analysis, including options for developing a Nuisance Court and a community service program directed at downtown cleaning. Staff recommends Council schedule a review of these programs in August for additional consideration and direction.

Summary of Recommendations on Downtown Social Issues:

- Schedule City Council review of staff research and recommendations on developing a Nuisance Court and community service program directed at downtown cleaning.

- Update on the Spare Change for Real Change initiative and graffiti removal pilot program.

Councilwoman Cape supported re-engaging the Pritchard Park Committee, with their role restricted to park programming and evaluating long-term Pritchard Park design modifications with community input. She felt that the Committee will look at creative ways to engage the Park actively so that there are eyes on the Park.

Councilman Newman supported the overall direction of re-engaging the Pritchard Park Committee. He also supported having Pritchard Park being open for different types of uses, as long as people are engaging in activities that don't harm other people in general. He hoped to keep the programming as open as possible. While we want our parks to be places where everyone has an opportunity to be there, we also expect a level of responsibility from everyone who is there. He asked the City Attorney and law enforcement personnel what our options are for holding people accountable for appropriate behavior in our parks.

Councilman Mumpower was against spending any money to alter our parks until we get control of the misbehaviors that are going on there. Our police can hand out citations all day long and nothing comes of it. Until we come up with some kind of accountability, there is no incentive to do the proper thing.

Councilwoman Cape said that we need to alter the misbehavior and replace it with the kind of behavior that we do want, e.g., neighborhood watches, eyes on the parks, and best practices from other communities. She finds that where citizens engage with their parks, the misbehaviors are pushed out.

Mayor Bellamy said that she and Councilman Davis meet with some services providers about these issues which are inter-connected. Regarding Pritchard Park, they confirmed that the issue we are dealing with is vagrancy, not homelessness. They all said that we have to have consistent enforcement of our laws in Pritchard Park in order to address those concerns, e.g., no panhandling, no defecation or urination in our parks, etc. She agrees that having eyes in the parks is a good deterrent but our police must be consistent in enforcement our laws. She cited that 20% of the vagrants are using 80% of the resources and that's why it's critical that we address this issue. The Downtown Social Issues Task Force, however, should not be the only ones shouldered with coming up with solutions on how to address these problems. We must work together with law enforcement and the service providers. She is supportive of looking at the programming at Pritchard Park, but doesn't think re-design is necessary if we do more law enforcement and work with the service providers. We committed to a 10-Year Plan to End Chronic Homelessness but we are not contributing any City funds to make that happen. We are, however, using Community Development Block Grant money to help with a position through the Affordable Housing Coalition. In addition, the City has used HOME funds to assist in permanent housing in the Griffin Apartments and Woodfin Apartments. She asked staff to come back to Council and truly address the issue of chronic homelessness as well as homelessness for families who may need shelter on a temporary basis. The inter-city visit is scheduled to review some models. Regarding social issues, if Mr. Dwight Buckner didn't work for years on the Spare Change for Real Change Program, we wouldn't have it. So, in order for us to make things happen, we've got to put some money in it and follow through. She supported the role of the Pritchard Park Committee to look at programming and hoped that the issues of homelessness and downtown social issues will come back to Council for specific policy direction.

Mayor Bellamy clarified her comments regarding vagrancy issues. She said she does not want the police to just arrest vagrants, but to make sure that we eliminate the illegal activities vagrants are doing, i.e., urination in the park, defecation in the park, littering, panhandling, etc.

Those are the types of activities we need to eliminate and we want those activities stopped in Pritchard Park.

In response to Councilman Mumpower, Mayor Bellamy said that Council has been invited to a meeting with local judges to talk about some options, e.g., alternate sentencing, and the City Attorney is looking into a nuisance court.

Councilman Freeborn believed we should task the Pritchard Park Committee to (1) look at programming; (2) work with service providers and community groups to address vagrancy issues; and (3) ask City staff to come back with a budget amendment to deal with litter and bathroom issues. He suggested we ask the Police Chief to come back with a proposal to put an officer in and around the Pritchard Park during the day and evening. He noted that when a park warden is at a particular park during heavy usage, you can see the crowd behavior is more respectful of the facility.

Councilman Davis recognized the efforts of the service providers. He supported the Pritchard Park Committee's direction be on recommendations for behavior problems and programming needs. He agreed with Mayor Bellamy that the Committee should not have to bear the burden of the Downtown Social Issues Task Force issues, but that City Council should give policy direction.

Vice-Mayor Jones said that this year we allocated significant funds to increase public safety and one of the police beats that will be increased will be in downtown. In terms of cleanliness, we identified significant dollars for downtown cleanliness and we will also have public restrooms downtown soon. She felt we are investing City dollars in the right direction. She did request trash cans in front of the service provider areas on Patton Avenue.

Councilman Davis noted that the County Commissioners are interested in working with the City on this issue as well since they are primarily responsible for social services.

It was the consensus of Council for the Pritchard Park Committee to move forward with programming recommendations only and report those back to Council, after which Council will give policy direction.

B. IMMIGRATION

Councilman Mumpower said that it has been almost a year since Council has approached the issue of illegal immigrants and have essentially done nothing since that time. He reviewed with Council the following power-point presentation:

"Why local action? With the paralysis and perpetual analysis at the federal and state level and their historical avoidance of accountability - it is the only realistic place to start. We must borrow from the civil rights movement of an earlier time - that was mostly accomplished at the local level. Asheville serves as an example.

"Why do we need to do this? The numbers create urgency: One half of the world lives (3 billion people) live on less than $2.00 a day. The minimum wage in Mexico is $4.00 a day. What we accomplish with illegal immigration a year (500,000) and legal immigration a year (1,000,000) is going backwards in addressing world poverty. We simply cannot absorb the numbers - we have gone from a nourishing rain to a flood.

"Until the mid-sixties we allowed roughly 200,000 legal aliens per year. This created our strong middle class and the "tremendous" economic strides of the black community by forcing employers to pay competitive wages due to the limits on cheap labor. Since that time, black economic progress has stagnated, the middle class has faded, and the gap between the richest and poorest has exploded. Quite imply the conspiracy by the Democrats (social indulgences)

and Republican (artificial wage restraint) has allowed illegal immigration to flourish at the expense of the majority and artificially propped up the corruption of other countries and cultures.

"There are other reasons: (1) public safety - no rules, no ID, and no accountability; (2) illegal aliens represent 25% of federal prisoners, are the primary distributors of illegal drugs in this county, and commit approximately 10 murders in the US per day; (3) at best, they do only 25% of the "unwanted" jobs in this country - just enough to keep wages suppressed; and (4) illegal immigration is a form of cultural terrorism - when people loose faith in the rule of law they stop playing by the rules - that is the foundation for a culture of selfishness and self-destruction.

"An 11 point plan of action is as follows: (1) add a provision in our new living wage ordinance to prohibit our subcontractors from hiring illegal aliens; (2) send a resolution to our state and federal representatives requesting that they begin enforcing existing laws and grant local authorities greater enforcement support and flexibility; (3) request that our City Attorney monitor federal and state legislation affecting local government ability to respond to illegal immigration concerns and make ongoing recommendations on potential initiatives; (4) follow-through on our August 2006 policy discussion on Asheville Police Department participation in 287 (g) of the Immigration and Nationality Act allowing for the appointment of local officers with immigration enforcement powers; (5) establish civil fines for using fake ID's within the City; (6) explore City regulation of day labor agencies by requiring confirmation of citizenship for temporary employment; (7) establish a formal City policy to enforce all existing laws related to illegal immigration at the local level; (8) implement our August 2006 policy discussion on transporting illegal immigrants to processing centers and reimbursements for such; (9) provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE program; (10) establish an Asheville City policy to participate in these programs; and (11) require citizenship to serve on a city board or commission.

"The United States of America serves the world best by being a "beacon" of liberty, opportunity and responsibility. Destroying our culture and economic foundation through mass illegal migrations is to sacrifice the many at the indulgence of the few.

"I see illegal immigration as one of our culture's essential issues. I believe we should look beyond what we are not sure we can do - to what we might can do. The state and federal example of complacency and paralysis is a model of disgrace.

"We should not be blinded to the importance of taking local nonpartisan action today."

Councilman Mumpower understood that Mayor Bellamy's recommendation is that we conduct a study; however, he would speak to action, not further analysis.

Mayor Bellamy suggested an opportunity to evaluate the issue of legal and illegal immigration and its impact on our community. In an effort to move this issue forward in a comprehensive manner, she suggested we follow the City of Charlotte's example by forming a "Mayor's Immigration Study Committee." Like Charlotte, the purpose of Asheville's committee would be to analyze the impact of legal and illegal immigration on the county's quality of life, public safety, and economic opportunities. Drawing from diverse representation from our community, the Mayor's Immigration Study Committee would be tasked with creating a final report to serve as an educational tool for guiding City Council's decision making process. By focusing on key areas impacted by legal and illegal immigration like public safety, economic development, education, and healthcare, the committee would concentrate on immigration's unique impacts in Asheville. She said the Charlotte's final report *Immigration: Legal and Illegal* is recognized as a national best practice for analyzing legal and illegal immigration on a local level. She welcomed Council's input on the committee, how members are appointed and any additional feedback they may have about this initiative. She suggested the Committee not be comprised only of Asheville residents, but County representation and perhaps a representative from Representative Shuler's office. She hoped to launch the process to appoint committee members

after our July 10 discussion. Since Council needs good solid information for policy direction and she felt this Committee can provide that information to Council.

Councilwoman Cape supported Mayor Bellamy's idea to study these issues locally and to look at what our particular action needs to be. Best practices do come from learning from other people.

Councilwoman Cape moved to support the Mayor in establishing a local immigration study committee similar to the City of Charlotte's model that utilizes stakeholders with a broad based inclusion of committee members. She liked the idea of studying the issues locally and what their impacts would be locally and regionally. This motion was seconded by Councilman Freeborn with the suggestion of a friendly amendment that the Sheriff of Henderson County be invited to be a member of the committee as he has expressed a desire to take the lead in the 287 (g) program. Councilwoman Cape accepted the friendly amendment.

Rev. Amy Cantrell hoped that Council did not move forward with this plan but to find ways to welcome our sisters and brothers from across the border.

Mr. Bill Lack felt Council should follow the Mecklenburg County model and not the City of Charlotte's model. He supported Councilman Mumpower's 11 point plan.

Rev. Christopher Chiaronmonte felt Council should not punish illegal immigrants but punish those who are truly breaking the law.

Mr. Mike Butrum urged Council to adopt Councilman Mumpower's 11 point plan.

Mayor Bellamy felt that the 11 point plan recommended by Councilman Mumpower will be looked at by the Committee. She said this is an opportunity to look at a lot of different options. In addition, she noted that the plan is a Charlotte-Mecklenburg Plan.

Councilman Mumpower had no problem with a study as long as it's a foundation for action vs. an alternative to action. The Sheriff of Henderson County and his predecessor have been talking about taking action on this issue for 4-5 years and he doesn't want us to study this issue to death. He questioned if there were any of the 11 points that Council would be interested in moving forward on now. He understood that the 11 points will not close the door to illegal immigration, but they do begin to send a message within the limits of our ability that Asheville is not a sanctuary city and we have concerns about illegal immigration.

Councilman Newman views this issue primarily as an issue that our federal government needs to address. He didn't think it can be addressed adequately at the local level until there is a federal set of policies in place that create a coherent strategy for our country to have a more rationale effective immigration policy. We need to do what is necessary at the local level that we are protecting the public from dangerous criminals, whether they are legal or illegal residents.

Councilman Newman asked Police Chief Hogan if there is anything that City Council can do to give him the tools, to hold people accountable for violating our laws, when officers arrest people who have committed dangerous crimes that threaten the safety of the people in Asheville. Police Chief Hogan responded that where they fall short is in the federal government in terms of the Immigration Customs Enforcement deemed locally inadequate to respond to identified illegal aliens that are arrested. Our challenge can't be addressed by Council or the courts, as it now stands. If the court is more efficient in criminal processing, then it would have a positive impact as it relates to illegal aliens. Our challenge lies at the federal and state level.

Councilman Newman liked the Mayor's suggestion of a committee; however, he was concerned that we are doing a lot of different studies this year for our community. When he thinks about the responsibility that we are actually charged with, and within our purview to

actually make a difference on, he questioned if this study would be at the top of the list for him. He is not against the study, but just questioned the resource allocation and limited staff.

When Vice-Mayor Jones called the question, Councilman Mumpower moved to accept the motion to entertain the question. This motion was seconded by Councilman Freeborn and carried unanimously.

The amended motion made by Councilwoman Cape and seconded by Councilman Freeborn to establish a local immigration study committee carried on a 6-1 vote, with Vice-Mayor Jones voting "no."

Councilman Davis moved to follow-through on our August 2006 policy discussion on Asheville Police Department participation in 287 (g) of the Immigration and Nationality Act allowing for the appointment of at least one local officer (and from then on the number of officers would be at the Police Chief's discretion) with immigration enforcement powers. This motion was seconded by Councilman Mumpower with the suggestion of a friendly amendment to also provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE Program. Councilman Davis accepted the friendly amendment.

Ms. Clare Hanrahan asked for clarification of how our police officers are supposed to know who is a vagrant or who is illegal.

Rev. Christopher Chiaronmonte urged Council to continue to work with Councilman Mumpower in finding a solution. He felt the solution is not to punish the illegal immigrants or the vagrants, but punish the ones who are corrupt.

Vice-Mayor Jones supported the portion of the motion regarding providing web based information for employers; however, she would not support the participation in 287 (g) of the Immigration and Nationality Act. She felt we did not know what we are doing. She felt it is very clear from civil rights history that change happens because of the federal action.

Councilman Freeborn felt that there are a lot of outstanding questions and that it was important that we establish a committee to study how the issues will play out in our community. He felt he didn't have enough information to make an intelligent vote for or against asking the Police Department to participate in 287 (g) of the Immigration and Nationality Act.

Mayor Bellamy said that in the past whenever we have something put forward for Council to consider, we ask staff to go back and do a budget amendment and/or give us more information on the pros and cons. She suggested we instruct the Police Chief to come back on July 24, 2007, with some more information on what he needs and what he is asking for.

Councilman Davis withdrew his motion.

Councilman Davis then moved to provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE Program. This motion was seconded by Councilman Mumpower and carried unanimously.

It was the consensus of Council to instruct the Police Chief to come back on July 24, 2007, with some more information on (1) what he needs; (2) what he is asking for; and (3) documentation about 287 (g) of the Immigration and Nationality Act and how it's applied and how we can direct its application within this community and within the context of this community conversation.

At 6:55 p.m., Mayor Bellamy announced a short break.

IV. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF NON-CONTIGUOUS PROPERTY LOCATED AT 2345 HENDERSONVILLE ROAD**

ORDINANCE NO. 3501 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 2345 HENDERSONVILLE ROAD

Mayor Bellamy opened the public hearing at 7:15 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include 2345 Hendersonville Road. The public hearing was advertised on June 29, 2007.

Sywall Properties, L.P. has petitioned the City for the annexation of one lot located at 2345 Hendersonville Road (PIN No. 9654.14-23-8209) containing approximately one acre.

The lot is located on the western side of Hendersonville Road in South Buncombe County near the intersection of Hendersonville Road and Glen Bridge Road. The area, while across Hendersonville Road from other properties contiguous to the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N.C. Gen. Stat. sec. 160A-58.1. This parcel and petition meet all applicable requirements of the State of North Carolina

Pursuant to N.C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on July 31, 2007.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council approve an ordinance extending the corporate limits of the City of Asheville by annexing one lot located at 2345 Hendersonville Road.

Mayor Bellamy closed the public hearing at 7:19 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3501. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 55

B. **PUBLIC HEARING TO CONSIDER REZONING 3 LOTS LOCATED AT SARDIS ROAD - BILTMORE LAKE FROM INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 3502- ORDINANCE TO REZONE 3 LOTS LOCATED AT SARDIS ROAD - BILTMORE LAKE FROM INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 7:20 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of rezoning three lots located at Sardis Road - Biltmore Lake from Industrial District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on June 29 and July 6, 2007.

The subject site is comprised of three parcels, totaling about 36 acres, landlocked in an area east of Biltmore Lake, south of Sand Hill Road, west of Sardis Road, and north of the Gaston Mountain development. The entirety of the site is currently zoned Industrial. Though no roads actually touch the site, the closest roads to the site are in Enka Village and the Biltmore Lake development. The applicant, representing Biltmore Farms, Inc. (associated with the latter development), wishes to rezone to property to RM-16.

The site's position at the margin of the extraterritorial jurisdiction area (ETJ) means that some of the adjacent zoning is City jurisdiction, while other nearby zoning is the jurisdiction of Buncombe County. The City of Asheville zoning to the north and east is Industrial, while the remaining adjacent zoning is the County's "R-2" zoning district. The applicant wishes to extend the residentially zoned area in order to expand the Biltmore Lake development towards Sardis Road.

According to the Unified Development Ordinance's (UDO's) Article 8, the purpose of the Industrial District is to reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees.

Residential uses may be permitted in the Industrial district only as an accessory use, and they must be occupied by employees of the principal use.

The RM-16 district is intended to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

It is worth noting that, while most parts of Biltmore Lake in City of Asheville jurisdiction are zoned RM-16, the dominant existing development pattern in the area is single-family residential, with a density of 2-4 units per acre. Further, it should be noted that the County's "R-2" zoning district allows a density of up to 12 units per acre.

As is noted in the sections above, the Comprehensive Plan includes a policy stating that Industrially zoned land should be preserved for industrial uses. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area. However, there are recent precedents (detailed above), also in this Candler area, for City Council approval of such down-zonings. The Dogwood Road site is the example with the most similarities: also more than 30 acres, also seeking residential zoning. The subject of this application, however, does not have the proximity to a road corridor that the Dogwood Road site has.

In addition, in 2005 (after the subject properties were initially zoned in 2001), an area of approximately 125 acres along Sardis Road to the east of the subject properties was rezoned from Community Business II to Commercial Industrial. While the Commercial Industrial zoning district does not permit the exact same range of uses as the Industrial district, the rezoning did establish a large area of land along this corridor available for production, manufacturing, packaging, processing, and assembly uses.

The subject site is bisected by the Progress Energy power transmission lines, as well as a small stream. These features, in addition to the slope at the south end of the site, would present obstacles for a large industrial development, but a residential development comprised of small lots could have more flexibility for working around these features.

Staff has received one communication from Southeastern Container who did not specifically oppose the rezoning but pointed out that his company is located in close proximity to the proposed rezoning area and it operates 24 hours a day, 7 days a week with truck traffic and lighting.

At the June 6, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval for this request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Subject site is bordered on more than half its perimeter by residential zoning, and is closer to residential streets than commercial streets.
- Site features (stream, slope, power lines), would arguably present more challenges for industrial development than for residential.
- Subsequent to this site's initial zoning, 125 acres nearby have been up-zoned to Commercial Industrial.

Cons:
- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.
- Uses permitted under the existing zoning have more potential to create and support lasting jobs.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. That said, both the Planning and Zoning Commission and City Council have supported similar rezoning in the recent past, and multiple characteristics of this particular site suggest that residential uses could be more suitable than industrial. If the City Council wishes to consider this rezoning independent of the aforementioned policies, staff feels a case can be made for recommending approval.

Mr. Will Buie, representing Biltmore Farms, understood Council has to consider the base zoning and not what is proposed, however, their intention is for single-family residential. He felt the topography of the area is such that it's probably not suitable for industrial development without major grading or impact to the streams and it doesn't really have access to major highways. They spoke to Mr. Sampson with Southeastern Container and have talked about (1) providing a sewer easement; (2) purchase of a corner of the property that will allow them to provide buffer from their facility; and (3) providing some additional disclosure notices to the people who will be purchasing those lots so they would be cognizant of that facility and it's importance to the community.

Rev. Christopher Chiaronmonte felt that Council should suspend rezonings. He said that regardless of whether the land is used for industrial or residential, grading will occur. He suggested low cost housing be placed on that property.

At 7:30 p.m., Mayor Bellamy closed the public hearing.

Vice-Mayor Jones recalled Council policy against rezoning industrial land and wondered if that is something that needs to be re-visited.

Mr. Mike Plemmons, representing the Council of Independent Business Owners, said that they haven't taken this rezoning request up as an issue. He did feel that Council should take into consideration the lay of the land.

Mr. Esselstyn noted that Planning staff presented this staff report to Sam Powers, the City's Director of Economic Development, and he had no problem with the rezoning request.

In response to Vice-Mayor Jones, Mr. Esselstyn said that the 125 acres along Sardis Road that were rezoned in 2005 to industrial adds the capacity for manufacturing-type operations in that corridor with better access to transportation facilities.

Councilwoman Cape said that discussions come up all the time of where are we going to have economic development and industrial zoning in the community. In light of the economic development question, she was hesitant to vote without fully understanding what the benefits are. She felt that not all manufacturing is large buildings but a lot are small scaled industry.

Councilman Mumpower felt our policy to retain industrial land is out dated and reflective of a time when we were hemorrhaging large industries and we wanted to preserve land for their comeback. There are very few indications that the probability of a comeback is real. The jobs that are being created in this city are on a much more smaller scale and require much smaller spaces. He felt we may need to reconsider the policy. Since there is some logic for rezoning, he moved to approve Ordinance No. 3502 and finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis.

In response to Councilman Newman, Mr. Esselstyn said that typically when someone requests a rezoning, they try to suggest zoning that is consistent with nearby zoning. Even though the zoning district is RM-16, there are mostly single-family subdivisions.

When Councilman Newman asked if Biltmore Farms would be willing to work with the City on voluntary annexation of this property, Mr. Tom Williamson, Vice-President of Community Development with Biltmore Farms, said that the property will be developed with 37 single-family homes serviced through the existing Biltmore Lake Association. He said they were asked through an e-mail from Ms. Shannon Tuch to consider voluntary annexation. They have done that with other properties, e.g., Biltmore Park at Town Square. In this case they are extending a franchise of the Biltmore Lake community and based on the advice of counsel they cannot, as part of the rezoning action, agree to a voluntary annexation. At this point they are willing to discuss it as it makes more sense at the earlier conception phase of a project to consider this. He was told that it was considered many years ago for Biltmore Lake and they considered it with Town Square West and reached an accord that was beneficial to everyone. In this case they would be willing to entertain it, but not in association with the rezoning action. If a meeting of the minds can be reached that makes sense relative to this small portion of Biltmore Lake, that's fine, but it is doubtful that that can happen as we have already had it tied into a lot of infrastructure and done significant amount of work at Biltmore Lake.

City Attorney Oast reminded Council that if the property is rezoned to RM-16, it is available for any use allowed in that district.

Mayor Bellamy was supportive of the rezoning because of the topography. She wanted to make sure, however, that people who will be purchasing the lots have full disclosure of the plant located near them and that the facility runs 24 hours a day, 365 days a year with traffic going in and out. She suggested the proposed property owners be given a map to show the location of the plant.

The motion to rezone three lots located at Sardis Road - Biltmore Lake from Industrial District to RM-16 Residential Multi-Family High Density District carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

Vice-Mayor Jones requested that for industrial district rezoning changes, the Sustainable Economic Development Advisory Committee review the request. And/or, to have them review our policy about not rezoning industrial land.

City Manager Jackson suggested we consult with various stakeholders, introduce the subject, hold some focus groups involving stakeholders and major property owners, and report back to Council on what we hear from them as well as observations and recommendations we have as staff. We will then seek further direction at that point.

Mayor Bellamy said that during our next quarterly update on the financial status and drug elimination, another component of the update will be our economic development status.

ORDINANCE BOOK NO. 24 - PAGE 58

V. UNFINISHED BUSINESS:

A. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS

ORDINANCE NO. 3503- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to May 8, 2007, at which time the public hearing was closed. The action was continued to a June 12, 2007, worksession in order for Council to review specific data and until continued to June 19, 2007. On June 19, 2007, the matter was continued until this date.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to establish new steep slope and ridgetop requirements.

Interim Planning & Development Director Shannon Tuch said that as Council is aware, the hillside and ridgetop development standards have been under consideration for some time and have, very appropriately, received a significant amount of attention given the potential impacts which are not just aesthetic and ecological, but also economic and social.

Because of this, staff has conducted a significant amount of research in order to develop appropriate standards, and has also conducted a great deal of analysis to help evaluate the impacts of establishing a hillside development area. A special presentation with a number of visuals were prepared and presented at Council's worksession on June 12, 2007, and the bulk of this information was directed at establishing an appropriate threshold of where to apply the hillside development standards.

Staff's original recommendation was that it should be applied to all property over 2,220 feet in elevation and those properties with an average natural slope of 15%. Staff had also proposed to include properties with an average natural slope of over 25% regardless of elevations but only in residential districts.

The Planning & Zoning Commission also spent quite a bit of time evaluating these standards and they ultimately settled on a recommendation to apply the hillside development standards only to those properties above 2,500 feet in elevation with an average natural slope of over 25%.

The Planning & Zoning Commission's recommendation significantly reduced the amount of acreage that would be protected under the hillside standards (although the standards that were adopted were more strict). Nevertheless, this recommendation inspired some new analysis and much of that was presented at the June 12 worksession.

Understanding that Council's direction at the June 12 worksession was to develop something of a compromise between our existing standards and the proposed standards that would have less of an impact on the lower elevations that were not as steep. This compromise is outlined below (in a July 10 memo to Council) and includes two components:

1. Apply existing hillside density and grading standards to properties above 2,200 feet that have an average natural slope between 15-24%; and
2. Apply the more rigorous density and grading standards to those properties above 2,200 feet with slopes 25% or greater.

The benefit of this proposal is that it protects the same amount of property that is current protected, but only applies the more strict standard to those more challenging and sensitive properties with slopes over 25%. However, what this standard does not do is balance the development potential so, if adopted, it would reduce the amount of development that could occur in general.

So, in response, staff has more recently examined the second option which is to look at the impact of applying the standards to only those properties over 2,350 feet and 20%. But what this standard achieves is that by redefining the hillside areas, it exempts some of the lower lying areas that are not as steep and these are areas that are currently restricted. This would effectively shift some development potential from more sensitive properties to some less sensitive properties. It would be next to impossible to determine the magic number that would achieve the perfect balance but this would be one option that would, at least, provide more of a balance.

This is just one permutation of options that have already been considered and there are quite a few more that could be considered.

July 10, 2007, memo to Council:

Areas below 2,220 feet in elevation having 25% or greater slope. First, earlier staff recommendations proposed extending slope requirements into areas below the long-standing "hillside" elevation threshold of 2,220 feet when slopes were 25% or greater. This significantly extended the area covered by the regulations but primarily applied to scattered sites of a few acres or smaller in size. Public comment noted that these areas often offered infill development opportunities having been previously passed over for development on adjoining less steep slopes. Given these circumstances, staff suggests that **Council exempt steep slope areas below 2,220 feet in elevation from all requirements proposed for steep slope areas above 2,220 feet except the geotechnical**

analysis requirements (which would apply once the slope reached 36% or greater or if the area represented a moderate to high risk for landslides). The development of these areas would otherwise be governed by underlying zoning and general grading requirements.

Areas above 2,220 feet in elevation and having slopes between 15 and 24.9%. Council discussion and public comment has noted that slopes below 25% were less problematic for development than those at or above that slope percentage. Whether areas of such slope represent major opportunities for affordable housing is debatable, but these areas are certainly better suited for development than those having slopes above 25% and are often on lower, less visible sections of mountainsides. Given these circumstances, staff suggests the **Council substantially increase the amount of grading and allowable density in these areas from what was previously recommended, in effect essentially maintaining the current hillside grading and density limits.** The recommended adjustments are illustrated in the following tables. The other proposed requirements, including tree preservation, road corridor design, height, etc. would remain in effect for these areas.

EXISTING GRADE	PERCENT GRADING	
	PRIOR	NEW
15-19%	45%	80%
20-25%	40%	70%

MAXIMUM NUMBER OF UNITS PER ACRE BY EXISTING GRADE										
Existing Grade	RS-2		RS-4		RM-6		RS-8 RM-8		RM-16 +	
	P	N	P	N	P	N	P	N	P	N
15%-19%	1.2	1.7	1.8	3.3	2.7	5.1	3.6	6.8	7.2	13.5
20%-24%	1.0	1.4	1.4	2.9	2.4	4.3	3.2	5.7	5.6	11.1

KEY: P=PRIOR N=NEW

Areas above 2,220 feet in elevation and having slopes 25% or greater.
No changes to the proposed ordinance are recommended.

Incentives and Bonus for establishing "Conservation" or "Preservation" areas.
A density bonus of up to 60% is proposed by placing more sensitive portions of a property within a conservation easement; **staff is proposing to slightly amend the applicable section to now read:**

> Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through a conservation easement that safeguards the property from future development; bonus of up to 60% based on the following table. Less sensitive areas may not exceed a 40% average natural slope and may include previously cleared areas, such as logging roads and pastures, provided such clearing predates January 1, 2007. Clustering in single family residential districts and the RM-6 district may include multi-family construction up to eight units per building if necessary to achieve site preservation objectives. Conservation areas may not be located on individually owned home lots and may remain as privately owned property.

PERCENT OF SITE PRESERVED	DENSITY BONUS

30-40%	30%
>40-50%	40%
>50-60%	50%
>60%	60%

As an example, if you have a 30 acre parcel zoned RS-2 with an average natural slope of 32% the total number of units allowed would be .6 per acre for a total of 18 units. If the developer sets aside the highest and steepest 10 acres then a bonus of 30% would be afforded to allow a total of 23 units. Interestingly, in this scenario the developer must preserve a minimum of 10 acres from grading per the proposed grading standards; however, this can include undisturbed slopes on private lots. If pursuing this bonus, the conservation property would be set aside and all grading would occur in the less sensitive areas. This incentive is likely to result in less disturbance while providing the opportunity for more units in the most appropriate building areas. This incentive may be elevated by increasing the bonus.

Using graphics, Urban Planner Blake Esselstyn explained the latest analysis.

Mayor Bellamy said that she asked staff to do the analysis on 2,350 feet because the 2,200 feet was detrimental to the corridors in south Asheville. We heard from the community that 2,500 feet was way too much. The 2,350 feet was a starting place. With 2,350 feet, we are preserving our hillsides and our topography and that is what she's heard the community say they want to preserve. There are extremes of some saying don't do any regulation and some saying let's put as many limitations as possible for no growth. She feels the 2,350 feet is a way to make sure that we are not hampering the southern part of the City that is a lot lower than the northern part, so we are able to preserve a lot of the ridges in Chunns Cove and north Asheville. The 20% grade was based upon earlier presentations.

The following individuals expressed their preference on the different options:

Mr. Charles Hulme, south Asheville resident
Mr. Mike Butrum, Mountain Council for Accountable Development
Mr. Joe Bassett, Asheville resident
Mr. Jay Quinn, resident on Sunset Drive
Ms. Barber Melton, Haw Creek resident and member of the Coalition of Asheville Neighborhoods
Ms. Heather Raybum, Asheville resident
West Asheville resident
Mr. Mike Lewis, north Asheville resident
Rev. Christopher Chiaronmonte
Ms. Christy Fryar, Mountain Council for Accountable Development

At the request of Mayor Bellamy, Ms. Tuch responded to various questions that were raised by individuals.

Mayor Bellamy asked what some developments would look like now (Kenilworth and Beaucatcher Mountain) had they been required to development with some of our new standards, e.g., single-family subdivision requirements, stormwater requirements, landscaping requirements, etc. Ms. Tuch responded that there are a number of measures. She said the hillside development standards designate a protected area - an area where we apply our standards but there are a special set of standards that are designed to accommodate their sensitivity. We have a number of other standards that get reviewed in conjunction. Typically if there are standards in conflict, which we hope there are no standards in conflict when it comes to inter-play between our stormwater ordinance, erosion control ordinance, subdivision ordinance, landscape standards,

etc. but if there were a conflict we would go with the most restrictive. Using the Kenilworth project as an example, that property was reviewed as a major subdivision and was approved as a major subdivision. There was no requirement that requires a major subdivision to move forward. There have been a number of changes since then that would now require that a subdivision over 50 lots (which that one was) would have to come before Council for consideration as a conditional use permit as a Level III project. We also have applied our current existing hillside standards to single-family developments. Even if this project gets built, and our hillside development standards are adopted, we can still apply some of those standards to that development. People coming in for the individual single-family home permit will still be subject to some of these hillside development standards in terms of height, light reflectivity and tree preservation. There have been a number of steps taken by the Council that will better safeguard those kinds of developments from occurring in the future.

In response to Mayor Bellamy, City Attorney Oast felt that as long as there is a rational basis for distinction, it may be possible to have two different elevations standards.

Councilwoman Cape wants to close some of our loopholes in our community. She felt we've done that with including single-family homes in our changes. She also felt that the flatness of the land in south Asheville, despite its elevation would encourage development along the transportation corridor and that the new regulations would support that development. She questioned whether or not the recent changes we made to our ordinance would make it strong enough.

Mayor Bellamy felt the real problem is the other ordinances, e.g., stormwater, erosion, single-family residences, etc. She felt this was a waste of time and has divided our community because the focus should have been on the true issues. She would be willing to make a motion to keep what we have but look at the other ordinances to make sure they are in place to support what we want. We want to preserve green space in Asheville and make sure development happens in a balanced way. The heart of the issue is making sure that our infill development meets the standards of developing in the mountains and making sure it's sensitive to hillsides. She asked the City Manager if we could have an overlap of what we have approved to see if it is how we want it to be on our mountains and then maybe have conversations about conservation.

Councilman Newman felt that we have closed the major loopholes and have added a geotechnical analysis requirement at 36%. He supported keeping the existing hillside rules in place between 2,220 feet and 2,350 feet and then apply new regulations above 2,350 feet with a slope of 15% or higher. I think there is a rationale for a different set of regulations, because it does apply to a number of different areas in the City. We could keep existing regulations there and then focus the more powerful regulations on the areas that people most really would think of them as the steep slopes. The only thing I don't like about that is it keeps more regulations on the books.

Councilman Davis agreed with Councilman Newman, noting that it's complicated with two sets of figures, but it's about the only way it works.

Vice-Mayor Jones felt the higher standards above 2,350 is a good way to go especially since we have tightened up other issues.

Vice-Mayor Jones supported a requirement that houses in the higher elevations be painted (or have materials) to blend in opposed to color being an incentive, especially since a height bonus is given.

Councilwoman Cape would be open to discuss the requiring Light Reflectivity Value of 25 or less on anything above 2,350 feet.

City Attorney Oast said that he has concerns about making it a requirement on what color people could paint their homes and also staff's ability to enforce that. He would have to research other areas to see how they would enforce that requirement.

Councilwoman Cape suggested we move the ordinance forward and then ask the City Attorney to research the requirement on the materials or painting of homes.

Councilman Mumpower reminded Council that we do not own the land we are talking about regulating. It is owned by a broad mixture of people and it's an investment in their future. We do not have an identifiable safety problem in Asheville. He felt this is taking property rights away from owners to protect mountain views for people who already have what they want.

Ms. Tuch said that staff needs direction on how Council wants to treat the roads. We provided in the staff report some standards for creating new roads and restrictions on the widths of road corridors and cut slopes, etc. Do we want to apply that stricter standard to only those portions of the property above 2,350 feet or do we want to apply it to anything over 2,220.

Councilman Freeborn suggested we postpone taking action on this for two weeks in order for the community to see a clean document and clean charts.

Upon inquiry of Councilman Newman, Ms. Tuch said that an option could be given to property owners if they want to exclude some areas on their property from any development to get a different calculation on the average natural slope. Councilman Newman supported giving property owners this option.

Councilman Newman moved to keep our existing hillside ordinance in place for properties located between 2,220 and 2,350 in elevation and then apply the new proposed steep slope ordinance regulations to properties located above 2,350 with a slope of 15% or higher. This motion was seconded by Councilman Davis.

Councilman Newman requested staff's recommendation as to standards for creating new roads and restrictions on the widths of road corridors. Ms. Tuch recommended a reduced road cross-section and that we apply that to all properties over 2,220 feet. In addition, she recommended that the road corridor restriction would be applied above 2,350 feet. Councilman Newman accepted Ms. Tuch's recommendations into his motion.

Mayor Bellamy could not support the motion. She felt the number one reason this is an issue is enforcement of existing laws. It has been a problem in the past and until we see enforcement of stormwater issues, erosion control, etc., changing this ordinance isn't going to make any difference. She looked forward to the August discussion to see what the changes we have made will look like on the ground and how they affect the overall aesthetics and beauty that we all want to keep in our community. She supported keeping what we have on the books, tightening them up with the other ordinances, but won't support any motion for steep slope changes until greater enforcement of the ordinances that we currently have.

The motion made by Councilman Newman and seconded by Councilman Davis (1) keep our existing hillside ordinance in place for properties located between 2,220 and 2,350 in elevation and then apply the new proposed steep slope ordinance regulations to properties located above 2,350 with a slope of 15% or higher; (2) the reduced road cross-section be applied to all properties over 2,220 feet; and (3) the road corridor restriction would be applied above 2,350 feet) carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

At 9:20 p.m., Mayor Bellamy announced a short break.

VI. NEW BUSINESS:

A. PARTISAN ELECTION

Mayor Bellamy said that she has received a request from Councilwoman Cape to pull this item for discussion as to a point of order.

Councilwoman Cape said that on July 2, 2007, Council received a confidential memorandum from our attorney that stated that because of the filing period timing there was nothing that City Council could do to reconsider this motion.

City Attorney Oast said that there is not a lot of guidance on this issue in the statutes or cases. It is his reading of the law that once Council sets the Charter amendment process in motion by using a particular process, then Council has the option of calling for a referendum or not. Once that process has begun, there is no way to change the course. There is the citizen initiated petition and the time for getting that done has not run out. Under the law, if Council wants to put the action to amend the Charter to a referendum, you had to have adopted a resolution to do that at the same time Council adopted the ordinance.

Councilwoman Cape questioned how does it serve the community to bring this issue up? Because of the legal rules of the charter change there is nothing we can do and we followed every legal process that we were supposed to follow. The democratic wheels are in play that if truly a majority of citizens feel like it was the wrong thing to have done, there is a mechanism within which to engage with that. To go through this when reconsideration would do nothing feels like a waste of time for the community.

Councilman Mumpower believes that there are alternatives and that those alternatives should be deliberated by the governing body. He felt that a referendum is not our only option.

City Attorney Oast said that the process that is specifically provided for in the law is essentially two ways. One is if Council adopts a resolution at the time they adopt the ordinance (which was not done). The other way is a citizen-initiated petition. If this Council decided (by majority vote) to try and subject it to a referendum and directed him to do so, he would have to take the matter to court and see if that could be done. He didn't think that would be a successful effort.

Upon inquiry of Vice-Mayor Jones, City Attorney Oast said that he has spoken with people whose specialty includes elections law at the School of Government and in the Attorney General's Office. One point everyone agreed on is there is not much guidance in this area. In reading the law, they all came to the same basic conclusion that once the process was set in motion, there was not a lot that could be done. If the ordinance that has been adopted stands, if it is not subject to a successful citizen-petition, it remains in place for a period of two years.

Councilman Mumpower requested the opportunity to share his perspective on reconsideration of this issue.

Councilwoman Cape said that we have followed all the rules on public engagement that is required. She wanted to understand Council's rules that when we have a vote on an issue and someone doesn't like the vote that is taken, how does that issue get to come back for another vote in front of the body again.

City Attorney Oast said that any Council member can get something on the agenda. The agenda is established by the Mayor and the City Manager. There is a way, in Council's rules, to prevent reconsideration within a 6-month period, but that requires that a motion on the issue in

question had been defeated. In this case, the motion was not defeated. He felt that this item is in order.

City Attorney Oast also noted that there is always the possibility of legislative relief. If Council felt strongly enough about changing the process to subject it to a referendum, Council could apply to the legislature to have that done.

Councilman Mumpower reviewed with Council the following power-point presentation:

"Partisan versus nonpartisan elections - reconsidering a step backwards. Partisan elections are a bad idea, poorly implemented, and regressive in nature. This issue deserves our best efforts towards reconsideration.

"Some quick whys: (1) Asheville is only one of less than a dozen cities out of 500 plus in North Carolina that now have partisan elections - we are on the losing side of this issue; (2) recent petition efforts have demonstrated the unrealistic hurdles for independent/third party candidates; and (3) partisan elections are about division and power - we see the failure of this approach at the state and federal level and do not need to duplicate models of failure - especially without constructive purpose.

"The impact: (1) we realistically eliminate independent and third party candidates from consideration and impair minority candidates; (2) we accelerate community polarization and division without positive compensating benefit; (3) we dramatically restrict the balance, diversity, and creative perspective of the Council; and (4) we further discourage voter enthusiasm.

"In direct challenge to those who supported partisan elections: (1) you have orchestrated an election that directly impacts on two of you who are running for office this cycle; (2) you have created an impossible timeline for obtaining a petition - either for a referendum or a candidate; and (3) you have embraced power politics under the guise of public good - the community, from all political perspectives, notes your true priority.

"What can we do? Recognize that the majority vote started with an error in process - the 90 day requirement to change parties meant it was too late for this election to ever be a fair time to implement this initiative.

"We need a need - let's find a way to (1) either hold a public referendum this coming year; or (2) postpone implementation until the next election cycle; or (3) reverse our course altogether."

"I do not believe it is the principle interest of any political party or this governing body to support any initiative that disenfranchises independent and third party candidates at any level."

Mayor Bellamy said as a point of order, whenever a presentation is made in front of the Asheville City Council the presentation is given to the City Clerk at a certain time and the Mayor reviews the presentation. She has not reviewed this presentation. She asked that Councilman Mumpower keep personal statements out of the presentation.

Councilman Mumpower felt Mayor Bellamy was restricting his ability to speak openly and candidly and that is important to this issue.

Mayor Bellamy asked Councilman Mumpower to adhere to guidelines currently in place. Normally the power-point presentation is the same presentation that is on Council's computer and on the City's web-site. She stressed that anyone making a power-point presentation before Council is supposed to have it to the City Clerk at a certain time.

Councilman Mumpower said that he would be happy to honor that going forward.

Mayor Bellamy felt that Councilman Mumpower's personal belief has nothing to do with the referendum. It is not her desire to censure any Council member, but she felt Councilman Mumpower has over-stepped her ability to defend his making this presentation. She ruled Council man Mumpower's presentation out of order, since we have a procedure that is not being adhered to.

Councilman Mumpower asked that the written procedure be supplied to him. If shown, he would be happy to adhere to it. There is no intention on his part to violate any procedures.

Mayor Bellamy said that anytime a presentation is requested, the presentation is asked for in advance.

Councilman Mumpower felt that is a subjective policy that Mayor Bellamy begun on her own. It is nothing that he has seen in writing or discussed as a Council before.

Mayor Bellamy ruled the presentation out of order.

Councilman Mumpower said this is no disrespect, but a commitment to seeing this issue through.

Councilman Mumpower continued with his power-point presentation as follows: "I do not believe it is the principle interest of any political party or this governing body to support any initiative that disenfranchises independent and third party candidates at any level. There are many who believe that independents and third parties represent the future of the country and to support any obstacles to seeking office in Asheville, such as the unrealistic petitions now required, violates all standards of fair play that are to be found in our best efforts as a community. He would be ashamed to belong to any governing body, organized party, or personal initiative that intentionally stepped over these boundaries of principle and fairness.

"Which way do we go: Plan A - success for the good folks trying to get the signatures necessary for a public referendum. They are to be commended. Plan B - find a way for this body to get this issue on as a public referendum or otherwise reverse our course. Plan C - For the public to hold the members of this Council who supported partisan politics directly accountable this November so that a new majority may reserve their actions in December."

Mayor Bellamy asked the City Clerk to present in writing the process and procedures that are needed in order for Council agendas to be made. In addition, at the next meeting she wanted all Council's procedures adopted so that we have to have some idea of what is going to be presented at the meeting in order to have a respectful decorum in the Council Chamber. It is not her desire to have unfair debate or to cause more angst or division in this community.

Vice-Mayor Jones and Councilwoman Cape would be open to hear public comment, but there is no recourse for City Council.

Mayor Bellamy said that even though Council changed the procedures as far as requesting items on the agenda, City Attorney Oast said that Mayor Bellamy was not out of order for putting this item on the agenda. He said the City Council rules say that the agenda is set by the Mayor and the City Manager and any Council member can request that something be placed on the agenda. He felt it was appropriate to establish reasonable time limits on public comments.

Upon inquiry of Councilman Freeborn, City Attorney Oast did not believe that even if Council voted in favor of Plan A, Plan B or Plan C outlined above by Councilman Mumpower, that Council could reverse course, hold a referendum or postpone the partisan election.

Councilman Mumpower moved that the issue of partisan elections be placed on the primary or the November ballot for consideration by the voters. This motion was seconded by Councilman Davis.

Mayor Bellamy read into the record a portion of Resolution No. 04-78 adopted by City Council on April 13, 2004: "Rule 7 - Public Address to the Council. (e) Persons addressing the Council are expected to observe the decorum of the Chamber, to be respectful of the Council and the public, to refrain from the use of profanity or foul language, to refrain from personal attacks and commentary on candidates for political office, and to refrain from making disclosures prohibited by the Personnel Privacy Act with respect to any City employee. (f) The mayor shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business. (g) Pursuant to Rule 9(b), the mayor may rule out of order any comments made under this part of the agenda if such comments are unruly or repetitive of information previously received by council on the same subject at the meeting then in session or at previous meetings. The mayor may also rule out of order any comments made during this part of the agenda that are rude, inappropriate, or intended to harass any person or group of people, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules."

The following individuals voiced their opinion on partisan vs. nonpartisan elections, mostly as it relates to a public referendum:

Rev. Christopher Chiaronmonte
Ms. Leesa Kulba
Mr. Mike Lewis
Mr. Charlie Hulme
Mr. Jay Quinn
Ms. Christy Fryar
Mr. Carlyle
Mr. Matt Mattan
Mr. Gilian Kearns
Mr. Dick Cosgrove
Mr. Tom Braine
Mr. Bernard Carmen, Chairman of the Libertarian Party of North Carolina

Councilman Newman said that this question has been talked about every time he runs for office and at public forums. He believes that a candidate's political philosophy, the values and the priorities that they bring to that office has a huge bearing in the way that they view the important issues facing the community. The voters have a right to know that information. He believes that political parties should be included rather than excluded from local office. He supported making this change to the City's charter over a year ago. When you exclude political parties from any elections, the elections, rather than turning around ideas and issues and a sense of direction that you might want to go in as a community, tend to revolve around simple name recognition. Name recognition is easily purchased by candidates who are wealthy or well-connected. He felt the political parties do play a very active role in the political process in Asheville which is the way it should be. He thinks that non-partisan elections in Asheville is a lie and it is more honest to be forthright about the realities of the way the electoral process works. It is his opinion that our system is broken and it artificially manipulates the outcome of the election. It's true that independent and unaffiliated candidates are required to get over 2,000 signatures on a petition, which major parties are not. However, the independent or unaffiliated candidates who get the required signatures, get their names automatically on the general election ballot. Candidates from the two major parties have to compete in a primary election in order to have a chance for their name to appear on the general election ballot, at considerable time, energy and expense. He said there are cities across the country where they solve most of the important political questions facing their communities through a referendum process. That is not how Asheville typically answers the important questions facing our community. We elect City Council

to wrestle with the tough, complex issues. Non-partisan elections sounds great, but to those of us who have been through the election process and who serve on this Council and has the experience of the realities of the political dynamics of this community, it is very different. Based on that experience, he believes partisan elections are the best choice for our community.

Councilwoman Cape explained why she felt that partisan elections are the right way to go.

Councilman Mumpower said that we have philosophical differences which is much different than political differences. Party affiliation does not tell voters anything. Not having a referendum disengages the public and disengages their enthusiasm for participating. He thinks this is about power and control. Diversity matters and we should not silent voices who disagree with us. He cited N.C. Gen. Stat. sec. 160A-102 ... "The council may, but shall not be required to unless a referendum petition is received pursuant to G S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance for a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance." He hoped to be able to find a way to make the referendum work. He asked the City Attorney if that statute provides us any opportunity to reverse what he believes is an ill conceived course.

Before Mayor Bellamy called the question, since there has been over 20 minutes of comments, she asked if any other member of Council who has not spoken wished to speak.

Councilman Freeborn felt that partisan elections make sense. He didn't think it really mattered whether the election are partisan or non-partisan but the fact is that independent or unaffiliated candidates have never made it past the primaries. Now they do have a process to get on the ballot. This is not a perfect system, but this creates some level of clarity. He noted that 90% of the people on their way to vote and who pass by a candidate ask the candidate what their party affiliation is. People want to know.

Vice-Mayor Jones explained that in any decision there are public goods that you weight out. The public goods that she weighed out in this decision had to do with transparency, minority, access to the ballot and voter turnout. Back in 2002 she began talking about partisan elections, with it coming back up again in 2006 and again in 2007. She agreed with Councilman Freeborn that when people go to the polls, they want to know what your party affiliation is.

Mayor Bellamy said that she was supportive of the motion.

In response to Councilman Mumpower, City Attorney Oast said that after reviewing the statute citied by Councilman Mumpower, his opinion has not changed. If Council was going to call for a referendum, that had to be done at the time the ordinance was adopted.

The motion made by Councilman Mumpower and seconded by Councilman Davis that the issue of partisan elections be placed on the primary ballot for consideration by the voters failed on a 3-4 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "no."

In order to dispel any notion that she is creating rules without Council adoption, Mayor Bellamy said that these rules will be made available on line. She read the following rules that were adopted by the Asheville City Council on June 13, 1995: "The city clerk shall prepare the agenda for each meeting as directed by the mayor and the city manager. Any council member may have an item placed on the agenda so long as the request is timely and is consistent with the notice requirements of Rule 2, if applicable. A copy of all proposed ordinances shall be attached to the agenda. An agenda package shall be prepared that includes, for each item of

business placed on the agenda, as much background information on the subject as is available and feasible to reproduce. Each council member shall receive a copy of the agenda and the agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the council members." Another section from Council's Rules reads: "(n) To prevent reconsideration for Six Months - The motion is in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the council, whichever occurs first." Another section of Council's Rules reads "20. Renewal of Motion - A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted or unless reconsideration is prohibited for a specified period of time by some other provision of law such as the provisions of the zoning ordinance prohibiting reconsideration of a rezoning request for a period of one year following a denial." Regarding documentation "Any documentation material that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof." Council did not receive the power-point either way. "This rule may be waived for good cause." She did not waive the rule for good cause. Also on our printed agenda that anyone can receive at the meeting, and on-line, it reads "Electronic presentations are limited to agenda items with presentation materials provide prior to the meeting by City staff, applicants, or organized opposition."

Councilman Mumpower said that this was not a repeat vote. He specifically asked the City Attorney if a referendum was a new issue and the City Attorney said it was.

Mayor Bellamy just wanted to point out that placing the item on the agenda was not out of order.

B. DIRECTION FOR SIGN CODE REGULATIONS OF AMERICAN FLAGS

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to remove or amend existing standards set forth in Article XIII that regulate the use of flags in conjunction with commercial sales or advertising.

While on a routine inspection, City code enforcement officers noted the TNT Fireworks vendor located at the Riverbend Wal-Mart shopping center as having established a temporary tent structure for the purpose of selling fireworks for the Fourth of July celebration. It was also noted that a great number of vinyl banners serving as temporary signage had been installed without any temporary sign permits, included with these banners were three American flags posted on each peak of the tent. An identical condition also existed at a second tent site located on Patton Ave.

City staff worked with the business owner on permitting the temporary signs without penalty; however, when asked to remove the American flags off the roof of the tent the business owner was uncooperative. Support information for the enforcement officer's request is as follows:

- Signs have been regulated in the City of Asheville since 1977, including the use of flags as signage.
- The sign code was further modified and adopted as part of the *Unified Development Ordinance* in 1997 and outlines a number of standards required for both permanent and temporary signage set forth in Article XIII.
- Article II defines "sign" as:

Sign means any words, lettering numeral, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric or other material background structure designed to carry such devices, as are used to designate or attract attention.

- There are a number of prohibitions listed when it comes to signage, once such prohibition is on roof signs where Sec. 7-13-3(a)(4) reads:
  Roof signs. Roof signs are prohibited; provided, however, signs on the surfaces of a mansard roof and on parapets shall not be hereby prohibited provided the signs do not extend higher than the height restriction for on-premises freestanding signs in the zoning district in which the sign is located and provided that the sign does not extend above the mansard roof or parapet to which they are attached.

- Another prohibition set forth in the same section reads:
  (17) Flags, decorative or otherwise, may not be used in conjunction with a commercial promotion or as an advertising device, or as an integral part of a sign regulated under this article. Flags that comply with the provisions set forth in section 7-13-2(c)(3) of this chapter are not subject to this subsection.

- The City's sign code also sets forth a number of exemptions to the sign code; the above referenced Sec. 7-13-2(c)(3) falls under this section and reads:
  (3) Flags, with insignia of any nation, organization of nations, state, county or city, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.

Based on this information, the American flag is clearly exempt from regulation unless "used in conjunction with a commercial promotion or as an advertising device" as noted in #17 above. It has been this department's understanding that the arrangement of these standards is to ensure that all citizens and business owners enjoy the right to fly the flag but not to the extent that it becomes exploited for commercial gain. It should also be noted that our local standard mirrors the federal standard set forth in Title 4, Chapter 1 which reads, "The flag should never be used for advertising purposes whatsoever."

The challenge for enforcement staff is to determine whether a flag is being "used in conjunction with a commercial promotion or as an advertising device"; in other words, is it a sign or is it a display of patriotism? Determining this can prove to be very difficult and, as a result, staff typically looks to the following guidelines to help them evaluate each situation:

1) Is the flag in a position of great prominence or of an excessive, non-standard size so as to "designate or attract attention" per the definition of *Sign* outlined in Article II; is it visible from a public right-of-way?
2) Does the appearance of the flag coincide with an advertised sale and/or product?
3) Is the flag being flown respectfully and in accordance with federal standards outlined in Title 4, Chapter 1? These standards include:
   - The flag is flown from sunrise to sunset or is properly illuminated at night
   - The flag is removed in inclement weather or is made of an all weather material
   - The flag is not made of a temporary or easily discarded material such as paper or plastic
   - The flag should always be upright and never touch anything beneath it

In the case of the TNT Fireworks site, the flags were:

1) Determined to be in a position of prominence (located on the peak of the roof) and were visible from public rights-of-way;
2) Appeared in conjunction with a commercial sale - Fourth of July fireworks; and
3) Were not being flown in accordance with federal standards – they were left out at all hours without illumination, they were not taken down during inclement weather, and were not maintained at all times in an upright position.

As a result, enforcement officers made the determination that the flags were being used as a "sign" and not a patriotic display and issued the business owner of TNT Fireworks a Notice of Violation (NOV) for having a rooftop sign. Enforcement staff offered the option of removing the flags from the roof and posting them on the ground but the owner refused, stating they did not want to pay a boom truck to come remove the flags.

It is important to note that no violation was issued for flying the flag "in conjunction with a commercial promotion or as an advertising device"; this was due to the Planning department's recent initiative to adopt a policy of education rather than penalty and instead of citing business owners, officers have been asked to take the opportunity to inform and educate business owners as to the proper method of displaying the flag and not to issue any NOV's (particularly around holidays). This practice has received some criticism from various citizens for non-enforcement of the City's standard and allowing for the exploitation of the American flag for commercial profit. No other violations related to flags or rooftop signs were issued to any other business located within the City of Asheville's jurisdiction during this same time period.

The events of this enforcement action and the media coverage it received has inspired interest in the City of Asheville initiating a change in the zoning ordinance that affect the regulation of signs and the use of flags as signs. There are several options that could be considered:

Option 1
Delete section 7-13-3(a)(17) that prohibits the use of flags in conjunction with a commercial promotion or as an advertising device; maintain existing exemption for American flags.

Pros:
- Allows for a much more liberal application of flags, decorative or otherwise, to be used in conjunction with commercial advertising.
- Exempts businesses from local enforcement actions (although still potentially subject to federal enforcement).

Cons:
- Opens up opportunity for excessive use of flags without local law to control.
- Contrary to Federal standards (with respect to the American flag).

Option 2
Delete section 7-13-3(a)(17); maintain existing exemption for American flags; and amend sign code to allow all flags non-exempt flags as an allowable form of signage and include in sign permit applications.

Pro:
- Regulates and limits the use of flags as signage.

Cons:
- Sign face of flags would have to be included in the total allowance for commercial signs, resulting in less sign area for traditional signs.
- In some cases, this could be contrary to Federal standards.

- Still requires the exercise of judgment from enforcement officers to determine whether flag is a patriotic display vs. a sign.

Option 3
Amend Section 7-13-2(c)(3) to clarify that in order to be considered exempt, American flags shall be displayed in accordance with the federal standards set forth in Title 4, Chapter 1 of the U.S. Code. This can be done in conjunction with a change to the sign application form and process that informs business owners of these requirements.

Pros:

- Fully informs applicants of their right to display the flag and how to do so according to Federal standards.
- Provides information at time of permitting, reduces the need for after-the-fact enforcement.
- Eliminates the need for enforcement officers to use judgment in determining when a flag is being used as a sign.

Con:

- Maintains the prohibition on using the American flag for commercial advertising purposes (supports Federal standard).

Staff recommends Option 3 and that Council request a wording amendment to be brought before the Planning & Zoning Commission for consideration.

Ms. Tuch responded to Mr. Dick Cosgrove when he asked if this issue was complaint driven or if it was discovered from a routine enforcement patrol.

Councilwoman Cape spoke in support of Option 3 for the respectful treatment of our flag.

Councilman Mumpower felt this is another example of the complexities of trying to control too many variables. It's interesting that we find such strong local enthusiasm for going after a federal issue on flags but with illegal immigration we try to run in a different direction.

In response to Councilman Mumpower, City Attorney Oast said that someone can burn a flag if it doesn't violate Fire Code regulations. Councilman Mumpower felt that if someone can legally burn a flag in the United States then the City of Asheville has no business in trying to regulate what people can do with the flag.

Councilman Freeborn said that according to the United States Code, burning a flag is the only proper way to dispose of the flag. Unfortunately people take that to extremes and burn it as a protest to our government. He would be supportive of Option 3; however, he agreed with Councilman Mumpower that this is a federal issue and is not appropriate for Asheville to be weighing in.

Councilman Newman supported Option 3, however, he felt we should get the opinion from the WNC Veterans Association on which option they would like.

Mayor Bellamy said that we have the Mayor's Task Force on Veterans Affairs and would be happy to send this to them for input and recommendation.

Mayor Bellamy said that she has received a lot of phone calls about this issue and apologized to the Veterans because it wasn't that we were regulating any flag, it was the nature in which TNT Fireworks chose to have the flag displayed. The federal government has adopted regulations on how the flag is to be flown and respected and the flags at TNT Fireworks did not

adhere to any of those regulations. Unfortunately the pictures that where shown did not do an accurate job of depicting the flags.

It was the consensus of Council to send this issue to the Mayor's Task Force on Veterans Affairs for their input and recommendation with a request that it come back to Council within 40-45 days.

C. RESOLUTION NO. 07-135- RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing Alternate members to the Board of Adjustment.

The term pf Michael Anders, as an Alternate member on the Board of Adjustment, expired on January 21, 2007.

On June 19, 2007, City Council instructed the City Clerk to arrange interviews for: Eric Zetterholm, Carolyn Burton and Kristy Carter.

After Council spoke highly of the candidates, Eric Zetterholm received 0 votes, Carolyn Burton received 1 vote and Kristy Carter received 6 votes. Therefore, Kristy Carter was appointed as an Alternate member of the Board of Adjustment, term to expire January 21, 2010, or until her successor has been appointed.

Vice-Mayor Jones asked that the City Clerk include a paragraph in the letters to the candidates not chosen that Council was really impressed with their interviews and they will definitely keep their names on file for consideration to other service to the City.

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D. RESOLUTION NO. 07-136- APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Greenway Commission.

Paula Robbins has resigned as a member of the Greenway Commission, thus leaving an unexpired term until December 31, 2007.

On June 19, 2007, City Council instructed the City Clerk to arrange interviews for Thomas Mesk and Christopher Gilbert. Mr. Mesk was interested in being appointed, however, was unable to come in at the interview time.

Thomas Mesk received no votes and Christopher Gilbert received 7 votes. Therefore, Christopher Gilbert was appointed as a member of the Greenway Commission to serve the unexpired term of Ms. Robbins, term to expire December 31, or until his successor has been appointed.

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E. RESOLUTION NO. 07-137- RESOLUTION APPROVING A $250,000 HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES AND $160,000 HOUSING TRUST FUND LOAN TO JCS INVESTMENTS FOR AFFORDABLE HOUSING DEVELOPMENT

At the request of Mayor Bellamy, Councilman Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Jones to conduct the meeting.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving $410,000 in Housing Trust Fund (HTF) loans for affordable housing development.

The following two Housing Trust Fund (HTF) applications were evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at the May 14 meeting. Currently over $865,000 is available in the Housing Trust Fund.

1. Mountain Housing Opportunities, Clingman Avenue Lofts, $250,000

This condominium development will consist of 21 one- and two-bedroom units, 9 of which will meet the HTF affordability requirements. Mountain Housing Opportunities has an excellent track record developing quality affordable housing. The project will meet *SystemVision* energy efficiency standards. The affordable units will carry a minimum affordability period of ten years and will be sold to households with income below 80% AMI as a result of the HOME funds also invested in the development.

2. JCS Investments, Bostic Place Phase II, $160,000

Phase II will consist of 4 three-bedroom homes. The developer has much experience with modular development and a very strong financial capacity. The developer has informed staff that he now plans to ensure energy efficiency by participating in the *Energy Star* program.

Pros:

- Assists with the development of 13 units of affordable housing in Asheville
- Increases the City tax base by at least $2.5 million
- Energy efficient construction

Con:

- None

The Housing and Community Development (HCD) Committee reviewed the proposals on May 14, 2007. The HCD Committee recommends City Council approve a resolution approving $410,000 in Housing Trust Fund (HTF) loans for affordable housing development. With the following terms: two year construction loans at 2% interest; may be passed to eligible buyers (i.e. those with income less than 80% of area median) as soft second mortgages.

Mr. Joe Bassett spoke in support of these Housing Trust Fund loans. He suggested that in the future Council look at longer periods of time for these homes to remain affordable, possibly even requiring perpetual affordability.

Ms. Caplan responded to various questions from Councilman Mumpower, some being, but not limited to: what is the square footage costs based on land values; how long are the soft second mortgages; how is the interest rate calculated; what happens if people default on their first mortgage; and how many soft loans have we done soft second mortgages.

Upon inquiry of Councilwoman Cape, Ms. Caplan said that to date we have had no losses at all due to foreclosures.

Councilman Mumpower felt this doesn't hold the accountability that he personally would feel comfortable with regarding the amount of dollars we are talking about.

Councilman Newman spoke in support of these two good projects. They also demonstrate how our affordable housing, low interest loan fund continues to be a very effective tool in encouraging both for-profit and non-profit builders in our community to create affordable housing as part of their infill developments that they would not otherwise be able to do. He agreed with the need for long-term affordability and that is something that the Housing & Community Development Committee is trying to figure out ways to do that.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-137. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

Councilwoman Cape (1) announced that there is a group of people who are talking about Ashe Village which will be an interesting project in our community next summer, which conversation will be around sustainability, green building and community engagement; and (2) commended the Sister Cities project for their role in the trip to Saumur, France, and would like for Council to consider expanding the City's role that we play in that organization.

The City received a Complaint on June 27, 2007, which is generally described as follows: Kelvin Benjamin and Wendy Benjamin vs. the City of Asheville. The complaint is for personal injury sustained from a fall into a manhole. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Vice-Mayor Jones adjourned the meeting at 11:52 p.m.

Kenda Lee
CITY CLERK

Terry M Bellamy
MAYOR

CAmb

DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

CERTIFICATE OF AUTHENTICITY

This is to certify that the micrographic images appearing on this film are true and accurate reproductions of records originated during the normal course of business by the *BUNCOMBE COUNTY CITY OF ASHEVILLE, CITY COUNCIL* **and consist of** *MINUTES*

The records begin with VOLUME: 77 YEAR: SEPTEMBER 21, 2004

PAGE: INDEX

and end with VOLUME: 81 YEAR: July 10, 2007

PAGE: 446

It is further certified that the above records were microfilmed in conformity with the provisions of the *General Statutes of North Carolina*, chapter 8-45.1 and 8-45.4, *"Uniform Photographic Copies of Business and Public Records as Evidence Act"*; that the microphotography processes accurately reproduce the records so microfilmed, that the film forms a durable medium for reproducing the original, if necessary; and that the film used conforms to American National Standards Institute, *Photographic Films-Specifications for Safety Film, ANSI IT9.6-1996* and American National Standards Institute, *Imaging Media (Film)-Silver Gelatin Type-Specifications for Stability, ANSI NAPM IT9.1-1996.*

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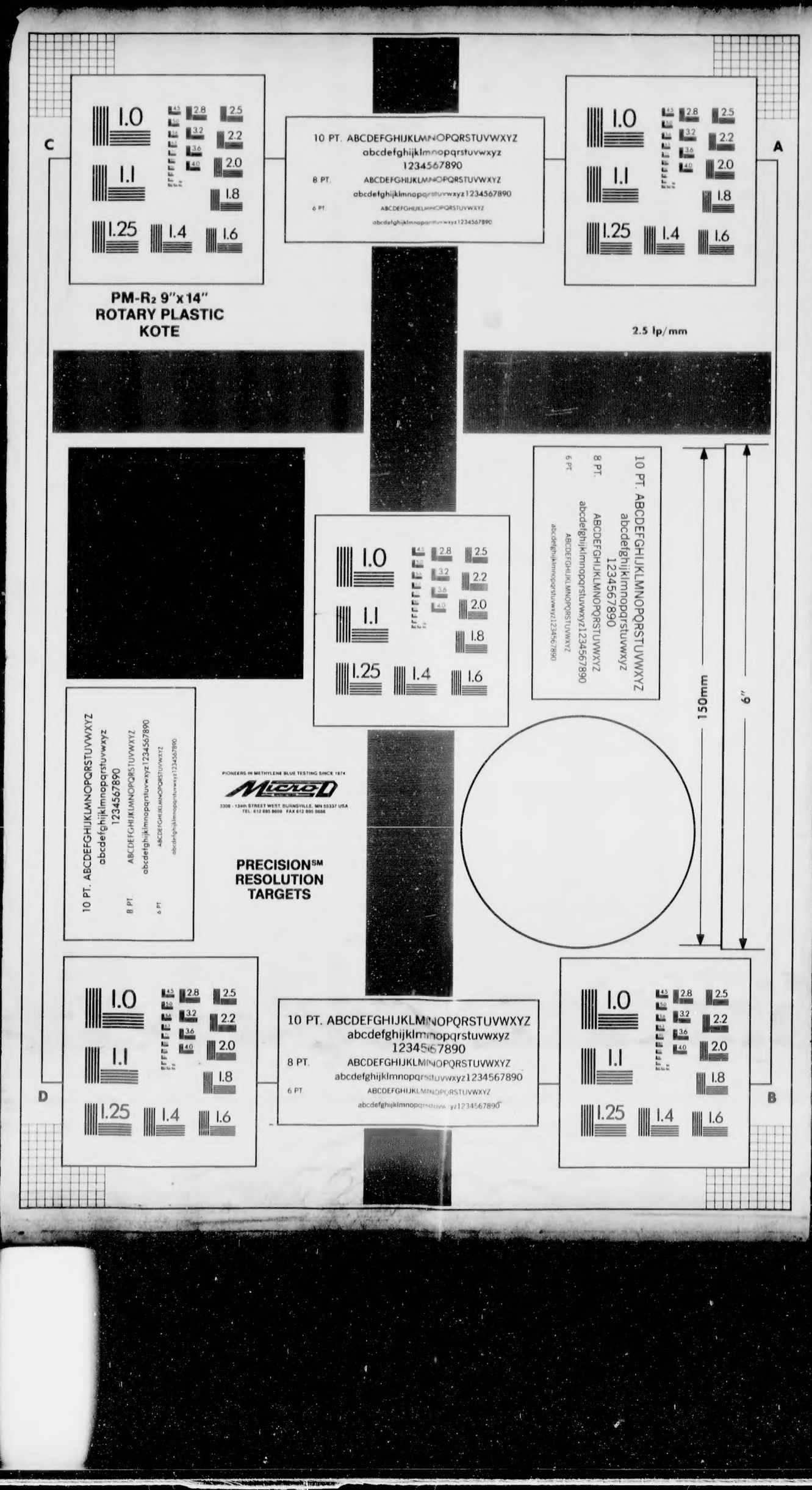
Microfilm Camera Operator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